

The New York Times

Wednesday, September 26, 2012

<http://mobile.nytimes.com/2012/08/19/realestate/new-york-real-estate-question-answer.xml;jsessionid=E73DEFFAEC6185E194163769B46ABDF1?f=38&p=1their apartments.>

On Condo Rentals and Smoking

Q *Is the board of a condo allowed to forbid an owner to rent to a smoker even though owners who currently live in the apartment are allowed to smoke?*

A Stuart M. Saft, a Manhattan lawyer who is the chairman of the Council of New York Cooperatives and Condominiums, said that the boards of most condominiums do not have the right to approve or reject a proposed purchaser or tenant.

But, Mr. Saft said, the bylaws of most condominiums provide the board of managers with a right of first refusal to buy or lease a unit that is being offered to a third party. So if a board does not want a smoker in an apartment, it can exercise its right of first refusal and rent the apartment from the owner on the terms being offered by the owner's prospective tenant.

Whether the board could sublet the apartment after renting it would depend on the lease being offered to the owner's prospective tenant.

Mr. Saft notes that the board can amend the bylaws to prohibit smoking by renters. He also notes that most condo bylaws forbid unit owners to allow odors to emanate from their apartments.