

Marijuana Use in Condominiums and HOA's

Increasingly, our organization, Colorado HOA Forum, is receiving inquiries about the use of marijuana in their condominium complexes. The inquiries involve the odor of marijuana in the hallways and throughout the building. Since "pot" has become legal in Colorado it is now out in the open and odor emitted from a "joint" can be offensive, intrusive, and affect the quality of life of others (not dissimilar to cigarettes). This is particularly the case in condominiums or any high-rise in which smoking in the hallways and or in one's own dwelling can result in the smoke and odor entering the residence of all on the same floor and/or throughout the building. Note, this is not a moral argument on the use of marijuana but addressing a real problem to allow both user and non-user to co-exist in harmony. HOA's seem to have run into a road block in addressing this problem but are they powerless?

HOA's can't ban the use of pot in one's own dwelling as it is a legal substance and the practice is conducted within private property. However, similar to HOA's setting rules for what color a home can be painted, how big and where an American flag is hung, or how, when, and where political signs are displayed an HOA can similarly make and enforce rules to mitigate the problems with marijuana smoke and odor. An HOA can prohibit smoking in lobbies of buildings or by the swimming pool area, ban glass/alcohol in the pool areas, or prohibit washing cars in certain areas. These are all restrictions on legal activities but don't prohibit the activities in a personal dwelling. So, an HOA could prohibit smoking weed in common use areas such as hallways and building lobbies and entranceways. Furthermore, rules can be implemented to prevent/mitigate pot smoke from being emitted from a condo into the hallways. The HOA can direct the resident homeowner to seal the door to stop leakage into the hallways and/or vent the living unit (open the patio door for example) during marijuana use. This can all be done by claiming that the practice by the homeowner is a nuisance and/or health problem to other residents which under most HOA governing documents allows the HOA to warn and/or penalize the homeowner if the infraction continues.

HOA's should utilize existing governing documents and implied authority to address this problem as mentioned above. HOA's can also modify existing governing documents/by-laws to implement restrictions and controls that allow both users and non-users of marijuana to co-exist in harmony.

No doubt the odor and smoke from marijuana can be a problem in condominiums and high rise buildings. "Pot" is here to stay in Colorado and addressing usage problems in shared areas and condominium complexes during the initial legalization stage can mitigate problems. HOA Boards and residents can take the lead in ensuring "pot" usage neither infringes upon the quality of life of others nor interferes with one's right to use weed.