

Achieving smoke-free apartment living

Information Sheet 4



Examples of 'smoke-free' strata by-laws

Individual circumstances will determine the amount of detail contained in a strata by-law prohibiting smoking. However it is important that the by-law clearly indicates the areas in which smoking is prohibited. The following two examples are real by-laws that have been provided to Cancer Council by representatives of owners' corporations.

Note: The word "lot" in these examples refers to a unit within a building.

From an apartment complex in Sydney's inner west

By-law prohibiting smoking on the premises:

(i) The owner or occupier of the lot must not smoke nor allow smoking within a lot or within the common property.

(ii) Without limiting paragraph (i), the owner or occupier of a lot must not allow any invitee to his lot to smoke within the lot or upon the common property.

From an apartment complex in Sydney's east

Specially resolved that the following special by-law be created:

Special By-law – Smoking In accordance with Strata Schemes Management Act 1996, Sections 47, 117, 45:

- 1. The proprietor or occupier of a lot must not smoke nor allow smoking within a lot or within the common property.*
- 2. Without limiting paragraph 1, the proprietor or occupier of a lot must not allow any invitee to smoke within his/her lot or upon common property.*

3. The Owners' Corporation delegates to the strata managing agent responsibility for:

- (a) The service of a notice, in a form approved by the Director-General, on the owner or occupier of a lot requiring the owner or occupier to comply if satisfied that the owner or occupier has contravened this by-law and*
- (b) Commencing legal proceedings seeking Orders, requiring a person who fails to comply with a notice served in (a), to pay the statutory pecuniary penalty and any costs of the Owners' Corporation in the proceedings.*



It is important that the by-law clearly indicates the areas in which smoking is prohibited.



Example developed by the organisation Action on Smoking and Health Australia

This more detailed example was developed by ASH Australia with legal guidance:

THE OWNERS – STRATA PLAN No. (X) (address) DRAFT MOTION

That the (name) Owners' Corporation specially resolve pursuant to (Section and relevant Act, e.g. in NSW: Section 47 of the Strata Schemes Management Act 1996) to make an additional by-law in the following terms:

SPECIAL BY-LAW: SMOKING ON THE PREMISES

1. For the purposes of this by-law:
 - (a) "smoke" means smoke, hold or otherwise have control over ignited tobacco or any other product that is intended to be smoked and is ignited;
 - (b) "the property" means all lots and the common property of the strata scheme;
 - (c) an owner of a lot, and a director or shareholder of a corporate owner shall be an occupier of that lot if he or she resides in the lot.
2. An owner or occupier of a lot must not smoke, or allow any one else to smoke, within a lot or the common property.
3. If a person, not being an owner or occupier of a lot, smokes in the lot the occupier of the lot breaches this by-law unless:
 - (a) the occupier did not know, or could not reasonably be expected to have known, that the person was smoking in the lot; or
 - (b) upon becoming aware that the person was smoking in the lot, the owner or occupier asked the person smoking to cease smoking immediately or to leave the property immediately, and the person did so.

4. If a person, not being the owner or occupier of a lot, smokes in the common property, the person, being an owner or occupier of a lot, who invited that person into the common property or with whose permission the person remains on the common property breaches the by-law unless:
 - (a) he or she did not know, or could not reasonably be expected to have known, that the person was smoking in the common property; or
 - (b) upon becoming aware that the person was smoking in the common property the owner or occupier asked the person smoking to leave the property immediately, and the person did so.

OPTIONAL ADDITIONAL CLAUSES:

5. This by-law does not prohibit smoking within the property by a person who, on the basis that the person smoked regularly before this by-law was made, has obtained the consent of the owners' corporation in writing to smoking, provided:
 - (a) the person resides in the property;
 - (b) the person does not smoke within the building or at a location visible from a public street;
 - (c) the smoke generated by the person's smoking is not discernable in a lot, and does not enter any air conditioning serving the building;
 - (d) the person does not smoke in or near an area in which clothes dry or children play;
 - (e) the person complies with any other conditions that the Owners' Corporation may place upon its consent.
6. The owners' corporation may place conditions upon a consent given by it pursuant to paragraph 5. The recipient of the owners' corporation's consent must comply with such conditions.