

NON-SMOKERS' RIGHTS ASSOCIATION SMOKING AND HEALTH ACTION FOUNDATION

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Questions and Answers for Landlords/Condominium Corporations/ Co-op Boards 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 your open windows or doors
- through electrical outlets, cable or phone jacks, ceiling fixtures
- through cracks and gaps around sinks, countertops, windows, doors, floors, walls, ceilings
- through the ventilation system
- from the off-gassing of objects, especially soft furnishings such as carpets and draperies.

2. As a landlord, why should I be concerned about second-hand smoke?

The most important reason to be concerned about second-hand smoke is for the health and well-being of your tenants and any building employees. SHS is a toxic mix of more than 4,000 chemicals. In 1992 the U.S. Environmental Protection Agency classified SHS as a "Group A" carcinogen — a category reserved for the most dangerous compounds proven to cause cancer in humans. Over 50 cancer-causing chemicals have been found in SHS.

Research shows that the greater the exposure to SHS, the greater the health risk. However, many people have health conditions, such as asthma, emphysema, angina, high blood pressure, and diabetes, that are worsened by even brief exposure to SHS. The bottom line is that health authorities, including the World Health Organization, have concluded that there is no safe level of exposure to second-hand smoke.

Do I have the right to advertise for non-smoking tenants in the self-contained apartments of my house/multiplex building?

YES. Smokers are not a protected class under Canadian human rights legislation and there is no legal right to smoke. Therefore, owners/landlords have the right to refuse to rent to someone who smokes.

Owners of large apartment buildings have the same right to restrict tenancy to non-smokers. In the case of large buildings, however, implementation and enforcement are more complicated. See the NSRA Backgrounder for more detailed information.

3. Can I evict a tenant for smoking in a self-contained apartment of my house/multiplex building when I thought I had rented to a non-smoker?

Landlords have the right to impose additional obligations/restrictions on tenants (beyond the standard lease agreement), as long as these requirements do not conflict with the provincial/territorial tenancy law. If a no-smoking clause is written into the lease, a landlord has the right to seek penalties for non-compliance. The usual first step is to issue a written warning, as prescribed in the law.

In most provinces/territories, a landlord has the right to seek eviction of a tenant for breaching a smoking ban, but must follow a specific process laid out in the law.

If you had a verbal agreement with the tenant, you may still have the right to seek an eviction depending on whether the residential tenancy law in your province/territory considers verbal agreements to be binding.

Consult the NSRA Backgrounder for a more detailed summary of and a link to the residential tenancy law in your province/territory.

4. I have received several complaints about a tenant who smokes in the common areas of my building even though this is not permitted in the lease. What action can I take? Do I personally have to 'catch' the tenant smoking?

The residential tenancy law in your province/territory specifies the remedies available if a tenant violates a term of the lease. Issuing a written warning to the tenant is usually the first step. You do not have to personally witness the tenant breaking a condition of the lease.

You may also want to verify that there are no-smoking signs posted and visible wherever smoking is not permitted. It is possible that the tenant was unaware of the no-smoking policy.

5. Our condominium corporation/co-op board has received several complaints about a resident who smokes in some of the common areas even though this is not permitted in the bylaws/co-op agreement. What action can be taken?

Provincial/territorial legislation governing condominiums sets out the processes that condominium corporations must follow in establishing and enforcing bylaws and rules. The specific bylaws/co-op agreement pertaining to your building will detail the consequences of breaching the no-smoking requirement. Usually the first step following a complaint is to issue a written warning. If the tenant continues to smoke, options may include imposing a fine or denying the tenant use of the recreational facilities. Repeated violations of the smoking restriction may constitute grounds for eviction.

Consult the applicable condominium law in your province/territory (see the NSRA Backgrounder for links) and the bylaw/agreement for your building.

What are the benefits of making my building smoke-free?

There are *many* benefits to making your building completely smoke-free:

- Reduced risk of fire
- Lower insurance costs
- Lower maintenance and repair costs
- Reduced painting frequency and costs
- Increased marketability—a large majority of Canadians (80%) are non-smokers and smoke-free rental properties are in high demand
- Less chance of non-smokers breaking their lease because of drifting smoke
- Less chance of being sued by tenants over harm to health from exposure to SHS.

6. Our building is going smoke-free. To what extent is the off-gassing of second-hand smoke from carpets, furniture, and walls a problem and for how long?

The off-gassing of second-hand smoke is the result of two processes—

- *absorption*, whereby carpets, draperies, and various soft furnishings absorb certain chemicals in tobacco smoke and then re-emit them into the air over time, and
- *adsorption*, whereby certain chemicals in tobacco smoke adhere to solid surfaces and then are re-emitted into the air over time.

The length of time for a room or dwelling to off-gas cannot be precisely measured, because it depends on many factors, including the concentration of SHS, the ventilation rate, the surfaces in the room, etc. Experts agree that the off-gassing of a premise could take weeks or even months.

7. What is the best way to make my apartment building smoke-free?

A phased approach will work best. If smoking is not already banned in the common areas of your building, start there. Send a letter to all tenants informing them of the new policy and the reasons for it.

Give sufficient notice and post highly visible no-smoking signs wherever smoking is not permitted. Provide tenants with regular information about the dangers of SHS.

Next, survey tenants to find out the extent of their support for or opposition to a smoking ban in the entire building. Find out how many smoke, what units they live in, and whether they smoke in their homes—don't assume that all smokers will oppose the smoking ban.

From the survey, the next step may be apparent. Perhaps only a small proportion of your tenants smoke and they could be limited to certain floors or to a certain part of the building. Or you may have to “grandfather” existing tenants' right to smoke, while banning smoking for all new tenants.

Because implementing a complete smoking ban will necessitate amending individual tenancy agreements, make sure you consult the residential tenancy law in your province/territory first. Most tenancy laws have detailed rules regarding how lease agreements can be modified. See the NSRA Backgrounder for links to the residential tenancy law in each province/territory.

8. Some condominium owners/co-op members want to ban smoking in our building. Do they have the right to do this? What role does the corporation/board play?

Condominium owners/co-op members absolutely have the right to ban smoking in the building, provided the rules for amending the condominium bylaws/co-op agreement are respected. It is the responsibility of the condominium corporation/co-op board to ensure that these rules are followed.

A logical first step would be to survey the current owners/members to determine the degree of support for a smoking ban. Assuming there is strong majority support, the next step would be for the owners/members who are spearheading the initiative to make a formal presentation to the condominium corporation/co-op board

of directors. The rules governing the corporation/co-op will specify the process that must be followed in order for the policy change to be adopted (number of votes necessary, amount of advance notice to be given, etc.)

If there are owners/members residing in the building who smoke, it may be necessary to include a “grandfather” clause, which basically accords existing owners/members 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.

Consult the law governing condominiums in your province/territory (see the NSRA Backgrounder for links) and your condominium bylaws/co-op agreement.

9. I own a rooming house. Some tenants have been complaining about breathing tobacco smoke, but most of the tenants smoke. What are my options?

Breathing second-hand smoke is a serious health hazard for both smokers and non-smokers. As well, there are major cost savings from going smoke-free. You have the right to restrict or ban smoking in your rooming house. There is no legal right to smoke in Canadian law.

Start by discussing the problem with the tenants and give them information on the health risks of SHS. Set a date on which smoking will be banned in all the common rooms, providing reasonable advance notice. Consider extending the smoking ban to the entire rooming house. For more information on how to phase-in a smoking ban, consult the NSRA Backgrounder.