

Model No-Smoking Policy Lease Addendum

Purpose and Application

The model no-smoking policy lease addendum provides sample language that can be used to establish no-smoking policies for public housing authority buildings, Housing Choice Voucher properties, Section 8 project-based properties, private non-profit affordable and market-rate housing, and condominiums. This sheet explains how the attached language can be used in each setting. The language in the model policy is not mandatory but has been found to be effective in implementing and enforcing no-smoking policies. (For HUD requirements on notice and timing of implementation of lease changes, see: *Comparison of Smoke-Free Housing Policy Factors; Private Market Rate versus Publicly Subsidized Multi-Unit Housing* available at <http://bit.ly/rGAIII>).

Public Housing Authorities

A Notice from the Department of Housing and Urban Development's Office of Public and Indian Housing in 2012 (see link in **Resources**) encouraged all public housing authorities to adopt smoke-free policies for some or all of their buildings. This notice also clarified that smoke-free policies can be added to an existing lease agreement or by including a lease addendum.

Section 8 Project-Based Properties

A Notice from HUD in 2010 encouraged Section 8 project-based properties to adopt smoke-free policies. That notice clarified that for Section 8, and other subsidized rental properties listed in the Notice, (see 2010 Notice; link in **Resources**) the addition of the smoke-free policy should be made through a change to the house rules or policies and procedures. The Notice also references the notice requirements before the house rules can be implemented and states that noncompliance with the no-smoking rule or policy could result in eviction. The no-smoking lease addendum language can be used to create a new house rule restricting or prohibiting smoking.

Housing Choice Voucher Buildings / Private Market Rate Properties / Non-Profit Affordable Housing

The model lease addendum can be used as an addendum to an existing lease agreement, or it can be incorporated directly into a new lease. If the smoke-free policy is a separate document, the lease should incorporate the provisions by referencing the addendum. All residents in Housing Choice Voucher properties, whether voucher supported or not, should be subject to the same lease language, including the no-smoking policy.

Common Interest Communities

The model no-smoking lease addendum can be used to implement smoke-free policies for owner-occupied multi-unit properties. Policies imposing use restrictions on owner-occupied units can be implemented through a change in the association declaration or the by-laws, or by the addition of a new rule or regulation. The language provided in this model addendum can be modified to fit the particular circumstances of a condominium complex, such as language to address the extent of the policy and enforcement procedures.

Lease Addendum Provision Explanations

The next couple of pages clarify each provision of the no-smoking policy lease addendum with brief explanations of the purpose of each. (The paragraph number corresponds to the provision sections in the model policy.)

1. The first provision lists the three key reasons for supporting no-smoking policies. This provision can be expanded if additional restrictions are placed on the use of any tobacco products on the property.
2. The definitions section defines key terms used in the policy to assist residents with compliance and management and staff with enforcement. The definition for smoking can be modified to align with a “smoking” definition in a state statute, but the definition can be more expansive than that in state law. This section also includes an optional definition for “electronic cigarettes” if the property manager wants to restrict their use.
3. The third provision describing the no-smoking complex describes the coverage of the policy in two ways: 1) it explains who is subject to the restrictions contained in the policy; and 2) it describes the areas of the property where smoking is prohibited or restricted. This section can be customized for each property according to management’s intentions.
4. The fourth provision puts some of the responsibility for maintaining a smoke-free property on to the residents. By signing the addendum the residents agree to notify management of smoking violations.
5. This provision requires the property owner or manager to post signage on the property indicating where smoking is prohibited to assist with enforcement.
6. The sixth provision allows residents to bring a legal action directly against another resident who is violating the policy. The nonsmoking resident can seek a court order requiring the smoker to take some action to stop the smoke from traveling between units.
7. This provision clarifies that a violation of the no-smoking policy is a violation of the lease and could result in eviction. If a property owner decides to have a graduated enforcement procedure—for example a couple written warnings followed by fines and then eviction— this is where the enforcement steps should be documented.
8. The disclaimer provision provides managers or landlords some protection from claims that they did not ensure a smoke-free environment. This disclaimer will generally be used in situations where a non-smoking resident is injured from exposure after renting in a building advertised as smoke-free, and management was not aware of the violation.
9. The last provision is optional language that can be used if the property is transitioning from smoking permitted to no-smoking, but resident leases will expire at different times. This provision allows for temporary “grandfathering” until the smoking resident moves or renews the lease. If all residents, smokers and nonsmokers, agree to the new no-smoking lease language, then “grandfathering” is not required.

Resources:

Office of Public and Indian Housing, 2012 Notice on smoke-free policies for public housing:
<http://portal.hud.gov/huddoc/pih2012-25.pdf>

Department of Housing and Urban Development 2010 Notice on smoke-free policies for Section 8 and other subsidized properties:
<http://portal.hud.gov/hudportal/documents/huddoc?id=10-21hsgn.pdf>

Comparison of Smoke-Free Housing Policy Factors; Private Market Rate versus Publicly Subsidized Multi-Unit Housing:
<http://bit.ly/rGAIII>

Model No-Smoking Policy Lease Addendum

[Comments are indicated with italics.]

Tenant and all members of Tenant's family or household are parties to a written lease with Landlord. This lease addendum states the following terms, conditions and rules which are hereby incorporated into the lease. A breach of this lease addendum shall give each party all the rights contained herein, as well as the rights in the Lease.

1. Purpose of No-Smoking Policy. The parties desire to mitigate (i) the irritation and known health effects of secondhand smoke; (ii) the increased maintenance, cleaning, and redecorating costs from smoking; and (iii) the increased risk of fire from smoking.

2. Definitions:

Smoking. The term "smoking" means the use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product. *[Optional] Smoking also includes use of an electronic cigarette.*

[Optional] Electronic Cigarette. The term "electronic cigarette" means any electronic device that provides a vapor of liquid nicotine and/or other substances to the user as she or he simulates smoking. The term shall include such devices whether they are manufactured or referred to as e-cigarettes, e-cigars, e-pipes or under any product name.

3. No-Smoking Complex. Tenant agrees and acknowledges that the premises to be occupied by Tenant and members of Tenant's household have been designated as a no-smoking living environment. Tenant and members of Tenant's household shall not smoke anywhere in the unit rented by Tenant, or the building where the Tenant's dwelling is located or in any of the common areas or adjoining grounds of such building or other parts of the rental community, nor shall Tenant permit any guests or visitors under the control of Tenant to do so. *[This section can be modified to indicate those areas in the complex where smoking is prohibited. If designated smoking areas are provided, they should be described here.]*

4. Tenant to Promote No-Smoking Policy and to Alert Landlord of Violations. Tenant shall inform Tenant's guests of the no-smoking policy. Further, Tenant shall promptly give Landlord a written statement of any incident where tobacco smoke is migrating into the Tenant's unit from sources outside the Tenant's apartment unit.

5. Landlord to Promote No-Smoking Policy. Landlord shall post no-smoking signs at entrances and exits, common areas, hallways, and in conspicuous places on the grounds of the apartment complex. *[Where signs are posted will depend on extent of no-smoking policy.]*

6. Other Tenants are Third-Party Beneficiaries of Tenant's Agreement. Tenant agrees that the other Tenants at the complex are third-party beneficiaries of Tenant's no-smoking lease addendum with Landlord. *(In layman's terms, this means that Tenant's commitments in this lease addendum are made to the other Tenants as well as to Landlord.)* A Tenant may bring legal action against another Tenant related to the no-smoking lease addendum, but a Tenant does not have the right to evict another Tenant. Any legal action between Tenants related to this no-smoking lease addendum shall not create a presumption that the Landlord breached this no-smoking lease addendum.

7. Effect of Breach and Right to Terminate Lease. A breach of this lease addendum shall give each party all the rights contained herein, as well as the rights in the Lease. A material breach of this lease addendum shall be considered a material breach of the lease and grounds for enforcement actions, including eviction, by the Landlord. A waiver of the lease requirement of no-smoking can only be made in writing.

[The enforcement steps should be specified in this section. The steps could start with a verbal warning, followed by written warning(s) and/or fines, leading to eviction for continued noncompliance.]

8. Disclaimer by Landlord. Tenant acknowledges that Landlord's adoption of a no-smoking policy and the efforts to designate the rental complex as no-smoking do not in any way change the standard of care that the Landlord or managing agent would have to a Tenant household to render buildings and premises designated as no-smoking any safer, more habitable, or improved in terms of air quality standards than any other rental premises. Landlord specifically disclaims any implied or express warranties that the building, common areas, or Tenant's premises will have any higher or improved air quality standards than any other rental property. Landlord cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke. Tenant acknowledges that Landlord's ability to police, monitor, or enforce the agreements of this lease addendum is dependent in significant part on voluntary compliance by Tenant and Tenant's guests. Landlord shall take reasonable steps to enforce the no-smoking policy. Landlord is not required to take steps in response to smoking unless Landlord knows of said smoking or has been given written notice of said smoking. Tenants with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that Landlord does not assume any higher duty of care to enforce this lease addendum than any other landlord obligation under the Lease.

LANDLORD

TENANT

DATE

DATE

[Optional Paragraph for temporarily "grandfathering" current residents who smoke.]

9. Effect on Current Tenants. Tenant acknowledges that current tenants residing in the complex under a prior lease will not be immediately subject to the no-smoking Policy. As current tenants move out, or enter into new leases, the no-smoking policy will become effective for their unit or under the new lease.

Resources:

Live Smoke Free; Association for Nonsmokers – Minnesota:

<http://www.mnsmokefreehousing.org/>

Smoke Free Environments Law Project

<http://www.tcsg.org/sfelp/home.htm>

Public Health Law Center – Housing

<http://www.publichealthlawcenter.org/topics/tobacco-control/smokingregulation/housing>

Sample Temporary “Grandfathering” Form:

<http://bit.ly/uTo7Bw>

Attorney Douglas J. Carney prepared the initial version of this Model Lease Addendum. He received ongoing advice, consultation, and recommendations from a legal advisory committee that included attorneys who regularly advise property owners and managers, who serve as tenant attorneys and advocates, or who advise public housing agencies. Representatives from Center for Energy and environment and the Association for Nonsmokers-Minnesota were also on the committee. The development of the lease addendum was supported by a grant from ClearWay MinnesotaSM. The modification about where smoking is allowed (Section 3) was included by Initiative for Smoke-Free Apartments. The addition of language addressing electronic cigarettes was added by Warren Ortland of the Public Health Law Center.

TEMPORARY SMOKING EXEMPTION FORM

Resident Name: _____

Apartment Number: _____

As a current resident of [name of building] and a smoker, I am requesting a temporary exemption from the [name of building] smoke-free policy adopted on [date of adoption]. I understand that my exemption will only apply to me and not to my guests. I also realize that my exemption will only allow me to smoke in my own apartment or in designated smoking areas outside the building, if any.

Further, I understand that should I move to another apartment in the building, or should I leave [name of building] as a resident and then return as a new resident at a later time, my exemption will be permanently lost.

Further, I understand that this exemption is temporary and will expire on the date of my lease renewal, at which time I will be required to adhere to the smoke-free policy adopted on [date of adoption].

Resident Signature: _____

Date: _____

Housing Management Signature: _____

Date: _____