

Controversial Smoke Free Strata By-Laws

As the notion of living a healthy lifestyle continues to become increasingly prominent within contemporary society on a global scale, smoke-free environments are now being enforced in the form of [strata by-laws](#).

While it is clear that Australia adopts strict smoke-free regulations within public areas and indoor workplaces, restrictions within apartment buildings and/or other multi-unit residencies are a fairly new phenomenon. This can be attributed to the increasing growth of community concern in relation to the harmful health effects that arise as a result of exposure to second-hand tobacco smoke.

Should strict by-laws be adopted?

One of the primary justifications as to why smoke-free strata by-laws have come into effect is due to the drifting of second-hand smoke into non-smoking residential property. The Cancer Council NSW offers a '[Smoke Free Apartment Living Kit](#)' and substantiates such claims by informing community members that their concerns are valid by stating "*Scientific studies have measured significant levels of tobacco smoke contaminants in the apartments of non-smoking residents who live in a building where people smoke in other parts of their building*".

Smoke has a tendency to drift throughout a building within apartment lots and common property. Drifting may occur through various mediums including but not inclusive to air conditioning systems, stairwells, balconies and elevator shafts. Resultantly, individuals living within apartments and other multi-unit residencies are placing pressure on owners corporations to pass strata by-laws to prohibit smoking and encourage living in a smoke-free environment.

If smoke-free strata by-laws do come into effect there is no doubt that various positives are apparent. For example, non-smoking individuals will have a reduced exposure to second-hand tobacco smoke and thus reduce the possibility of encountering potential health risks such as asthma. Financial benefits are also evident as smoke-free environments contribute to a reduced risk of fire and cigarette related damage including burn marks on furniture, benches, carpets and walls; equating to reduced cleaning and maintenance costs. Most importantly, individuals living within a smoke-free environment may feel peace-of-mind within a residency that takes preventive measures to improve the health of all.

Or...should people have a right to smoke?

On the contrary, smoke-free by laws have sparked a great deal of fury, particularly towards individuals who prefer to adopt a smoking lifestyle. Smokers believe that such by-laws take away a right of one group at the expense of another and feel it is a denial of their legal rights, believing they should have a right to smoke within the boundaries of their lot. Subsequently, many questions raised include: Are my legal rights infringed? Will a designated smoking area be provided? Can a balance between smokers and non-smokers be struck? & How do I know if I live in a smoke-free environment?

[Adrian Mueller](#), specialist strata lawyer with JS Mueller & Co, says, *Strata buildings have the ability to enforce by-laws prohibiting smoking. Existing strata schemes that do not have smoke-free by-laws can bring them in, but only if a 75% majority vote is obtained "*.

[Adrian](#) continues by saying, *"There are available options to address the problem of smoke drift within apartment blocks. The level of detail within a strata by-law prohibiting smoking will vary due to individual circumstances. The by-law might ban smoking on any or all of the common property, a lot's outdoor areas and even a lot's indoor areas."*

For NSW strata legal or levy collection advice please contact us [here](#) or call 02 9562 1266, we're happy to assist.