



GOWLING WLG

TOBACCO AND CANNABIS IN CONDOS

TOBACCO IN CONDOS

Smoking tobacco in condos is often a point of friction and frustration between neighbours. Second-hand smoke is known to cause irritation, discomfort and nuisance. It is also known to be a health hazard. In addition, smoking increases the risk of fire as well as maintenance and cleaning costs.

LEGALIZATION OF CANNABIS

Canada is in the process of legalizing the production, possession and consumption of cannabis (marijuana). While the provinces are still working on regulating the implementation of this legalization, adults are expected to be able to possess and consume set quantities of cannabis. They will also be able to grow up to four plants, each up to a meter high, in their homes — including condos, which will expectedly cause challenges to condominium corporations.

In addition to the concerns normally associated with cigarette smoking, the growing and smoking of cannabis may raise the following concerns:

- Damage to units and common elements, including by moisture from marijuana plants, which can create mould and spores in walls, ceilings and floors, and which can damage window seals
- A disproportionate use of utilities such as electricity and water (if not sub-metered), which are required in greater quantities to grow marijuana plants
- Increased fire hazards due to people drying cannabis on household stoves or by using unauthorized patchy electrical modifications
- Odours from plants or smoke getting into other people's units

THE LAW IN ONTARIO

Presently, the Smoke-Free Ontario Act only prohibits someone from smoking (or from holding lighted tobacco) in common areas of condominiums. This means that, unless the governing documents of the corporation state otherwise, owners and occupants can smoke in units, on balconies and on the exterior grounds of condo complexes.

WHAT CAN CONDOMINIUMS DO?

Condominium corporations can regulate the consumption of both tobacco and cannabis. This can be done in one of the following two ways:

- By amending your Declaration – which requires the support of 80% of the owners; or
- By adopting a Rule – which can easily be adopted.

Indeed, a board may adopt a rule aimed at promoting the safety, security or welfare of owners, or aimed at preventing unreasonable interference with the use and enjoyment of units or common elements.

A rule must be reasonable and cannot be inconsistent with the Declaration or with the Condominium Act.

HOW IS A RULE ADOPTED?

Adopting a rule is easy, but can be quite technical. The following steps must be followed:

1. The board must approve the new rule by resolution at one of its board meetings.
2. Proper notification of the rule must be sent to all owners. The content and service of the notice must meet the requirements under the Condominium Act.
3. The rule must be circulated for at least 30 days.
4. The rule will become effective after 30 days (or on a date set in the notice) unless:
 - a. At least 15% of the owners requisition a meeting of owners; and
 - b. A majority of the owners present at such meeting, vote against the rule.

If no meeting is requisitioned or if the rule is not voted down at a properly constituted meeting of the owners, then the rule is passed and becomes effective.

WHAT KIND OF RULE WORKS BEST FOR YOU?

When developing a rule, a board should consider the following questions.

RULE ON TOBACCO

1. Where do you want to prohibit tobacco smoking?
 - In the units only?
 - On exclusive-use balconies, patios and terraces?
 - Anywhere on the property?

Some corporations go completely smoke-free. Others take one or many of the above options. Smoking is already prohibited on all common areas.

2. Does the corporation also want to prohibit "vaping" or electronic cigarettes?
3. What kind of grandfathering provision would works best for the corporation?
 - No grandfathering
 - 2 year
 - 6 months
 - For the duration of ownership/occupancy
 - 1 year

RULE ON CANNABIS

4. Do you want to regulate cannabis?
 - Do you want to prohibit cannabis smoking?
 - i. Are you considering a full ban?
 - ii. Are you considering a partial ban (unit only; balcony only or outside only)?
 - Do you want to prohibit the growing of cannabis?

We are happy to help you
develop a rule that will
work for you!

CONDOADVISER.CA



RODRIGUE ESCAYOLA

PARTNER

+1 (613) 783 8684

rod.escayola@gowlingwlg.com