

Tenants & Condominium Owners: Qs & As on Drifting Second-hand Smoke

1. What is drifting second-hand smoke?

Drifting second-hand smoke (SHS) is tobacco smoke that drifts or seeps into a residential unit from various sources:

- from a neighbour's patio or balcony or from outdoor common areas
- through open windows or doors
- through electrical outlets, cable or phone jacks, or ceiling fixtures
- through cracks and gaps around sinks, countertops, windows, doors, floors, walls or dropped ceilings
- through the ventilation system
- from the off-gassing of objects, especially soft furnishings such as carpets and draperies.

2. Why should I be concerned about second-hand smoke?

SHS is a toxic mix of more than 4,000 chemicals. In 1992 the U.S. Environmental Protection Agency (EPA) classified SHS as a "Group A" carcinogen - a category reserved for the most dangerous compounds proven to cause cancer in humans. More recently, the California EPA identified SHS as a toxic air contaminant.¹ Sixty-nine cancer-causing chemicals have been found in SHS.

Research shows that there is a dose-response relationship between exposure to SHS and health risk - the greater the exposure (length of time exposed and amount of exposure), the greater the risk to your health. However, many people have health conditions that are worsened by even brief exposure to SHS, such as asthma, emphysema, angina, high blood pressure and diabetes. The bottom line is that many reputable health agencies,

¹ California Environmental Protection Agency, *Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant, As Approved by the Scientific Review Panel on June 24, 2005.*
URL: <ftp://ftp.arb.ca.gov/carbis/regact/ets2006/app3exe.pdf>

including the World Health Organization, have concluded that there is no safe level of exposure to second-hand smoke.

3. What can I do about people smoking in the common areas of my building?

First check to see whether smoking is already banned in the common areas of your building:

- Check the law governing smoking in public places in your province/territory.
- Check whether there is a local bylaw banning smoking in public places.
- Check your lease agreement or the declaration/bylaws of your condominium

If there is a policy or law banning smoking in common areas, the problem may stem from lack of awareness or enforcement. To increase awareness, no-smoking signs should be posted (and visible) wherever smoking is not permitted.

If smoking is banned in your lease, contact your landlord. If this does not solve the problem, document all incidents (who, when, where) and file a complaint with the provincial residential tenancy office (contact information available in the NSRA Backgrounder document *When Neighbours Smoke*).

If smoking is banned under your condominium's declaration or rules, you will need to inform the board of directors about the problem and request that appropriate disciplinary action be taken.

If there is a provincial law, consult the NSRA Backgrounder for information on how to contact the enforcement authority.

For a local bylaw, call your municipal bylaw enforcement or the public health department and report the problem.

Non-Smokers' Rights Association/Smoking and Health Action Foundation

720 Spadina Ave, Suite 221, Toronto, ON, M5S 2T9 Tel: 416.928.2900 toronto@nsra-adnf.ca
130 Albert St, Suite 1903, Ottawa, ON, K1P 5G4 Tel: 613.230.4211 ottawa@nsra-adnf.ca

www.nsra-adnf.ca

4. I am bothered by tobacco smoke coming from my neighbours' apartment. Is there anything I can do that won't jeopardize our relationship?

There are two issues here: what you can do about the SHS and whether the solutions will jeopardize your relationship.

Start by determining how the smoke is entering your apartment. You may be able to solve the problem by caulking around cracks and gaps and/or replacing weather-stripping around windows and doors. If the smoke is entering through the ventilation system, you will need to involve the landlord. See Question 5 below.

Consider explaining the problem to your neighbour. They may be unaware that the smoke is bothering anyone and may not realize the health risks of exposure to SHS. It's possible they will be supportive and agree to smoke outside only. It is more likely, however, that your neighbour will be uncooperative. Many smokers feel pressure to quit smoking and are upset that smoking is increasingly being banned in public places and workplaces. They may resent the suggestion that they do not have the right to smoke in their own home. Ultimately you will need to decide which you value more: a smoke-free living environment or a good relationship with your neighbour.

5. I am bothered by second-hand smoke in my apartment that seems to be related to the ventilation system. What can I do about this?

Try to figure out if the problem relates to the central ventilation system or your local kitchen or bathroom fan.

- The central ventilation system may not be working properly, or perhaps the system is operating intermittently on a timer and the schedule needs to be adjusted. Ask your landlord or superintendent to check into it.
- If you suspect your kitchen or bathroom fan, try the tissue test. Hold a tissue to the grille: the fan should be able to hold it firmly in place. If it blows instead of sucks, talk to your landlord about getting it cleaned, repaired or replaced.
- Investigate getting your unit positively pressurized. You will need to consult with a professional as well as obtaining permission from your landlord. Refer to the NSRA

Background document *When Neighbours Smoke* for more information.

6. I have severe asthma that is triggered by breathing second-hand smoke. I have had several attacks recently in my own apartment because of drifting smoke coming from other units. Most workers are now protected from exposure to SHS on the job. What rights do I have not to be exposed in my own home?

The right not to be exposed to second-hand smoke is not absolute, and the law with respect to private spaces has not caught up to the protection afforded to people in workplaces and public places.

However, under provincial/territorial tenancy laws, people are entitled to "quiet enjoyment" of their home, which includes the right to be free from unreasonable disturbances by other tenants or their guests. It is possible that a residential tenancy official/tribunal could rule that drifting SHS constitutes an unreasonable disturbance and thus order some form of remedy. The remedy might include repairs to the building to minimize the drifting smoke, permission to break your lease, or some other solution.

7. Some tenants in my apartment are interested in having the building go smoke-free. Can this be done?

Yes, the best practical route for a building to go 100% smoke-free is for the landlord to impose smoke-free restrictions on new tenants signing new leases. However, expect the process to be lengthy and challenging.

Although progress is being made, the real estate sector has been slow to acknowledge the need to protect people from SHS. Begin by gathering support. Survey the tenants to determine the extent of support for a smoking ban. If you don't have strong majority backing, you will need to educate the tenants about why they should be concerned about SHS before you take a proposal to management.

Next gather evidence of the health risks of SHS exposure and the health and economic benefits of going smoke-free, and present your case to the landlord. Consult the NSRA Background document *When Neighbours Smoke* for more detailed suggestions on how to proceed.

8. A number of owners in my condominium want to have the building declared smoke-free. How can we do this?

Talk to other residents and gather as many supporters as you can. Consider circulating a petition or survey among owners to determine the extent of support for a smoking ban. Gather evidence of the health risks of SHS exposure and the health and economic benefits of going smoke-free. Ask to present your case to the condominium's board of directors.

If there are owners residing in the building who smoke, it may be necessary to include a "grandfather" clause, which basically accords existing owners the right to continue smoking in their units. While any prospective new owners would be informed that smoking is not permitted anywhere in the building, the building would only become completely smoke-free when all current smokers had moved out.

This would be a lengthy process and arguably defeats the purpose of a smoke-free policy. Currently there is no case law to indicate how such a situation might play out, but it is hoped that the courts would support and enforce restrictions to maintain a level playing field within the condo. Avoiding enclaves of greater "rights" would also avoid resentment and confusion amongst residents.²

Consult the law governing condominiums in your province/territory (see the NSRA Backgrounder document *When Neighbours Smoke* for links) as well as your condominium declaration/rules.

9. Can I be evicted for complaining about smoking violations or trying to have the building declared smoke-free?

NO. The residential tenancy laws in each province/territory specify that no retaliatory action can be taken against a tenant for making a complaint or reporting a violation.

² Shoenmarklin, S. *Analysis of the Voluntary and Legal Options of Condominium Owners Confronted with Second-hand Smoke from another Condominium Unit*. Smoke-free Environments Law Project. The Centre for Social Gerontology, Inc. May 2006.

10. I am planning to move and would like to live in a smoke-free building. How can I find out if there are any in my area?

The housing market has been slow to recognize the need to protect people from SHS. However, progress is being made. For example, Winnipeg's largest landlord, Globe General Agencies, officially went smoke-free in October 2006. With respect to smoke-free condominiums, we know of a small handful in British Columbia.

Private homes and small multiplex buildings that include self-contained rental apartments are the best smoke-free candidates. Try checking Craig's List online (www.craigslist.org) or other similar websites. Other sources of information may include the public health department in your area, or local or provincial tenant advocacy organizations. See the NSRA Backgrounder *When Neighbours Smoke* for contact information.

11. I live in a rooming house and am asthmatic. Most of the tenants smoke. Although we have our own rooms, we share the bathroom, kitchen, living room, and dining room. I can't afford to live anywhere else. What can I do?

The laws governing rooming houses vary from province to province. Most are regulated under specific municipal bylaws. The common areas of rooming houses are likely *not* included in local and provincial/ territorial smoke-free laws that ban smoking in the common areas of multi-unit buildings.

Start by calling your local public health department to find out whether your community has a smoke-free bylaw that covers the common areas of rooming houses.

If not, talk to your landlord. Explain your problem and provide him/her with the facts about the health risks of exposure to SHS and the benefits (including substantial cost savings) of going smoke-free. Ask the landlord to introduce a policy banning smoking in the common areas. Request that the landlord consider this as a first step toward possibly making the rooming house completely smoke-free.