



Model Smoke-Free Policy _____ Homeowners' Association

Findings

WHEREAS, the U.S. Surgeon General has conclusively determined that there is no risk free level of exposure to secondhand smoke;¹ and

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”;² and

WHEREAS, in 2008, careless smoking was the leading cause of fire deaths in Minnesota; 100% of the fire deaths in multi-unit residences were associated with smoking;³ and

WHEREAS, given the proven health risks associated with smoking and breathing secondhand smoke, the Board deems it 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]⁴, which prohibits smoking in all condominium units as well as the [indoor/outdoor] common elements; 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 of _____ adopts the following smoke-free policy:

¹ 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

² American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. *ASHRAE Position Document on Environmental Tobacco Smoke*. June 25, 2008

³ Minnesota Department of Public Safety, *2008 Fire in Minnesota: Fire Reporting System, 20th Edition*.

⁴ Bracketed items are options.

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

“Business invitee” shall include, but is not limited to, any contractor, agent, household worker, or other person hired by the association, owner, tenant or resident to provide a service or product to the association, owner, tenant or resident.

“Common elements” means the entire complex, except for the individual units and limited common elements. Common elements include, but are not limited to, lobbies, recreation or multi-purpose rooms, hallways, laundry rooms, stairs, elevators, swimming pools, barbeque areas, playgrounds, sidewalks, and grass and landscaped areas.

(See state statute definition of “common element”: Minn. Stat. § 515B.1-103(8) (2010))

“Indoor area” means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

(State statute definition of “indoor area”: Minn. Stat. § 144.413 subdiv. 1a. (2010))

“Limited common element” means a portion of the common elements allocated by the declaration for the exclusive use of one or more, but fewer than all, of the units.

(State statute definition of “limited common element”: Minn.Stat. § 515B.1-103(20) (2010))

“Smoking” means inhaling or exhaling smoke from any lighted cigar, cigarette, pipe, or any other lighted tobacco or plant product. Smoking also includes carrying a lighted cigar, cigarette, pipe, or any lighted tobacco or plant product intended for inhalation.

(State statute definition of “smoking”: Minn. Stat. § 144.413, subdiv. 4 (2010))

Policy Provisions

1. Smoking is prohibited everywhere on the property at _____, including, but not limited to, the individual units, indoor and outdoor limited common elements, and in all indoor and outdoor common areas.

(Purpose: to establish the areas of the property where the policy applies)

2. No owner shall smoke, or permit smoking by any occupant, agent, tenant, business invitee, 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 provisions of the governing documents of the Association.

(**Purpose:** to establish intrusion of secondhand smoke as a nuisance 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 copies of 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, and 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 or 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 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.)

(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 either 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.