

NON-SMOKERS' RIGHTS ASSOCIATION SMOKING AND HEALTH ACTION FOUNDATION

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Questions and Answers for Tenants/Condominium Owners Co-op Members 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. 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 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 there is a dose-response relationship between exposure to SHS and health risk—that is 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, 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 your lease agreement, the bylaws of your condominium, or your co-op membership agreement.
- Check the law governing smoking in public places in your province/territory.
- Check whether there is a local bylaw banning smoking in public places.

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).

If smoking is banned under your condominium bylaws or co-op agreement, you will need to inform the condominium association or co-op board of directors of 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.

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.

Consider explaining the problem to your neighbours. 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 neighbours 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.

If the smoke is entering through the ventilation system, you will need to involve the landlord. See Question 5 below.

5. I am bothered by tobacco smoke in my apartment that seems to be coming from the ventilation system. What can I do about this?

This is a complex problem. The central ventilation system may not be working properly or it may not comply with the provincial building code. Ask your landlord to check into the ventilation. If this does not solve your problem with drifting SHS, contact your municipal government licensing office or property standards office to report a possible violation of

property standards bylaws or the municipal code.

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 tobacco 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?

While most provinces have laws banning smoking in most or all workplaces and in most public places, the law is reluctant to extend into a private domain and dictate an individual's behaviour in their own home.

Under provincial/territorial tenancy laws, however, 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, but expect the process to be lengthy and difficult. 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 first 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.

Present a well-researched case to management that includes a phased-in approach to going smoke-free.

Consult the NSRA Backgrounder for more detailed suggestions on how to proceed.

8. A number of owners/members in my condominium/co-op 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/members 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 management/ co-op board of directors.

You will need to consult the condominium bylaws/co-op agreement, as well as the relevant provincial/territorial residential tenancy law to determine what kind of accommodation must be granted to existing owners/members who smoke. Their right to smoke in their unit may have to be grandfathered or they may have to be given a specified amount of notice before the policy goes into effect.

If you are successful in having your condominium/co-op pass a smoke-free policy, the condominium bylaw/co-op agreement will have to be amended to include the policy and to specify the penalties for non-compliance.

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.

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

Real estate is one of the last sectors of society to recognize the need to protect people from SHS. But progress is being made. The city of Thousand Oaks, California, for example, requires developers of subsidized affordable housing to ban smoking in one-third of the units.

We are not aware of any large apartment buildings in any province or territory that are officially smoke-free. Private homes and small multiplex buildings that include self-contained rental apartments are the best candidates. The public health department in your area may keep a registry of such apartments. Another option is to contact a local or provincial tenant advocacy organization. See the NSRA Backgrounder 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 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.