

Achieving smoke-free apartment living

Information Sheet 3

Case Studies

A number of strata buildings in Sydney have adopted smoke-free by-laws. The case studies presented here look at how the occupiers of two strata blocks achieved this.

Case Study 1

The chairman of an owners' corporation for a residential apartment building in the western Sydney suburb of Ashfield was approached by other residents concerned about tobacco smoke invading their apartments. They were also dismayed at having to continually remove tobacco-related litter from footpaths and garden beds at the block.

Residents complained of being exposed to the smoke day and night with little respite. The smoke was originating from two units in the block of eight. In one of the two units the smoke would reportedly drift from the living room through a balcony door and then through balcony doors and windows of other units. Residents believed the smoke was also travelling through vents in the walls of units and via the building roof cavity. In the other of the two units, the tenant reportedly used the balcony for smoking with the resultant smoke drifting directly into windows and other balcony doors.

The chairman sought advice from the block's strata manager about the legality of a strata by-law that would allow a 100% smoke-free policy to be implemented at the block. Based on a 2006 decision by the Consumer, Trader and Tenancy Tribunal in

NSW¹, the strata manager confirmed the legality of such a by-law. Consequently, at the request of the owners' corporation, the strata manager developed a by-law, which was supported by more than the required 75% of those attending the special meeting organised to decide the matter.

Subsequently, all current residents of the building were notified of the new by-law, and from that point on, every new tenant was informed of the by-law prior to signing their lease. Signage was also posted at strategic points on the property to inform visitors - including trades people - that the entire property is a smoke-free area.

Shortly after the by-law was adopted, one tenant from whose unit tobacco smoke had been escaping moved out. The tenant in the other unit from which smoke had been escaping reportedly initially refused to comply with the requirement of the by-law and continued to smoke on the unit balcony. The response of the executive committee was to advise the tenant that if this non-compliance continued the tenant would be issued with a 'Notice to Comply with a By-Law' and that a fine of up to \$550 could be imposed by the Consumer, Trader and Tenancy Tribunal. In response,



the tenant agreed to walk the short distance to the footpath at the front of the building and smoke there, thus resolving the matter.

The chairman of the owners' corporation has informed Cancer Council NSW that since the by-law was passed:

... we have received nothing but praise from all the residents of the building, new tenants and owners in the building, and the managing agents of the units. It is definitely a healthier place to live without any unsightly cigarette butts on the ground or foul second-hand smoke wafting throughout the building

and common areas. I believe we have increased the rental/resale value of each unit in the building. After all, approximately 83% of the population do not smoke and would preferably live in an apartment block that is free of cigarette smoke as a result of how close we all live to our neighbours, and a non-smoking tenant would definitely want to rent out a unit that has not had a smoker in it previously. However, this is difficult to quantify, but is the opinion of myself and the other seven owners, along with the managing agent of the building.



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The use of clear signage will help to encourage compliance with smoke-free policies.

Case study 2

After a year of second-hand smoke exposure, residents in a six-lot art deco apartment complex in Sydney's eastern suburbs decided it was time to take action to resolve the problem. With the existence of double brick walls throughout the building, tobacco smoke managed to find its way from a top floor apartment through air vents in that unit's walls, travelling between the double brick walls and into the vents of units adjacent and on the floors below. The impact upon non-smoking residents ranged from annoyance to a diagnosed respiratory condition that a medical practitioner attributed to second-hand smoke exposure.

Personal approaches and letters to the occupants of the apartment from which the smoke was coming had failed to resolve the matter. It was then that one of the residents approached Cancer Council NSW seeking

copies of NSW legal judgements that had affirmed the right of strata owners' corporations to establish by-laws allowing 100% smoke-free policies.^{1,2} The resident then contacted the Land Titles office of the NSW Government's Land and Property Management Authority to obtain a copy of the by-law that was the subject of one of these cases. Having obtained this, the resident drew upon the by-law to draft one for the resident's own strata corporation. The draft was then reviewed and later supported by the corporation's strata management agent.

The by-law was passed at an extraordinary general meeting of the owners' corporation with unanimous support. Signage stating that the building was subject to a 100% smoke-free environment policy was placed in all common areas.

References

1. Durie GJ. (6-11-2006); Consumer, Trader and Tenancy Tribunal Strata and Community Schemes Division.
2. Supreme Court of NSW. (1997); Salerno v Proprietors of Strata Plan No. 42724; (1997) 8 BPR 15,457; BC9701114.