

Smoke-free Model Lease Provisions & Addendums

In residential leases between a landlord and tenant, such as a lease for the rental of an apartment unit, a smoke-free lease provision can be a provision in a new lease or an addendum which amends an existing lease. For condominiums, the language can be added to the Covenants, Conditions, and Restrictions of the condominium declaration.

Lease Provision

RULES AND REGULATIONS

Resident shall comply with all laws, ordinances, public rules, and governmental regulations applicable to the leased premises and its use. Resident shall comply with the rules and regulations of the Landlord, a copy of the rules and regulations as they now exist has been provided to the Tenant. The Landlord may amend the rules and regulations, from time to time, in any reasonable manner. This Tenant shall not permit or suffer any act or omission constituting a nuisance to other residents, management, or any authority, including without limitation, excessive noise, excessive traffic into and out of the premise, violence or threats of violence, use of controlled substances, and smoking. A violation of this Lease provision shall be considered a material breach of the lease and grounds for termination of the Lease by the Landlord.

Tenant acknowledges a receipt of a copy of the Rules and Regulations.

Initials _____.

ATTACHED RULES AND REGULATIONS PROVISION:

Smoking is prohibited in any area of the leased premises, including enclosed and outdoor areas. In accordance with the Colorado Clean Indoor Air Act, for purposes of this lease smoking means: the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.^[1] This provision applies to tenants and guests. It is the responsibility of the tenant to inform his/her guests of the no smoking provision of this lease and prohibit smoking by his/her household members or guests while on the premises. Smoking by the tenant, members of his/her household, or his/her guests in any area of the leased premises is a violation of this lease. A breach of this provision shall be considered a material breach of the lease and grounds for termination of the lease by the Landlord.

^[1] Colo. Rev. Stat. § 25-14-203(16) (2006).

Condominium Declaration Provision

Under Colorado Clean Indoor Air Act § 25-14-204 smoking is prohibited in common areas, including but not limited to restrooms, lobbies, and hallways, of the condominium premises.^[1] In addition, this provision prohibits smoking in any area of the leased premises, including enclosed and outdoor private areas. In accordance with the Colorado Clean Indoor Air Act, for purposes of this lease “smoking” means: the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.^[2] This provision applies to tenants and guests. It is the responsibility of the tenant to inform his/her guests of the no smoking provision of this lease and prohibit smoking by his/her household members or guests while on the premises. Smoking by the tenant, members of his/her household, or his/her guests in any area of the leased premises is a violation of this lease. A breach of this provision shall be considered a material breach of the lease and grounds for termination of the lease.

^[1] Colo. Rev. Stat. § 25-14-204 (2006).

^[2] Colo. Rev. Stat. § 25-14-203(16) (2006).

Lease Addendum

This addendum is made this _____ day of _____, 20____, and is added to and amends that certain agreement by and between _____ as Tenant(s) and _____ as Landlord(s), which agreement is dated _____ day of _____, 20____. Said agreement is amended as follows:

Tenant and all members of the Tenant's family or household are parties to a written lease with the Landlord (the Lease). This Addendum contains 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. The "Rules and Regulations" lease provision shall include "smoking" as a nuisance to other residents, management, or any authority.

2. The "Rules and Regulations" attached to this lease shall include the following provision:

Smoking is prohibited in any area of the leased premises, including enclosed and outdoor areas. In accordance with the Colorado Clean Indoor Air Act, for purposes of this lease "smoking" means: the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.^[1] This provision applies to tenants and guests. It is the responsibility of the tenant to inform his/her guests of the no smoking provision of this lease and prohibit smoking by his/her household members or guests while on the premises. Smoking by the tenant, members of his/her household, or his/her guests in any area of the leased premises is a violation of this lease. A breach of this provision shall be considered a material breach of the lease and grounds for termination of the lease by the Landlord.

^[1] Colo. Rev. Stat. § 25-14-203(16) (2006).

Below are provisions that should be included in a Smoke-Free Lease Addendum, according to Susan Schoenmarklin, a Consulting Attorney for the Smoke-Free Environments Law Project.

NOTE: This information is provided for educational purposes only and is not to be construed as a legal opinion or as a substitute for obtaining legal advice from an attorney. Smoke-Free Lease Addendums should be drafted with the assistance of legal counsel.

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 buildings or other parts of the rental community, nor shall Tenant permit any guests or visitors under the control of Tenant to do so.

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.

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 know of said smoking or has been given written notice of said smoking.

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. 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.

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 the 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 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 relation 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.

Source: Susan Schoenmarklin, Tobacco Control Legal Consortium, *Infiltration of Secondhand Smoke into Condominiums, Apartments and Other Multi-Unit Dwellings* (2004). Used with permission.

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