

**Condo Smarts**

Headline: How to Define Nuisance in a Strata  
Topic: Smoking; Noise  
Publication date: July 4, 2010  
Publication: The Province  
Written by: Tony Gioventu

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**Dear Condo Smarts:** Our strata corporation is constantly dealing with complaints from owners about noise, smoking, barbeque smoke, odours and smells. All of these fall under the same bylaw in the Strata Act that deals with items that are a nuisance. Smoking is the most obvious problem that we frequently have to address. Our strata is an older building so ventilation, indoor air quality, and the passage of air and odours from unit to unit and floor to floor is a common occurrence. If we took all of these items seriously, everyone in our strata would likely be in violation of the bylaws, every month. We know that some people are more sensitive, but with such an older building and living in a collective, there has to be some reasonable level of nuisance that everyone has to deal with. Where do we draw the line? Are there court cases or definitions that give us a better understanding? Dvora & John, North Vancouver

**Dear Dvora & John:** There are a number of terms used in the Strata Property Act and the Standard Bylaws that require the strata council to make an interpretation that is both reasonable and comparable to the circumstances of each community. For example, there is a provision in the Act where an owner may apply to the strata council for a hardship exemption from rental bylaws. Hardship itself is not defined, and that is a matter that only the council may solely decide. The council could look to other definitions or examples, but ultimately, the council act as the hearing body to gather the information necessary to make the decision. The duty to make the decision regarding a hardship exemption, bylaw enforcement, fines, penalties, or special accommodations to the bylaws, cannot be delegated to any other party.

Nuisance may have a number of interpretations and may be interpreted quite broadly. Here are some of the interpretations that the courts have issued in establishing a nuisance. At common law, a "nuisance" is a condition on a property or some use of a property that interferes with a neighbouring owner's ability to enjoy their

property. For example, an industrial plant that otherwise operates lawfully may cause a nuisance if smoke or noise invades the right of enjoyment of neighbouring land owners to an unreasonable degree.

According to Elaine McCormack, a Vancouver lawyer whose expertise is in the area of strata law, "The law of nuisance attempts to reconcile competing uses of land. It endeavours to balance the rights of one occupier of land to use his or her property for lawful purposes with another occupier's right to the quiet use and enjoyment of his or her land. The Court can intervene when the interference with the other's use or enjoyment of land is unreasonable."

If you look at the Standard Bylaws, these terms are almost identical. "*Use of property: unreasonably interferes with the rights of other person to use and enjoy the common property, common assets or another strata lot.*"

In a 1990 Supreme Court case in BC of *Popoff v. Krafczyk*, the court approved the objective test as follows: "In every case it is not whether the individual plaintiff suffers what he (or she) regards as substantial discomfort or inconvenience, but whether the average man (or woman) who resides in that locality would take the same view of the matter. The law of nuisance does not guarantee for any man (or woman) a higher immunity from discomfort or inconvenience than that which prevails generally in the locality in which he lives."

Therein rests the challenge for every strata council in determining what is reasonable, what is balanced, and what constitutes the reasonable use and enjoyment of property without interruption. If we consider the number of occupants in multi family communities, the variations of potential nuisance would be endless. The council will have to establish whether they believe the actions did or did not constitute a nuisance.

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There are simple examples of a nuisance that we can all understand: a loud party at 3 am, a dog barking all day, cigarette smoke or BBQ smoke contaminating strata lots, cooking odours that migrate throughout a building system, exercise machines or jetted bathtub operated during the night causing disruptive vibrations or noise, vacuuming at 3 am.

Many complaints often relate to building designs or age. For example, older wood frame buildings with hard wood flooring may have no sound suppression, so even a small pet or person walking across the floor may be an irritant to some owners. There is no simple method of establishing a nuisance. If the complaint meets or exceeds the test, the remedy may be notice of complaint and eventually bylaw enforcement. But where building designs or systems contribute to the nuisance, the strata corporation may have to assess other remedies first within their operations and bylaws to reduce the impact on owners. In some instances strata corporations have upgraded ventilation systems to deal with smoke or odour, adopted bylaws requiring area carpets in high traffic areas, and even in some cases amending bylaws that limit or restrict activities to make the building lifestyle more reasonable for the occupants.

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