



Smoking Bans In Individual Units Controversial

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Q: I am on the board of directors of a condominium association. We were approached by an owner who wants to make our building smoke-free. She was told that she needed a petition with twenty percent of the voting interests to get her request on the agenda for a board meeting, which she has done. Is this allowed by Florida law? Can you enforce no smoking requirements in private condominiums? How does the board respond to this request? **J.C. (via e-mail)**

A: A growing number of condominium associations across the country have implemented smoking bans both on common elements, and in a few cases, inside of units (apartments).

The law is clear that the board has the authority to prohibit smoking within indoor common elements. The Florida Clean Indoor Air Act, found at Section 386.204 of the Florida Statutes is a uniform state-wide code that bans the smoking of all tobacco products in enclosed, indoor “work places.” Therefore, in all indoor meetings of the board, committee meetings, and meetings of the membership, smoking would be prohibited because “work” is being performed. Furthermore, cleaning or maintenance of an enclosed common element is sufficient “work” to impose a ban on smoking within these areas as well. Further, the statute specifically states that smoking is prohibited in

specified condominium common elements, including hallways, corridors, aisles, water fountain areas, restrooms, stairwells, entryways, and conference rooms.

The statute does not apply to outdoor common elements, such as a parking lot or open swimming pool area. However, it is my view that if the board of directors is granted rule-making authority over the common elements, which is usually the case in condominiums, the board could adopt a rule banning smoking in outdoor common elements as well. As a practical matter, given the highly addictive nature of tobacco and nicotine, some associations designate an outdoor “smoking area” on the theory that it is better to have a given place where people can smoke, as opposed to having to deal with people who will break the rules because they simply cannot quit smoking.

The authority to ban smoking inside of units (apartments) is a much more controversial topic. After all, smoking tobacco is a lawful activity in and of itself, and your home is your “castle.” Although some attorneys would argue that a board of directors might be able to ban smoking within units by board-made rule, that would certainly be an aggressive tactic. In my opinion, an amendment to your declaration of condominium which bans smoking inside the units would likely be upheld, although there have been no appellate court rulings

in Florida to support the validity of such an amendment.

If an amendment to the declaration of condominium is going to be put up for a membership vote, there are typically two ways that this can happen. First is by action of the board. Second is by petition of unit owners. However, the petition you have received does not appear to be a petition for amendment, but rather a petition for the call of a board meeting.

Twenty percent of the unit owners have the right to petition the board to call a board meeting and consider an issue, but the board is not required to take any specific action as a result of this type of petition. Stated otherwise, your board is probably obligated to take up the unit owners' request that a smoking ban be considered, but the board is not obligated to move the issue forward. However, declarations of condominium also contain a petition process (different than the process for having the board call a special meeting) where unit owners can propose an amendment to the declaration of condominium on their own accord. If this type of petition is received, the board would be required to put the amendment up to vote whether it agreed with it or not.

Some associations that have considered smoking bans also ask about "grandfathering" existing smokers. These are all fairly tricky legal issues, and the board of directors also has to be willing to enforce a smoking ban if it is enacted. Therefore,

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you should involve your association's legal counsel in this process, preferably at the early stage so that your community's specific governing documents can be examined, and the board advised as to its options in addressing the members' petition. Please keep in mind that the board is required to call a meeting to address a petition signed by twenty percent of the voting interests no later than 60 days from its receipt.

Q: I live in a small condominium, there are only eight units. We are not sure if we must follow the condo law as it is or can we drop parts of the law. **L.G. (via e-mail)**

A: In general, Chapter 718 of the Florida Statutes, known as the Florida Condominium Act, applies to all condominiums regardless of size.

There are a few provisions of the statute which specifically exempt smaller associations. For example, in condominiums of ten units or less, co-owners of units may serve on the board. As another example, in condominiums of less than fifty units, certain year-end financial reporting requirements (such as mandatory audits when annual receipts exceed a certain level) are not applicable.

However, with respect to the vast majority of issues, the statute will apply equally to small condominiums.