

Model Smoke-Free Lease Addendum and Lease Provisions

Below we have provided both a Model Smoke-Free Lease Addendum which can be considered for addition to existing leases, and Model Lease Provisions which can be considered for inclusion in new or existing leases or in condominium Conditions, Covenants and Restrictions. Before utilizing this model language, landlords and/or condominium owners should consult with their own legal counsel.

Model Smoke-Free Lease Addendum

Tenant and all members of Tenant's household are parties to a written lease with Landlord (the Lease). This Addendum states the following additional 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 risks from secondhand smoke; (ii) the increased maintenance, cleaning, and redecorating costs from smoking; and (iii) the increased risk of fire from smoking.
2. Definition of Smoking. 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.
3. Smoke-free Complex. Tenant agrees and acknowledges that the premises to be occupied by Tenant and members of Tenant's household have been designated as a smoke-free 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.
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 of the Tenant's apartment unit.
5. Landlord to Promote No-Smoking Policy. Landlord shall post no-smoking and/or smoke-free signs at entrances and exits, common areas, hallways, and in conspicuous places adjoining the grounds of the apartment complex.

6. Landlord not a guarantor of smoke-free environment. Tenant acknowledges that Landlord's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, do not make the Landlord or any of its managing agents the guarantor of Tenant's health or of the smoke-free condition of the Tenant's unit and the common areas. However, Landlord shall take reasonable steps to enforce the smoke-free terms of its leases and to make the complex smoke-free. Landlord is not required to take steps in response to smoking unless Landlord is put on notice of the presence of cigarette smoke, via agent, personal knowledge, and/or written notice by a Tenant.

7. Other Tenants are Third-Party Beneficiaries of Tenant's Agreement. Tenant agrees that the other Tenants at the complex are the third-party beneficiaries of Tenant's smoke-free addendum agreements with Landlord, meaning that Tenant's commitments in this Addendum are made to the other Tenants as well as to the Landlord. A Tenant may sue another Tenant for an injunction to prohibit smoking or for damages, but does not have the right to evict another Tenant. Any suit between Tenants herein shall not create a presumption that the Landlord breached this Addendum.

8. 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 Addendum by the Tenant shall be a material breach of the lease and grounds for immediate termination of the Lease by the Landlord. Landlord acknowledges that in declaring this building(s) (or portion of the building) to be smoke-free, the failure to respond by Landlord to a complaint filed by the tenant shall be treated as equivalent to a request for maintenance. Law governing the implied warranty of habitability and the covenant of quiet enjoyment shall be understood to include the right to be smoke-free contingent upon cooperation of both Tenant and Landlord. These provisions shall also be construed to result in a constructive eviction if Landlord fails to timely respond to Tenant's complaints regarding smoke with the respective remedy reserved to the Tenant in such instance.

9. Disclaimer by Landlord. Tenant acknowledges that Landlord's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, does 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 smoke-free 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 warrant 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 Addendum is dependent in significant part on voluntary compliance by Tenant and Tenant's guests. 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 Addendum than any other landlord obligation under the Lease.

10. (Optional Paragraph for existing rental communities that adopt "no-smoking policies"):
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 smoke-free policy will become effective for their unit or new lease.

Landlord _____

Tenant _____