

HOARDING, SMOKING AND OTHER POTENTIAL NUISANCES

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I. APPLICABLE LAWS AND DOCUMENTS

- A. Michigan Condominium Act
- B. State and Federal laws (particularly Fair Housing laws)
- C. Local ordinances (for instance, fire codes)
- D. Master Deed & Bylaws
- E. Rules & Regulations

II. WHAT IS A NUISANCE?

A. Two Types of Nuisances:

- 1. Public (criminal wrong): threatens the health, morals, safety, comfort, convenience or welfare of a community as a whole (e.g. manufacturer that has polluted a stream)
- 2. Private (civil wrong): unreasonable, unwarranted or unlawful use of one's property in a manner that substantially interferes with the enjoyment and use of another individual's property
 - a. Nuisance Per Se: an act, occupation, or structure that is a nuisance at all times and under any circumstances, regardless of location or surroundings (e.g. conduct that is a violation of the law, such as burning in an open fire pit that is otherwise prohibited under local ordinance)
 - b. Nuisance in fact: those that become nuisances by reason of circumstances and surroundings. A Plaintiff must prove 4 elements:
 - i. Fault: person acted intentionally or negligently

- ii. Substantial interference (law is not intended to remedy trifles or redress petty annoyances):
 - Examples that interfere with physical condition (vibration, raising of water table)
 - Examples that interfere with comfort (foul odors, smoke, dust, loud noises)
 - iii. Harm
 - iv. Reasonableness of defendant's conduct: if interference is substantial, then must weigh respective interests of both parties
- B. Hypersensitive vs. Reasonable: An Association generally does not have to cater to hypersensitive individuals (but beware of Fair Housing considerations). Instead, the Association is only obligated to ensure that conduct, activities and conditions do not create a nuisance in the community to persons of average and ordinary sensitivities

III. TYPICAL MASTER DEED BYLAW PROVISIONS

A. Master Deed:

No Co-owner shall use their Unit or the Common Elements in any manner inconsistent with the purposes of the Condominium, the Condominium Documents, zoning and other municipal ordinances, State and Federal laws and regulations, or in any manner which will interfere with or impair the rights of any other Co-owner in the use and enjoyment of their Unit or the Common Elements.

B. Bylaws:

*No immoral, noxious, improper, unlawful or **offensive** activity, including without limitation speeding or other vehicular infractions, shall be engaged in on or upon the Common Elements, Limited or General, or any Unit, nor shall anything be done which may be or become an **annoyance or a nuisance** to the Co-owners of the Condominium, nor shall any unreasonably noisy activity be carried upon the Common Elements or any Unit. There shall not be maintained any animals or device or thing of any sort whose normal activities or existence is in any way noxious, noisy, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the reasonable enjoyment of other Units. The Board of Directors of the Association shall be the final arbiter of whether a particular animal, device, or thing is in violation of the foregoing restrictions, and disputes among Co-owners that cannot be amicably resolved shall be mediated by the disputing Co-owners in accordance with Article III hereof. No Co-owner shall do or permit anything to be done or keep or permit to be kept on their Unit or on the Common Elements anything that will increase the*

*rate of insurance on the Condominium without written approval of the Association and each Co-owner shall pay to the Association the increased cost of insurance premiums resulting from any such activity or the maintenance of any such condition. **All municipal codes and ordinances pertaining to the use of the Common Elements shall be followed at all times.***

IV. SMOKING

A. General Common Elements

1. Michigan Clean Indoor Air Act

- Michigan Legislature adopted in 1980s
- Essentially prohibits smoking in, among other places, condominium common areas, and requires no smoking signs to be placed at entrances of condominium buildings where owners share common facilities (such as hallways and the like)
- Only applies if the Act provisions are adopted by the County

2. Rules and Regulations

- General Common Element areas within the building are under the Association's sole jurisdiction and Boards may adopt reasonable rules concerning the use of the Common Elements. Because it is pretty well documented that second hand smoke has a direct affect on one's health (which is evidenced by the State legislature's enactment of the Michigan Clean Indoor Air Act) a Court would likely uphold a rule prohibiting smoking in the common areas of the building as well as on all General Common Elements.

B. Units: while second hand smoke is again known to affect health, smoking is not illegal in residences so any prohibition would have to be accomplished via an amendment to the Condominium Bylaws approved by 2/3rds of those owners entitled to vote.

C. Marijuana

1. No Medical Card = prohibited
2. Medical Card = can only prohibit if causes a nuisance or if documents amended to specifically prohibit

V. HOARDING

- A. What is it? In 2013, the Diagnostic and Statistical Manual of Mental Disorders, or DSM-5 (the handbook for mental health experts), specifically recognized hoarding as a mental disorder, and it is described as a pattern of behavior that is characterized by the excessive acquisition and inability or unwillingness to discard large quantities of objects that would seemingly qualify as useless or without value
- B. How prevalent? Affects between 3% and 5% of all Americans
- C. Why should the Association be concerned? Can pose a danger to the hoarding owner and neighbors by risk of fire, pests and vermin, mold growth and other health concerns

A. Addressing the Issue

1. Contact the authorities: Health Department, Building Department, or Fire Department of the local municipality. If they are willing to handle the situation, the Association's board of directors is insulated and otherwise not involved
2. Inform the owner of the issue and try to obtain voluntary compliance: failing enforcement by the local authorities, the Association or its attorney should send a letter pointing out that the owner is in violation of the documents and specifying a date by which the owner must come into compliance
3. Absent compliance, obtain a court order

VI. ABANDONED UNITS

1. Exterior not maintained
2. Broken Windows
3. Winterization
4. Self-help
5. Court order

VII. ODORS