



## Condominium Law Q&A

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**Question** – I am a non-smoker whose condominium smells like a cigarette. My neighbors smoke, and the smell of their cigarettes is entering my condominium through the bathrooms. Since realizing where the smell is originating from, I have closed off the doors and vents. I have spoken to my neighbor regarding this matter, and she reports that she has closed the doors and vents to her bathrooms as well. She also tells me that she has asked her boyfriend and son to smoke outdoors. I have also informed my condominium association who said there is nothing they can do. I purchased an air purifier but I haven't noticed any difference. When removed for cleaning, you can see an outline of black where the purifier was located. While I realize they have the right to smoke in their space, what rights do I have? Any help you can provide will be greatly appreciated. M.L.W., Melbourne

**Answer** – A recent decision of a trial court might be of interest to my readers. In 2003, a family purchased a condominium unit at the Palm-Aire Condominiums in Pompano Beach. At that time, the defendant in the case, who was a one pack a day smoker, lived on the floor above the family. Initially, the smoking did not bother the new family; however, once the upstairs smoker acquired a tenant who also smoked, the problem of smoke seeping into their unit became an issue. It seemed that the non-smoking family was "hypersensitive" to smoke, due to a history of respiratory allergies. The smoke caused the family's health to deteriorate. Neither air

purifiers installed by the non-smoking family, nor an exhaust fan installed by the association, resolved the problem. The smoke got so bad that on several occasions the family had to sleep elsewhere. On one occasion, the smoke caused the smoke detector to go off in the non-smoking family's unit. Eventually the non-smoking family sued the smoker under theories of trespass, common law nuisance, and breach of covenant [the declaration of condominium contains a provision which states, "... unit owner shall not permit or suffer anything to be done ... in his unit ... which will ... interfere with the right of another unit owner or annoy them by unreasonable noises, or otherwise, nor shall the unit owners commit or permit any nuisance ... in or about the condominium property.] The trial judge found that though there was no case on point in Florida which addressed whether secondhand smoke is considered a form of trespass onto real property, the unique facts of this case justified the finding that it does. In addition, the court, citing the authority of Florida's Supreme Court which held that "an owner or occupant of property must use it in a way that will not be a nuisance to other owners and occupants in the same community," held that anything which annoys or disturbs one in the free use, possession or enjoyment of his property, or which renders its ordinary use or occupancy physically uncomfortable, may become a nuisance. While a trial decision lacks precedential value, I am of the opinion that this well reasoned opinion will find its way into the precedents of Florida law.

**Question** – Our association recently replaced our old roof with a new roof, which is inferior in several aspects, including having a much lower insulation layer [increases electric bills for top floor owners and decreases sound attenuation of grinding noise of condenser units on roof], and improper slope, allowing water to pond. Doesn't the law require repairs to be of equal or better quality? J.H., Cocoa Beach

**Answer** – As a general statement, I agree with your analysis. The new roof should have been of equal or better quality to the original roof. At this stage, the problem is figuring out what to do about the

issues you raised. When the board contracted for re-roofing, were specifications prepared for bid by a qualified engineer? Did the roofing contract incorporate those specifications and was the installation checked by the engineer to ensure that the work was performed in accordance with the design specifications? Was the work permitted and did the roof, as installed, meet code requirements and good workmanship? Clearly, a new roof which ponds is evidence of a problem. The board should hire a roofing expert to examine these questions, and if it is found that the roofing installation was not up to code and/or the design specifications, have the roofer correct the problems. ■

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*Gary A. Pdiakoff is a founding principal of [Becker & Pdiakoff, P.A.](#) and has served as its President since the inception of the Firm. He is on the Board of Governors of the Shepard Broad Law Center of Nova Southeastern University where he is an Adjunct Professor, teaching Condominium Law and Practice.*

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