

SAMPLE COMPLAINT LETTER

Requesting a condominium’s board of directors to take steps to reduce or eliminate the problem of second-hand smoke

This sample letter is designed for residents who are suffering from second-hand smoke infiltrating their homes from neighbouring units and who want to write to the condominium corporation to take steps to resolve the problem.

In the absence of a no-smoking policy, residents have a right to smoke. However, this right is not absolute—especially if second-hand smoke is interfering with the health and well-being of other people in the building. Virtually all condominium corporations in Ontario have general rules prohibiting behaviour that creates a nuisance or hazard to another person. This can include smoking, regardless of whether or not the condominium corporation has a formal no-smoking policy in place. If someone’s second-hand smoke is infiltrating neighbouring units on a frequent and on-going basis and causing an unreasonable disturbance, condominium boards of directors have the authority and responsibility to address these complaints.

However, whether or not a condominium corporation recognizes second-hand smoke as a nuisance will very much depend upon the exact wording of the rule relating to nuisance and is left up to the discretion of the board of directors to determine. It should also be noted that a 1988 Supreme Court of Ontario case on nuisance determined that “although the test of nuisance is generally whether the defendant’s use of its land interfered with the beneficial use and enjoyment of the plaintiff’s lands and whether that interference was unreasonable, there is authority for the proposition that where actual physical damage occurs, the interference is unreasonable.”

Steps	Examples
Describe the source and extent of the problem.	
<p>Describe how often the smoke is coming in, where it comes from and be sure to emphasize that it is more than a temporary discomfort or inconvenience.</p> <p>Identify:</p> <ul style="list-style-type: none"> • When the problem first started; • How the smoke is entering your unit (i.e. through open patio doors); • Where the smoke is coming from (i.e. upstairs neighbour’s balcony); • How often the smoke enters your unit on a daily or weekly basis. List dates, times and frequency of occurrence; • How much smoke is entering your unit. Does the smoke stay in one area or does it permeate other areas of your home? 	<p>Dear (president, condominium board of directors),</p> <p>Re: Second-hand smoke infiltrating my unit and causing an unreasonable nuisance</p> <p>I am an owner residing at (enter address).</p> <p>Unfortunately, I am currently faced with second-hand smoke coming into my unit from (enter the unit number if you know where the smoke is coming from). The smoke comes in through my daughter’s bedroom window from the balcony upstairs, and also seems to be coming in through her closet. Although the odour is most pronounced in my daughter’s bedroom, our whole home has started to smell like second-hand smoke. It is definitely worse in the evenings and weekends when our neighbour is home. It happens every single day without fail.</p> <p>(See attached log with the times and dates the smoke has entered my home.)</p>

Steps	Examples
Describe how it has impacted your health.	
<p>Identify:</p> <p>Symptoms or illnesses caused by the smoke, including asthma attacks (and the need for a puffer if none was required before), headaches, burning/watery eyes, sore throats, bronchitis, ear infections, heart problems, etc.</p> <ul style="list-style-type: none"> • Is smoke worsening a pre-existing health problem such as asthma, allergies, heart disease, high blood pressure, fibromyalgia, or cancer? • Do you fear for the health of your infant? Babies who are exposed to second-hand smoke have a higher risk of dying from Sudden Infant Death Syndrome (SIDS). 	<p>I am very concerned about my daughter's health. She has asthma and I have noticed she is coughing more and needs to use her puffer at night, something she didn't previously need to do.</p> <p>I am enclosing a letter from our family doctor stating that my daughter should not be exposed to second-hand smoke and that she is at risk of having an asthmatic attack.</p> <p>Also, I have started to suffer from frequent headaches, something I have never had before. I don't get them when I am away from home, so it is clearly linked to the smoke.</p>
Describe how the smoke has denied you full use and enjoyment of your home.	
<p>Identify:</p> <ul style="list-style-type: none"> • Has all or parts of your home become uninhabitable at times? • Are you forced to stay out of certain rooms because of the smoke? • Are you unable to open your windows or balcony door? • Are you unable to use your balcony? • Are you unable to use your fans or heating system? • Have you been forced to leave your home on certain days or at specific times to avoid the smoke? • Are friends and family unable to visit you because of the smoke? <p>You need to provide extensive evidence demonstrating the extent and frequency of the smoke and how it is causing a nuisance and loss of your reasonable enjoyment of your home.</p>	<p>Because the smoke infiltration is significant in my daughter's bedroom, she now sleeps in my room on a cot.</p> <p>We don't have air conditioning and it is too hot to keep the window closed. Because of the smell coming from the closet, we keep her bedroom door closed all the time, so unfortunately we don't have use of this room anymore, despite paying the mortgage for a two-bedroom unit.</p>
Describe what steps you have taken to resolve the problem yourself.	
<p>If you have to take more formal steps, it will be important to demonstrate that you have taken steps to minimize the problem yourself.</p>	<p>Apart from keeping the bedroom window closed all the time, I have tried caulking inside the closet to block the smoke coming in. Unfortunately, it doesn't seem to have done much good.</p> <p>I have also tried to politely talk to our neighbour about the problem, but he only got mad and said that he can do what ever he wants in his own home.</p>

Steps	Examples
Collect and attach supporting evidence.	
<ul style="list-style-type: none"> Obtain written proof from neighbours, friends and family concerning the extent and frequency of smoke entering your home. The more people who can verify your complaint, the stronger your case. Obtain a letter from your physician to verify that the smoke is making you or your family members sick, or aggravating an existing condition or illness. 	<p>Please find the attached documents that support my claim of nuisance and a loss of reasonable enjoyment of my home.</p>
Provide information about the dangers of second-hand smoke. (Optional)	
<p>For more information on the dangers of exposure to second-hand smoke go to the US Surgeon General's Report at:</p> <p>www.surgeongeneral.gov/library/secondhandsmoke/</p>	<p>Second-hand smoke is a serious health hazard that can lead to disease and premature death in children and nonsmoking adults. There is no known safe level of exposure. Even brief exposure can be harmful to people's health. Second-hand smoke:</p> <ul style="list-style-type: none"> Is poisonous, and exposes residents and families to over 4,000 chemicals; Contains more than 50 chemicals that are known to cause cancer in humans; Is a class 'A' cancer-causing substance ranked with the most deadly substances, including benzene, chromium, cadmium, and arsenic.
Make your request.	
<ul style="list-style-type: none"> Indicate your willingness to negotiate a resolution Propose some potential solutions, such as: <ul style="list-style-type: none"> Maintenance or repairs to the common elements to block the smoke; Maintenance or repairs to the central ventilation system; Negotiations with the neighbour who smokes to limit where and/or when she or he smokes. <p>If a negotiated solution cannot be reached with the neighbour and there is evidence of a reasonable disturbance caused by the smoke, the corporation has the authority to notify the neighbour who smokes that they are in violation of the rules, and must cease the behaviour that is causing the nuisance. Condominium corporations have a duty to enforce bylaws and rules, including making an application to the Superior Court of Justice for an order enforcing compliance.</p>	<p>The situation has become utterly intolerable and I need your help.</p> <p>Given the seriousness and urgency of the situation, I am asking that you talk to my neighbour and ask him for his cooperation in not smoking in his unit or on his balcony.</p> <p>If this person is not amenable to this request, then I would ask that the board of directors find that he is in violation of the rules for causing a nuisance, and that rule enforcement proceedings be initiated.</p>
Ask for a response by a specific date.	
<p>Ask for a response by a specific date. Your bylaws may specify timeframe responses regarding complaints, or when meetings are held to discuss issues such as complaints.</p>	<p>I would appreciate a response within two weeks so that I can move forward on this issue knowing your position. Thank you very much for your assistance on this important matter.</p>