

Appendix A

Sample Smoke-free Policy

_____ [Condominium/Cooperative/Homeowners'] Association (the
"Association")

[Note: This document is not intended to provide or convey in any manner legal advice. Please consult an attorney before amending the association's governing documents or adopting a new rule.]

Findings

WHEREAS, the U.S. Surgeon General has conclusively determined that there is no risk-free level of exposure to secondhand smokeⁱ;

WHEREAS, the American Society of Heating, Refrigerating and Air Conditioning Engineers has issued a position document on environmental tobacco smoke concluding that "the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity"ⁱⁱ;

WHEREAS, given the proven health risks associated with smoking and breathing secondhand smoke, the **[governing body]** (the "Board") deems it advisable and in the best interest of all members of the Association to approve **[an amendment to the declaration, or a change to the Rules and Regulations]**, which prohibits smoking in all condominium units as well as the **[indoor/outdoor]** common areas; and

WHEREAS, nothing in federal law, including the Federal Fair Housing Act, prevents the imposition of smoking prohibitions in multi-unit dwelling buildings.

THEREFORE, the Board adopts the following smoke-free policy:

Purpose

The Board of _____ Association adopts the policy below to protect the residents of _____ from the health risks of exposure to secondhand tobacco smoke.

The policy is also adopted to prevent the risks of injury to residents from fires associated with smoking.

Definitions

(a) "Smoking" means inhaling, exhaling, burning, holding or carrying any lighted or heated cigarette, cigar, cigarillo, pipe, hookah, or other lighted smoking device for burning or heating tobacco or any other plant product in any manner or in any form. Smoking also includes use of electronic cigarettes.

(b) "Electronic cigarette" means a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. The term shall include, but is not limited to electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, electronic hookahs, and vape pens.

(d) “Plant Product” includes medical marijuana. Smoking marijuana by registered medical marijuana users is prohibited by the provisions of this Rule.

Policy Provisions

1. Smoking is prohibited everywhere on the property at _____ including, but not limited to, the individual units and all indoor and outdoor common areas. *[If you choose to provide an outdoor smoking area or area(s), specify location(s) here.]*

[Purpose: to establish the area of the property where the policy applies.]

2. No owner shall smoke or permit smoking by any owner, occupant, agent, tenant, contract worker, household worker, guest, friend or family member.

[Purpose: to identify those parties to whom the policy applies.]

3. Smoking in violation of this policy shall constitute a nuisance, pursuant to the governing documents of the Association.

[Purpose: to establish intrusion of secondhand smoke as a nuisance and to assist with actions against other occupants or against the Board.]

4. All owners are required by law to provide to prospective buyers of their units a Resale Disclosure Certificate, in the statutorily prescribed form, together with the Association’s Articles of Incorporation, Bylaws, Declaration, Rules and Regulations, current budget and current financial statements. The Resale Disclosure Certificate must include a description of the smoking prohibition and a reference to the smoke-free policy. Owners selling their units must advise their real estate agents and prospective buyers of the smoking prohibition prior to the time that a purchase agreement for the unit is entered into.

[Purpose: to require disclosure of smoking policy in resale documents.]

5. Any owner who rents, leases or otherwise allows someone other than the owner to reside within or occupy the unit shall disclose to all persons who reside within the unit that smoking is prohibited at _____.

[Purpose: to require disclosure of smoke-free policy to renters or other occupants of units.]

6. The Board shall have the authority and power to enact rules and regulations which it deems necessary to enforce this policy, including a schedule of fines which may be imposed after notice and a hearing.

[Purpose: to reinforce the ability of the Board to enact rules and regulations to assist with implementation and enforcement of smoke-free policy.]

7. This policy may be enforced in a court of law by any resident or the Association. If any resident or the Association is required to hire legal counsel to enforce this policy, the resident or the Association shall be entitled to recover attorney’s fees and costs incurred, whether or not litigation has been commenced. The Association may collect attorney’s fees and costs it incurs

through the use of a special assessment levied against the owner of the unit and an assessment lien, if necessary.

[Purpose: to define treatment of attorney's fees for action to enforce smoke-free policy.]

8. Optional provision for “grandfathering” current smokers: Owners who purchased their units prior to implementation of this policy, and tenants who occupied a unit prior to implementation of this policy, may continue to smoke in their unit until the unit is sold, or for a tenant, until the end of the lease term. Upon termination of a smoking tenant’s lease, the smoke-free policy would apply to the new lease, for the existing tenant or for a new tenant. Upon conveyance of title to a unit owned or occupied by a smoker, the unit shall become subject to the smoke-free policy and smoking would not be permitted.

Enforcement

Violation of the smoke-free policy shall be enforced as are other use restrictions for the property.

ⁱ U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General-Executive Summary, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

ⁱⁱ American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. ASHRAE Position Document on Environmental Tobacco Smoke. June 25, 2008.