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Smoke-Free Condominium Policies are Legal & Necessary

Policies Improve Health and Reduce Costs

Smoke-Free Condominium Policies Protect Health

Smoke-free condominium policies are the only way to eliminate drifting secondhand smoke from neighboring units. Secondhand smoke is not merely an annoyance; it is a major cause of preventable death in the U.S. According to the 2006 Report of the Surgeon General of the United States, secondhand smoke causes lung cancer and coronary heart disease in nonsmoking adults.¹ It also causes respiratory illnesses in children and Sudden Infant Death Syndrome (SIDS).²

The Report also concluded that there is no risk-free level of exposure to secondhand smoke.³ Breathing secondhand smoke even for a short time can have immediate adverse effects on the cardiovascular system.⁴

Secondhand Smoke Spreads Through Multi-Unit Buildings

Unfortunately, secondhand smoke seeps through walls, ventilation systems, light fixtures, ceiling crawl spaces, and doorways.⁵ The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the preeminent U.S. standard-setting body on ventilation issues, has concluded that ventilation technology cannot be relied on to completely control health risks from secondhand smoke exposure.⁶ Therefore, the Surgeon General encourages the implementation of smoke-free housing policies as the only effective method in order prevent transfer of secondhand smoke from one unit to another.⁷

¹ Office on Smoking & Health, U.S. Dep't of Health & Human Servs., *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* (2006), available at http://www.cdc.gov/tobacco/sgr/sgr_2006/index.htm.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Smoke-Free Condominium Policies are Legal

Condominium boards and associations have the legal right to adopt smoke-free housing policies, just as they are free to prohibit pets and limit other legal activities. Though tobacco is a legal product for adults, there is no legally-protected right to smoke in one's condominium unit.⁸

Condominium owners not only have the right to implement smoke-free policies, but they may also be held liable under common law theories or statutory law (such as the Fair Housing Act) for their failure to prohibit smoking when a neighbor is impacted by the drifting secondhand smoke.⁹

The Public Prefers Smoke-Free Condominiums

According to a survey conducted in the Midwest, nearly three quarters of renters would prefer to live in smoke-free housing.¹⁰ Demand for smoke-free apartments is on the rise, and it is reasonable to assume that this demand will transfer to the condominium market. A recent survey conducted in Los Angeles found that 85% of non-smokers (and 60% of smokers) supported having designated smoke-free condominium units.¹¹

Smoke-Free Condominiums are Better Investments

Smoke-free condominium policies save owners money by reducing the costs associated with cleaning and re-painting, as well as lowering the risk of fire. The U.S. Fire Administration of the Federal Emergency Management Agency reports that cigarettes are a leading cause of fires in buildings as well as the number one cause of fires that result in death.¹²

Research also shows that smoke-free condominiums may also have higher resale value. Real estate agents agree that as smoking rates have declined, so has the number of people willing to purchase the property of a smoker.¹³

Smoke-Free Condominium Policies are Easy to Enforce

Smoke-free policies are generally self-enforcing, so long as they all owners are clearly notified of the policies. If there are violations, these policies can and should be enforced in the same way that any other condominium policies are enforced. A recent survey of smoke-free apartment complexes in Minnesota found that smoke-free policies have not required management to spend any additional time on building management.¹⁴

Adapted from MISmoke-Free Apartment Fact Sheet, available at <http://www.tcsg.org/sfelp/SFCondofacts.doc.pdf>.

⁸ Samantha Graff, Tobacco Control Legal Consortium, *There is No Constitutional Right to Smoke* (2005).

⁹ Susan Schoenmarklin, Smoke-Free Environments Law Project, *Analysis of the Voluntary and Legal Options of Condominium Owners Confronted with Secondhand Smoke from another Condominium Unit* (2006).

¹⁰ D. Hennrikus et al., Preferences and Practices Among Renters Regarding Smoking Restrictions in Apartment Buildings, 12 TOB. CONTROL 189 (2003).

¹¹ Los Angeles Count Department of Health Services Tobacco Control and Prevention Survey, 2002-2003 survey.

¹² U.S. Fire Administration, U.S. Department of Homeland Security, *Residential Smoking Fires and Casualties* (2005).

¹³ Antoinette Martin, *Real Estate & Secondhand Smoke: On Tobacco Road, It's a Tougher Sell*, N.Y. Times, Feb. 8, 2004.

¹⁴ Initiative for Smoke-Free Apartments, *Adopting a No-Smoking Policy in Apartment Buildings: A Guide for Owners and Managers*, available at <http://www.ansrmn.org/ISFA%20Owner%20%20Mgr%20Guide.htm>.