



Condominium Law Q&A

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Question – I have found you via Google. I have purchased a condo in Coconut Creek. My neighbor's cooking is entering my condo. The smell is horrid at the best level and requires us to shut off our AC, open all windows and use fans for an hour or so to remove the foul odor. What recourse do we have? In FL law should there not be an air tight firewall between units? If this is true the HOA should be responsible for sealing the interior or shared wall? I am concerned with the smell, but also if the smell is able to travel so freely into our space; what happens if a fire breaks out? Air movement would speed the fire. M.R., Coconut Creek

Answer – The question you asked which deals with smells associated with attached living, coupled with sounds and sights, are among the most frequently asked questions and causes of conflict in Shared Ownership Communities (SOC). So much so, that my new book, *New Neighborhoods: The Consumer's Guide to Condominium, Co-Op, and HOA Living* opens with "thwat, thwat, thwat" sounds made by spinning helicopter blades, in which I relate the true story of a nuisance caused by an owner who frequently landed his helicopter around the condominium property, disturbing the peace and quiet of other unit owners. So prevalent is the problem, we devoted an entire chapter in *New Neighborhoods* ("It's an ill wind that blows no good") to the subject of nuisance, which is defined as a noise, smell, or other bothersome condition or event that interferes with a neighbor's right of peaceful use and possession of his or her unit. Breaking it down, among the most prevalent

complaints are smells, which can include your neighbor's cooking of their traditional Indian curry dish, sauerkraut, fish or other foods, cigarette or cigar smoke, varnish when the unit is freshly painted, or decaying foods from an owner who suffers from hoarding. Sounds include the level at which the TV or radio is played, musical instruments, family sing fests, barking dogs, singing parrots, and even tap dancing on uninsulated hard wood floors. Then there are sights, everything from the briefness of one's bikini, to the gator in the garden which is decked out for each Florida Gator football game. Oh yes, there is also the color of one's home, outside decorations, and art work; not everyone is happy with the David not wearing a fig leaf! While we do suggest, where possible, that unit owners be sensitive to the fact that they are living in close quarters, open windows or turn on the vents, cut down the volume, smoke outside, and dress appropriately when walking through the common areas, in truth, there is very little that can be done about these normal consequences of living in close confines. While courts, when there is a showing of a nuisance, can enjoin the conduct, keep in mind that the test of whether one's conduct constitutes a nuisance is whether the incident in question would disturb a "reasonable person with ordinary sensibilities"--not someone who is hypersensitive. Then, again, you can do what my wife now does, and that is sleep with ear plugs.

Question – Where can I locate the requirements for the elections of board members? In our condo association our board comprises of 6 Canadians and

one token American. The Canadians stay only 180 days or less, have the Statues been changed regarding this problem? Also, at a recent meeting to change our by-laws we were asked if “anybody voted NO or if they vote to abstain,” no one was asked if they voted YES, it was done by a show of hands, and not by written vote. There was no ballot vote of a YES vote, is this legal? We were informed by our President that a show of hands was legal according to Florida law.

Answer – Florida Statutes 718.112(d)(3) (also known as the Condominium Act) governs the election of directors. There is no distinction made in the Act regarding the nationality of a unit owner, only that they be unit owners if required by the governing documents. Also, an owner does not have to be a full time resident to qualify to run for the board. Insofar as canvassing the members when counting the votes, a show of hands and/or voice vote is perfectly legal, except for a few instances where written consent or joinder is required.

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