



Pennsylvania Condo/Planned Community Corner Only Non-Smokers Welcomed

By *Carrie B. Nase*

Over the past few years, numerous states and municipalities, including Philadelphia, have passed legislation restricting people from smoking in public places, such as workplaces, restaurants, and bars. In such locals, an individual is left only with the right to smoke freely in his home. But does that right even exist? Individuals are entitled to the privacy of their own home; however, arguments are beginning to ensue over whose privacy rights should be protected – the smoker's or the non-smoker's? In a multi-family dwelling, such as a condominium, secondhand smoke can travel from one unit to another unit through the ventilation system or simply by seeping through the walls due to the close proximity of the units. The question is then raised whether a condominium association has the right, or the duty, to restrict homeowners from smoking in their own home.

Typically, a Declaration of Condominium gives each unit owner the right to quiet enjoyment of his unit. The condominium association is charged with the responsibility of enforcing the governing documents of the condominium and has a fiduciary duty to act when a violation of such documents has occurred. Therefore, it is in the best interest of an association to address issues that may be the basis for a dispute between residents by implementing certain restrictions. However, how far can a condominium association go in creating restrictions before it reaches the point of infringing on an individual's rights?

Condominiums are typically created with the intent of attracting residents that are similarly situated. For example, some condominiums are age restricted or pet friendly. Why shouldn't they also be permitted to be smoke-free? The answer is, they can. A condominium association would likely be permitted to implement a restriction against smoking. Condominiums are unique in that they have the ability to enact certain restrictions against the homeowner, so long as such restrictions are reasonable. Some state courts have determined that a smoking ban included in the original Declaration would carry a strong presumption of validity since the homeowner purchased the unit with the knowledge of the restriction. A subsequent Board of Directors of a condominium association has the right to enact restrictions that promote the health, happiness, and enjoyment of life for its residents. Although smokers may argue that a smoking ban impedes their enjoyment of life, the health of a non-smoker outweighs the happiness of a smoker. An amendment to the Declaration creating a smoking ban also will most likely be found valid as a reasonable restriction, so long as it is enforced consistently.

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