



Smoke Free Living in Condos

By Denise Lash on December 01, 2010



A growing issue now facing condominium boards is the issue of whether to impose restrictions on smoking in condominiums and if so, how far to go.

It is clear that second-hand smoke is a real health risk to anyone exposed to smoking. Where a unit owner is a non-smoker and does not live with a smoker, they should assume that they are free from any health risk associated with smoking. But sometimes, smoke will penetrate between units or a unit owner may choose to go onto their balcony to have a smoke, which in turn impacts on other non-smoking residents. This then creates not just a nuisance but a real risk to non-smoking residents.

On November 20th, 2010, the Toronto Star wrote an article about a resident in a Co-operative who was concerned about the risk to her children because of smoke seeping into her unit. She ended up turning things around in her community by convincing the Co-operative board to pass a by-law which over the years will gradually increase the number of smoke-free units in her Co-operative.

The way it works is that when a pair of stacked units agree to go smoke-free in their units, they submit their request to the board and then the units are declared smoke free. The only way it can be changed if both owners agree after that point.

Condominium Corporations, however, work a bit differently and are governed by the Condominium Act. Restrictions on smoking cannot be done by a by-law, but can be dealt with through amendments to the Declaration and/or passing new rules.

In 2006, The Smoke Free Ontario Act came into effect which had an impact on Condominium Corporations by requiring that the common areas of a condominium building remain smoke free. This legislation does not deal with smoking in common areas that are not enclosed or the inside of units.

The problem that many boards face is dealing with the smoker who wants to smoke freely in their unit, and the unit owner next door who constantly complains about smoke penetration.

The U.S. has some interesting case law on this topic which resulted in court decisions finding that second hand smoke was a nuisance serious enough to order the eviction of the smoking residents.

These cases highlight the ever increasing intolerance of second hand smoke.



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Boards of Directors are now enacting rules to deal with restrictions to smoking on all common areas (including balconies and patio areas) where smoking may cause a nuisance to other residents. In instances where smoke penetrates into a unit, boards will actively take steps to investigate whether there is some deficiency in the common elements and carry out the repairs. Where there is no deficiency, boards will insist on the smoker, carrying out the necessary modifications to the unit and pay the costs for that work.

For those Condominium Corporations that want to go smoke free, this can only be done through amending the declaration. This is a process that requires 80% consent of the unit owners. Where there are smokers living in the units before the amendment goes through, boards should consider "grandfathering" those unit owners to allow them to stay in their units as smokers until they move out or sell their units.

Boards always have the balancing act of weighing the interests of one resident over another. With smokers it is the freedom to smoke versus non-smoking recipient of second-hand smoke. It is clear that the Condominium Act imposes an obligation on the board of directors to take steps to enforce the condominium documentation and to take action where there is potential risk of harm to any person on the property.

The key is to have documentation that can be enforced. So steps should be taken to review documentation and if deficient, start preparing revisions.

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