

COMMON PROPERTY

Newsletter for professionals in the facilities management sector.



Puffing in Common Areas



Edition: 14th October 2011

Once upon a time we considered it our right to light up and have a puff wherever we wanted. Those days are long gone. I am absolutely certain that the readers of this newsletter will be divided! Those who smoke will consider the findings in this newsletter as discriminatory! Those who are anti-smoking will be clapping their hands!

The question of whether an owners corporation can make by-laws prohibiting smoking on balconies or in common property was considered in the Serlenos case. This was a Supreme Court case that held that the Owners Corporation had the power to make laws prohibiting smoking on balconies and from smoking in lots. In particular, where the smoke was able to float from one lot to another, the owners corporation were permitted to make by-laws prohibiting cigarette smoking.

Hence, it is lawful for owners corporations to make by-laws which prohibit smoking in common properties, on balconies or even in lots.

What happens where no by-laws are in place? In the Highgates case, heard before an adjudicator at the Consumer, Trader & Tenancy Tribunal, considered the issue of cigarette smoking. It was considered a nuisance and a breach of Section 117 of the Strata Schemes Management Act 1996. Hence, it was accepted that even if you did not have a by-law, laws against smoking that affects others can be enforced.

Once upon a time your home was your own castle. If you decide to live with others, the law will work to ensure that your habits, although legal, do not impact upon others' comfort.

**Cheers,
Bailey Compton
and the team at ACP/Leverage**

Strata CPD

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