



Australian College
of Professionals

College Chronicle

Smoke Drift

October 4, 2019



RTO 91513

An interesting case was decided by NCAT recently that gives a new perspective on an Owners Corporation's responsibility when dealing with complaints involving smoke drift and neighbouring properties.

As of 30 November 2016, the Strata Schemes Management Regulation provide for a standard by law to be introduced to restrict smoking on common property and to prohibit smoke drift from common property. What the legislation has not done is prohibit individual owners being able to smoke within their own property. Obviously, all owners should have some level of autonomy, especially within their own four walls. However, how is an adjoining owner or an owner across the hall able to stop someone else's smoke from causing a hazard or nuisance within their lot?

This is where we look to the case law. There have been a few cases in the last five years that have considered the impact on lot owners when another lot owner is smoking and that smoke drifts into someone else's lot. In most of the case law to date, the cases surrounded tenancy and could be dealt with by consulting the Residential Tenancies Act 2010 and the lease that applies to that tenancy. The cases where lot owners are taking action against the Owners Corporation because one owner's smoke drift is interfering with the neighbouring lot however, is a rare and interesting case.

In the case of *Gisks v The Owners – Strata Plan No 6743; The Owners – Strata Plan No 6743 v GISKS* [2019] NSWCATCD 44, NCAT found that smoke drift emanating from a lot onto a neighbouring lot is a nuisance because it is an interference with the lot owner's use and enjoyment of the lot. This ruling indicates that smoke penetration from a lot onto another lot is potentially, a nuisance and hazard.

The Tribunal had heard the following facts:

- the lot owner had complained for two years to the Owners Corporation about the neighbouring lot owner smoking within their own lot causing the smoke to drift into the complainant owner's lot, with the complaints relating to health and safety and the view that inhalation of cigarette smoke is a toxic chemical cocktail;
- the Owners Corporation considered the matter was a civil one as it only affected one person;
- the strata committee issued notices to all residents in relation to the complaint.

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This case was based on Section 153(1)(a) of the Strata Schemes Management Act 2015 (NSW) (the Act) states:

- (1) An owner, mortgagee or covenant charge in possession, tenant or occupier of a lot in a strata scheme must not:
 - (a) Use or enjoy the lot, or permit the lot to be used or enjoyed, in a manner or for a purpose that causes a nuisance or hazard to the occupier of any other lot (whether that person is an owner or not)

The Tribunal Member accepted the lot owner’s evidence in relation to smoke drift from the neighbouring lot and found that the smoke drift is a hazard and a nuisance. The Tribunal Member also found that the strata committee erred in its approach and misconceived the operation of section 153 by not addressing the matter properly.

While this case was a case involving the Owners Corporation, the Tribunal did not penalise the OC for not having taken better steps in preventing or stopping the hazard and nuisance. The Member did order that at all times, the neighbouring lot occupant must not smoke on the balcony or in the bedrooms of her lot AND must close all exterior doors, bedroom windows and bathroom window when smoking in her lot.

One thing a Strata Manager can take away from this decision is that an Owners Corporation should take these types of matters seriously. While there was no penalty in this case for the Owners Corporation’s inaction, penalties could have been applied, such as compensation to the compliant lot owner as well as costs orders against the OC in the matter. These complaints should be taken seriously and legal advice sought in a timely manner.

‘Til next time, wishing you every success in your business ventures,

Rosy Sullivan | College Director & Principal

4 HOUR CPD SEMINARS Full 12 points

THU 10TH OCT	TAMWORTH Sales & Prop Mgmt	THU 17TH OCT	SYDNEY CBD Property Management
MON 14TH OCT	GUNNEDAH Sales & Prop Mgmt	MON 4TH NOV	BATHURST Stock & Station
WED 16TH OCT	GOSFORD Sales & Prop Mgmt	MON 4TH NOV	BATHURST Sales & Prop Mgmt
THU 17TH OCT	SYDNEY CBD Real Estate Sales	MON 4TH NOV	MOREE Sales & Prop Mgmt

2 HOUR CPD SEMINARS (8am - 10am unless specified otherwise). Full 12 points, Pre-reading required

FRI 18TH OCT	PARRAMATTA Sales & Prop Mgmt	THU 7TH NOV	PARRAMATTA Sales & Prop Mgmt
THU 24TH OCT	LIVERPOOL Sales & Prop Mgmt	MON 11TH NOV	CASTLE HILL Sales & Prop Mgmt
THU 31ST OCT	SYDNEY CBD Strata Management	TUE 19TH NOV	GOSFORD Sales & Prop Mgmt



From the office

There we have it, another fortnight that has come and gone here at ACOP. Our classrooms have had great numbers of ecstatic students attending our CPD and licensing courses these past two weeks. We have had many of our trainers out and about travelling the streets of metropolitan Sydney to provide our high quality and in-depth CPD seminars. With a skip in their step our trainers have travelled to Scone, Parramatta, Baulkham Hills and Forestville making their way gradually back to the energetic walls of ACOP to provide our evening CPD seminar for Sales and Property Management.

Amongst the hustle of our CPD courses we have also been jam packed with students who attended our Strata Management Agency Practices course followed by the Trust Accounting and Insurance module for the strata licensing program. Our students were quite robust, as for many this was the last module that most students needed to attend for the end of their study journey. Alongside our licensing courses, we also held a great class of students who attended our Diploma of Leadership and Management course, ending this fortnight of training on a high.

As many may know, age is a virtue and you're only as old as you feel. Well from the family here at ACOP we would love to wish John Sullivan – our Financial Controller a very big and happy 60th Birthday – and we all say that he hasn't aged a day over 21 (he pays us, so we'll say anything). Now if you know us well, your mind is most probably pondering on the thought of how the day had gone for John. It started with a few of us blowing up an endless amount of balloons as we achieved the impossible by filling his office up so much his chair was nowhere to be found. As he entered the office we were all scrambling to get the last of his "reflections" photos up as we created a collage of photos that we displayed on his office door. We had spent most of the day ensuring John didn't open the fridge door as his surprise cake awaited and at 3pm that afternoon it didn't disappoint. Rosy has undoubtedly great taste but this was something else, as she placed a colossal tower of custard filled profiteroles dipped in milk chocolate and chocolate dipped strawberries on the desk for everyone to admire. It is needless to say that his birthday was a day that will always be remembered. To end this fortnight we would also like to welcome back Rachele who had a well-deserved vacation sipping on juice while visiting the beautiful sandy beaches of Mexico. We missed her and it's great to feel reunited as an ACOP family again.

The most important news is last. ACOP has been granted re-registration as a Registered Training Organisation for another (7) seven years. The compliance team at ACOP now have time to take a little breath, before they launch again into the daily tasks of keeping us all conforming to the Standards required for RTOs. Congratulations to us.

CERTIFICATE OF REGISTRATION COURSES

Units taken from nationally accredited training qualifications from the CPP07 Property Services Training Package.

MON 14TH WED 16TH OCT	SYDNEY CBD
MON 28TH WED 30TH OCT	PARRAMATTA
MON 11TH WED 13TH NOV	SYDNEY CBD
MON 25TH WED 27TH NOV	CASTLE HILL

FINANCE & MORTGAGE BROKING COURSES

Units taken from nationally accredited training qualifications from the FNS Financial Services Training Package.

MON 28TH WED 30TH OCT	SYDNEY CBD Certificate IV in Finance & Mortgage Broking
28TH-30TH OCT & 7TH-8TH NOV	SYDNEY CBD Diploma of Finance & Mortgage Broking Management <i>(Upgrade Program - Must hold Certificate IV in Finance & Mortgage Broking)</i>

PROPERTY LICENCE COURSES

Units taken from nationally accredited training qualifications from the CPP07 Property Services Training Package.

20 TH - 21 ST NOV	Staff Management SYDNEY CBD	18 TH - 19 TH NOV	Financial Management SYDNEY CBD
8 TH - 11 TH OCT	Sales for Real Estate SYDNEY CBD		
21 ST - 25 TH OCT	Stock & Station Agency Practices SYDNEY CBD	FRI 8 TH NOV	Trust Accounting + Insurance (Strata) SYDNEY CBD
4 TH - 7 TH NOV	Strata Management Agency Practices SYDNEY CBD	11 TH - 13 TH NOV	Trust Accounting PARRAMATTA
FRI 1 ST NOV	Real Estate Auctioneer Accreditation SYDNEY CBD	14 TH - 15 TH NOV	Property Management PARRAMARRA

View our course calendar for all course details.

DIPLOMA OF PROPERTY SERVICES (AGENCY MANAGEMENT) CPP50307

BATHURST	
MODULE 1	24 th - 25 th October
MODULE 2	7 th - 8 th November

SYDNEY	
MODULE 1	24 th - 25 th October
MODULE 2	7 th - 8 th November

PROPERTY SERVICES

CONSUMER GUIDES

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