

Battle of the Butts!

By **KIRSTEN FLEMING**

For many New Yorkers, owning a 1,000-square-foot one-bedroom condo in a posh Upper East Side doorman building is a dream come true.

But they don't live next door to Jane's chain-smoking next-door neighbor from hell, whose incessant nicotine habit has ensured that her own pad constantly smells like eau de Joe Camel.

"I feel like I'm living in a college dorm, and I just want to live like an adult," says Jane, a 50-year-old journalist who didn't want her real name published for professional reasons.

"Right now, all of my outlets are taped up and my windows are sealed."

Still, her apartment reeks of stale smoke that seeps through the shared wall, which happens to bump up against Jane's bedroom.

She purchased the condo 15 years ago, but the trouble began in 2008, when the human chimney rented the unit next door and began puffing on cigarettes, pot and something that "smelled like plastic."

Despite repeated complaints, Jane says her condo board has refused to broach the subject of banning smoking, even after a fire in February — sparked by a different tenant's smoking habit — gutted one apartment and did extensive water damage to numerous floors.

"They've banned smoking in parks, but I can't have a smoke-free bedroom," Jane says.

Just over eight years ago, the city made the controversial decision to ban smoking in restaurants and bars, acting under Mayor Bloomberg, who has anointed himself the Eliot P. Ness of cigarettes.

In May, it became illegal to smoke on city beaches and in parks.

Now, residential buildings are becoming the next frontier in the battle of the butts.

"Smoking in residential buildings is the hottest, newest issue now," says real estate attorney Adam Leitman Bailey, who since January has lined up five clients complaining about smoking in their buildings.

His firm represents more than 200 co-ops, and many of them are dealing with this problem.

A legal turning point on the issue came in 2006, when a New York City judge ruled that a shareholder in a co-op has the right to live free of smoke, and the board is responsible to enforce the rights of victims (in these cases, second-hand smoke complainants).



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SMOKE New Yorkers are fuming over cigarette smoke coming from neighbors who light up in their apartments

“It was the first time that it was put in writing — that a court would enforce the right to be smoke-free and people were able to say, ‘I don’t want to smoke anymore or get cancer,’ ” says Leitman Bailey.

This leaves the issue squarely in the hands of co-op and condo boards.

Jane’s condo board said mandating a smoke-free building would be an impossible task, which might require approval from 80 percent of all unit owners.

But it wasn’t impossible for the residents at Ariel West, a 68-unit condo on West 99th Street. The 3-year-old building went smoke-free in May after the board voted to ban it, with a penalty of \$150 per cigarette violation. The fee doubles for subsequent violations, and no existing smokers were allowed to continue puffing away under the new edict.

So what’s keeping most other buildings in New York City from following suit?

Many argue that smokers’ rights have been snuffed out in the name of health zealots, which may keep some buildings from intervening.



“Despite the dangerous and intrusive nature of cigarette smoke, smoking has long been identified with personal rights, probably because of cigarette manufacturers’ efforts to cast smoking as a rights issue,” says Michael Greenberg, a Manhattan real estate attorney. The fiery issue grabbed the spotlight in February, when Upper East Side resident Harry Lysons settled a lawsuit with neighbor Russell Poses and his wife at 501 E. 79th St., agreeing to pay a whopping \$2,000 every time he smoked a stogie.

Leitman Bailey says these cases rarely result in litigation, because the disputes can be pricey and drag on for years.

Real estate broker Eric Zollinger, 37, took matters into his own hands when his neighbor’s clove cigarettes stank up his master bedroom at his apartment in the Caledonia, a 3-year-old luxury building on West 17th Street.

“It was a serious stench. When I would have friends over, they could smell it,” says Zollinger.

After waiting a few weeks, he approached management about the bothersome smell.

“They came and sealed up all of the outlets in the master bath and master bedroom, but I could still smell it,” he says. “They came back and sealed up all of the outlets, media panels, light switches, and it dramatically helped.”

Architect Howard Zimmerman, whose firm investigates how to stymie the flow of smoke, blames cheaper construction and other physical factors in newer buildings for this phenomenon called “negative air pressure,” where smoke and other smells get sucked through the doors, duct work and outlets. He’s working with 20 city buildings on the problem.

But older buildings have their fair share of troubles, too. And it doesn't just come down to structural issues — rude neighbors and unresponsive management companies fan the flames as well.

Dave, a 24-year-old accountant, has been battling an elderly female smoker who lives on the first floor below his fifth floor NoLiTa walk-up, which he's called home for two years.

"She's a nasty old woman, and usually I don't interact with her at all, but recently she started smoking in front of her apartment," says Dave, who didn't want his last name used for fear of retaliation from his neighbor. "I live on the top floor, so it comes up there, and I can smell it in my apartment. It's just also a nuisance that I have to walk through this every day."

He asked her to go outside to smoke, which only prompted the woman to spew vulgar words at him.

"That woman knows every curse word in the book. I took a picture of her smoking in the hallway and yelling at me. We sent it to management, and we didn't hear back."

After a week, "No smoking" signs appeared in the hallway.

But he says the signs were ripped down a day after they were put up — and the smoking granny was back at it again, even dumping butts and ashes on the floor.

Dave is currently exploring his next move. Meanwhile, a frustrated Jane hopes her neighbor won't be allowed to renew his lease when it's up in a few months.

"We're not talking about the smell of Indian food," she says. "It's carcinogens."

Gettin' ciggy with it

What should you do if you have a problem with a smoking neighbor?

* Don't call 311: A city spokesman says 311 won't regulate or accept complaints about smoking within apartments, but it does get about 1,400 queries a year regarding the simmering issue.

* Talk to your board or landlord: According to real estate attorney Adam Leitman Bailey, the board or the landlord is responsible for fixing the issue, whether that includes implementing a no-smoking policy or bringing in a team to plug up the leaks.

* Be prepared to pay up: If the building refuses to acknowledge that a problem exists, the cost to seal up an apartment would fall on your shoulders.



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