



HOAs Can Ban Smoking within Condominium Units
by Lawrence Szabo, Esq. | Jul 10, 2018 | Governing Documents

A common conflict that occurs within homeowners associations, and in particular those that govern condominiums, relates to complaints by individuals who are affected by secondhand smoke resulting from smoking by a resident or guest that is in a neighboring unit or in close proximity. Dealing with such conflicts involves a balancing of rights between the parties. While the offending party that is creating the secondhand smoke will argue that he or she has a right to smoke, the party complaining of the effects of the secondhand smoke will argue that he or she has a right to the quiet enjoyment of their own units and should not have to put up with secondhand smoke that permeates into their unit.

Contrary to the smoker's belief that he or she has a right to smoke, it has been determined that no such right exists as documented in a 2008 publication by the Tobacco Control Legal Consortium entitled, ["There is No Constitutional Right to Smoke: 2008."](#)

The directors and management personnel for homeowners associations who have the responsibility of dealing with complaints relative to secondhand smoke must be familiar with the provisions contained in the Association's governing documents that would apply to smoking. Virtually all HOAs have provisions in their governing documents (ie. their CC&Rs) that prohibit association members from engaging in activities that constitute a "nuisance." Such general provisions are designed to cover a range of activities that might possibly create a nuisance, such as:

- Activities that create noise such as playing a TV or sound system too loud, or playing basketball, or allowing a dog to bark, or installing hardwood floors.
- Activities that create odors caused by different forms of smoking, cooking, or barbequing.
- Activities that create visual annoyances such as storing junk, inoperable vehicles and other items in view of other people.
- Activities that create health and safety issues or violations of laws.

The following is a typical provision found in HOA governing documents that is designed to prohibit association members, their tenants and guests from engaging in activities that constitute a nuisance:

No noxious or offensive activities shall be carried on in any condominium or in the common area, nor shall anything be done therein which may be or become an annoyance or nuisance to other owners.

Aside from the general provision commonly found in HOA CC&Rs that prohibits people from engaging in an activity that constitutes a nuisance, the passage of statutes and case decisions have made it clear that homeowners associations can adopt more specific provisions in their governing documents that ban smoking in both common areas and inside the units owned by the association members. These more specific provisions which ban smoking entirely are generally made part of an association's governing documents by way of an amendment of the association's CC&Rs.

Separate and apart from having provisions in their governing documents that limit or prohibit smoking, because complaints of suffering from secondhand smoke tend to be subjective, homeowners associations should have guidelines that address how their board of directors will handle complaints concerning secondhand smoke. The duties that are imposed on association directors require them to investigate alleged violations of their governing documents in order to make a good faith determination as to whether a complaint is legitimate. A failure by an HOA board to address a reported problem involving secondhand smoke could constitute grounds for commencing a legal action against the association and the granting of a judgment against the association based on the directors' breach of their duties.