

Q&A: Where There's Smoke ... There's Fire?

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By Steven P. Bloomberg

I live above a daily cigar smoker, and particularly in the warmer months I like to leave my windows and balcony door open. I've complained several times to the board and management that the smoke is getting into my unit, my rug, my bed sheets, my furniture. I'm told that although smoking is banned inside the building, my neighbor is totally free to smoke on his balcony regardless of where the smoke goes. Do I have any recourse at all in this?

--Smoked Out in the South Loop

"The Smoke-free Illinois Act prohibits smoking in virtually all public places and workplaces, including offices, theaters, museums, libraries, educational institutions, schools, commercial establishments, enclosed shopping centers and retail stores, restaurants, bars, private clubs and gaming facilities," says Steven P. Bloomberg, an attorney and principal at Chuhak & Tecson, P.C. in Chicago. "Smoking is allowed in private residences except when used as a child care, adult day care, or healthcare facility, or any other home-based business open to the public. However, restrictions in declarations prohibiting smoking in the common or limited elements or units can be enforced. Generally, a balcony is a limited common element, and if the board has a restriction against smoking in the common elements in the building, the restriction should also apply to balconies.

"Many declarations have restrictions prohibiting noxious or annoying acts from a unit owner that disturbs other unit occupants or owners. The dictionary defines "noxious" as physically harmful or destructive to living beings. It appears that the smoking is a noxious behavior and should be stopped by the board through either a fine or taking the problem to court.

"In this scenario, the tenant should request that the board reconsider its position on the smoking problem, as this is the most cost-effective and efficient approach to finding a solution. If the board is unwilling to reconsider its stance, the next course of action would be to consult with an attorney focusing in the condominium field to explore alternative options."