



Owners' corporation obligations

Smoke-penetration can cause distress and lead to disputes

Strata managers or committee members are sometimes approached by residents regarding smoke-penetration. This can be distressing for residents and lead to disputes. People who smoke in apartments can feel targeted and stigmatised.

Cancer Council NSW is often contacted by tenants and owners in apartments about the distressing nature of smoke-penetration and the aim of this toolkit is to provide all residents and members of a strata scheme with the information and tools required to make an informed decision that is right for their apartment complex.

■ Smoke-free policies are intended to provide a clean, shared living environment

Tenants and owners share infrastructure and spaces. To manage the shared living environment of all residents and ensure proper use of common property, the owners' corporation can implement by-laws to ensure that common rules apply to all people residing there. The aim of smoke-free by-laws is to create clean and healthy air in people's shared living environment. It is not intended to isolate people who smoke. Smoke-free policies do not preclude people who smoke from living in the building, they simply restrict where people can smoke or they may require all people not to smoke while on the property.

Cancer Council NSW encourages all owners' corporations to introduce 100% smoke-free policies to improve the health of tenants, create a more habitable environment, reduce cleaning and refurbishment costs, reduce the chances of fire and to limit the risk of lawsuits arising from secondhand smoke exposure.

Legal Case Study

Owners' corporation versus May and Ors 2006

Tenants ordered to stop smoke from penetrating neighbouring apartments

The owners' corporation of an apartment complex in Millers Point won a case taking two residents to the Tribunal as their smoke was penetrating neighbouring apartments. Residents noticed the smoke immediately and one neighbour complained of the smell in her bedding as a result of the smoke. The owners' corporation took action on behalf of

tenants in the building. The Tribunal ordered the residents to take action to prevent smoke from penetrating neighbouring apartments and the owner/s of that apartment were also ordered to ensure smoke was not able to drift into other apartments. This case paved the way for owners' corporations and strata committees to take action on smoke-penetration.²



Owners' corporations can enforce by-laws

Once a by-law is in place and communicated to all residents in the building if there is an infringement – i.e. a resident continues to smoke in areas that are smoke-free – a penalty notice can be issued by the owners' corporation. The *Strata Schemes Management Act 2015*¹ states that an owners' corporation for a strata scheme may give notice to the owner or resident to comply with a specified by-law. On application by the owners' corporation to the Tribunal (see above) the owner or resident may be ordered to pay a monetary penalty if they have contravened a by-law.

The Civil and Administrative Tribunal

Tenants, owners and owners' corporations have the right to apply for a hearing by the Civil and Administrative Tribunal and have the power to take a resident who smokes to the Tribunal seeking that the resident cease all behaviour (including smoking) that is causing a nuisance. It was the Tribunal that ordered residents in an apartment complex to take action to prevent smoke odour from their cigarettes entering other apartments and common property after a strata committee brought a case on behalf of tenants who had been exposed to secondhand smoke.²

REFERENCES

¹ New South Wales Government. *Strata Schemes Management Act. 2015* [Accessed 12 September 2016]; Available from: <http://www.legislation.nsw.gov.au/#/view/act/2015/50/full>.

² Australasian Legal Information Institute. *Owners corporation versus May & Ors. 2006* [Accessed 12 September 2016]; Available from: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWCTTT/2006/739.html?stem=0&synonyms=0&query=durie%20and%20smok*