

Tough Clean Air Law Affects Associations

If it has One Part-Time Employee, it's Subject to Act

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Today is the eleventh part of a series regarding the 2003 legislative session and its effect on community associations. Past installments have looked at activities of the 2003 Florida Legislature involving community association manager licensing, the new condominium "flag law," new disclosure obligations in homeowner associations (HOA's), amendments to the HOA statute, amendments to the Florida Marketable Records Title Act, and amendments to the condominium statute regarding mortgagee questionnaires, electronic notice of association meetings, insurance, and fire sprinkler retrofitting.

Today's column looks at new changes to an old law that have received a lot of press, but might not immediately come to mind as important to your community association. I am referring to the latest version of the Florida Clean Air Act. This Act implements Section 20, Article X of the State Constitution, which was supported by more than 70% of Florida voters.

Florida is the latest state to enact an aggressive clean air law, aimed at protecting people from dangers associated with secondhand smoke. The new law became effective July 1, 2003, and includes sweeping changes including a total ban on smoking in restaurants and bars where more than "incidental" food is served. As expected, the majority of the debate and press on this issue has been devoted to its impact on restaurateurs and bar owners. However, this new law reaches beyond your local watering hole and creates matters of immediate concern for condominiums, cooperatives, and homeowners' associations.

The old Act prohibited smoking in any enclosed common areas such as hallways, lobbies, or elevators. The new Act expands this prohibition to include smoking in any "enclosed indoor workplace." While this obviously bans smoking in your association's management

office, the Act includes any place where one or more persons engages in work, and which place is predominantly or totally bounded by physical barriers.

This means that if your neighborhood association has even one part-time employee, it is subject to the Act. Even a private office, where only one person comes and goes, is covered under the Act. It doesn't matter if work is occurring at the same time as the smoking takes place. Once an area is used for "work," it is covered under the Act. Also, don't think that just because your groundskeeper is a volunteer that the Act doesn't apply. The Act applies to employees, independent contractors, agents, partners, proprietors, managers, officers, directors, apprentices, trainees, associates, servants, volunteers, "and the like."

Additionally, the definition of "enclosed" doesn't necessarily mean that the area must be bounded by solid walls and a ceiling. The "physical barriers" enclosing the workplace can be open windows and even screens. Therefore, a maintenance shed or garage is covered under the Act. Although the Act has not yet been tested in the courts, the most conservative interpretation of the Act would be to prohibit smoking anywhere that could be considered to be a "workplace" and that is "enclosed" (as defined by the Act). That means that if your association has a volunteer maintenance person who works part-time and cleans a screened-in lanai area adjacent to your swimming pool, then that screened-in lanai may no longer be used as a smoking area -- even if the maintenance person has that particular day off.

Your neighborhood association may have a clubhouse with a bar inside it. Although this may technically be a "private club," if anyone works there, anyone at all, even cleaning people, then this becomes a closed indoor workplace. The only way that this could be

exempt from the law is if the clubhouse bar area could be considered a “stand alone bar.” By the Act’s definition, this means that the area must be a licensed premises devoted predominantly or totally to serving intoxicating beverages, and any serving of food is merely incidental to alcohol sales.

The Act does not reach so far as to prohibit smoking in private residences unless the residence is used commercially to provide child care, adult care, or health care. Therefore, if a resident smokes in his or her own

residence, the fact that a home health care professional visits to treat the resident does not transform the residence into a “workplace” under the Act.

Neighborhood associations should take careful notice of the new Act. It provides for fines that increase with each violation. With all of the expenses associated with running a neighborhood association, no board of directors wants to be in the position of levying a special assessment on its residents to pay for Clean Air Act violations. ⚖️

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners’ associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm’s Naples and Ft. Myers offices.

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