

## ATTORNEY

By Tracey Goldstein, Esquire, Feinstein, Raiss, Kelin &amp; Booker, L.L.C.

## Rising tenant smoking complaints: what's a multi-family property owner to do?

Nationwide, multi-family property owners are fielding a

rising number of tenant complaints related to smoking in individual apartment units. While the challenges associated with smoking are not new to seasoned owners and property managers, medical studies focusing on the dangers of second and third-hand smoke have thrust this issue to the forefront. Adding further to this renewed focus is a prominent real estate firm's recent announcement that it would ban smoking in its 40,000 rental units nationwide. As a result, the multi-family property smoking debate has been pushed firmly into the limelight.

There are many well-documented studies, including a 2010 report by the U.S. Surgeon General, indicating that second-hand smoke (SHS) is a clear health hazard. Because of its migratory properties, smoke from one multi-family unit can infiltrate hallways, common areas and other residential units. The U.S. Surgeon General further asserts that there is no risk-free level when it comes to SHS.

It is imperative that property owners educate themselves regarding their legal obligations as well as how to properly handle a smoking complaint. In some states like New Jersey, if the smoke is emanating from one unit into another, and interfering with the "peace and quiet" of others, the landlord is obligated to take steps to remedy the situation. It is important to note that residents who smoke do not have the absolute right to do so in their private apartment if it interferes with the enjoyment of others.

And, if an individual with a disability complains about SHS smoke, and requests a reasonable accommodation, the landlord must comply. Mandated by the Federal Fair Housing Act, the reasonable accommodation may include terminating a lease or providing an apartment transfer.

**New Data on Third-Hand Smoke**



Tracey Goldstein

The dangers of third-hand smoke (THS), the residue that permeates rugs, upholstery, walls, furniture and other surfaces long after the second-hand smoke has been cleared from an area, is also being recognized as extremely harmful. According to the New Jersey Global Advisors on Smokefree Policy (GASP), THS may be more of a health hazard than SHS as it continues to emit particles long after the cigarette has been extinguished and the smoke has dissipated. Infants, children and those

with respiratory concerns, such as asthma, are especially vulnerable to THS.

Between SHS and THS, it is no surprise that property maintenance and unit turnover costs are considerably higher for multi-family owners. Smoking is known to cause extensive property damages, from yellowed walls to discolored window treatments and ruined carpets. According to HUD, apartment turnover costs are two to seven times greater for a smoking unit as compared to a non-smoking

unit.

The issue of smoking in multi-family properties is further compounded when it comes to safety concerns beyond exposure to SHS and THS. Smoking paraphernalia can easily lead to accidental fires. Examples include a tenant falling asleep while smoking or young children starting fires when playing with matches or lighters.

**HUD Endorses Smoke-Free Public Housing and in Market-Rate Units**

There is no existing fed-

eral or state law that prohibits owners from instituting a 100-percent smoke-free policy. Furthermore, HUD has endorsed no-smoking policies since 2009, when the agency encouraged all multi-family owners, including public housing authorities and landlords of private market-rate units, to adopt a smoke-free dwelling. In addition to public housing complexes, smoke-free buildings seem to be most common in new construction.

As Americans become more

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# CONSTRUCTION MGMT. & CONSULTING

## By Ronald C. Kerins, Jr, Greyhawk 2013 - 2014 commercial, industrial, and retail real estate market forecast

**W**hat is your forecast for the commercial, industrial, retail real estate market for the balance of 2013 and first quarter 2014? Although we proceed with cautious optimism that recent upticks in construction spending are sustainable, we feel that through the end of 2013 and the first quarter of 2014 the construction market appears to be heading in the right direction. The numbers aren't drastically rising, but the sustainability and continuing upward movement is encouraging.



Ronald Kerins, Jr

Federal Government spending on construction and infrastructure is trending downward and the overall public sector has pulled back from recent spending campaigns, with the exception of funding for higher education projects and recovery efforts as a result of natural disasters, so there is a need for the private sector to get off the sidelines.

All sources point to a 'pent-up demand' in many construction sectors. Corporate America is sitting on large cash balances. Some estimates have these balances in excess of \$2 trillion. Several markets, including healthcare and retail, appear to be poised for expansion,

### By Tracey Goldstein

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health conscious, smoking complaints within multi-family buildings are expected to gain even greater momentum. For owners without smoke-free policies, the ramifications of smoking by residents and visitors alike in private units or community spaces will continue to take its toll, both in terms of the physical space and with regard to tenant complaints. Because of smoke's migratory properties, it can and will continue to interfere with the "peace and quiet and enjoyment" of others – a fact not lost on today's educated tenant base.

Tracey Goldstein is a partner with the West Orange, NJ based law firm Feinstein, Raiss, Kelin & Booker, L.L.C. ■

tion, which should translate into construction spending. A factor in this projected move to spend could be that, in general, U.S. businesspeople are simply tired of the downturn and feel that if construction costs remain depressed, the time is right to build.

The healthcare sector has continued to sustain growth with many organizations moving to developing acute care and express care facilities to lessen the burden placed on Emergency Rooms by non-critical cases.

Educational funding for New Jersey Colleges and Universities tops the list of stimulus packages that have created opportunities for construction. This coupled with ROD grants for K-12 school projects keep the public market moving.

Due to the longevity of the recent prolonged downturn in the economy, many contractors are finding themselves in financial difficulties. The subcontractor market continues to bear the brunt of this as the entity at the end of the payment trail line. As a

result, we have seen specialty contractors closing their doors leaving owners with incomplete projects awaiting rescue. If the project is supported by bonding there is some hope that this rescue is assured. The private sector owners often find themselves at risk without the support of a surety.

In recent years we asked each other how far into the future are we able to project, and the answer has been one quarter at a time, so to be looking two or three quarters out is an improvement and glimpse of

optimism we all so desperately need. As the economy turns, and our planning horizons are lengthened, we can begin to focus on more long range growth in the construction sector as we look ahead to 2014...small steps in recovery!

**Ronald C. Kerins, Jr., CCM, LEED-AP, MBA is a principal with GREYHAWK, an award winning international construction program management and consulting firm with headquarters in Moorestown, NJ. ■**

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