

Can an Association Prohibit Smoking at the Pool?

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With all of the recent warm weather we have been having, residents have been able to take advantage of the Florida sunshine and enjoy their community pools. But in order to make lounging poolside fun for everyone, the question arises whether an association may make the pool area smoke free by prohibiting smoking.

The starting place for answering this question is whether the association has the authority to create rules governing the use of the common elements, in the case of condominium associations, or the common areas, in the case of homeowners' associations. As to condominium associations, section 718.123(1), Florida Statutes, provides that the "entity or entities responsible for the operation of the common elements . . . may adopt reasonable rules and regulations pertaining to the use of such common elements . . ." Since it is the association which is responsible for the operation of the common elements, according to this statute, the condominium Board would have the authority to create a rule governing the use of the common elements such as a rule prohibiting smoking at the pool. For homeowners' associations, there is no statutory grant of rule making authority over the common areas. Thus, the rule making authority would need to be found within the governing documents for the association. As this power routinely appears in the Declarations, Articles of Incorporation and Bylaws of homeowners' associations, it is likely that your homeowners' association already possesses the authority to promulgate a rule which would prohibit smoking at the pool or other common areas.

Even when an association Board has the authority to create rules and regulations, though, it should be noted that to be truly enforceable, a rule must be reasonable and generally related to the promotion of the health, happiness and peace of mind of the owners. In light of the well established dangerous effects of secondhand smoke, a rule prohibiting smoking at the pool would surely be reasonable and clearly related to the health of the owners. Non-smokers who breathe in secondhand smoke take in nicotine and other toxic chemicals just like smokers do, and according to reports produced by the Office of the U.S. Surgeon General, there is no risk free level of exposure to secondhand smoke. Breathing even a little secondhand smoke can be harmful to one's health. Thus, it is more than reasonable for an association to adopt a rule prohibiting smoking in the pool area.