

MEMORANDUM

New NYC Laws Regarding Smoking

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SUMMARY

Owners of New York City residential buildings consisting of three or more units, whether a rental, a cooperative or a condominium, must adopt a policy on smoking, and disclose it to both current and prospective residents. A building is not required to adopt a “no-smoking” policy. Disclosure of the policy is required annually, either by distribution to the individual residents or by posting in a prominent location. In addition, the policy must be disclosed in any agreement to sell a condo unit or a co-op apartment.

DETAILS

New York City recently enacted two laws dealing with smoking. The first expands the prohibition of smoking and the use of electronic cigarettes in common areas in residential buildings with 10 or more units to residential buildings with 3 or more units.

The other new law requires that every “owner” of a multiple dwelling with three or more units adopt and disclose a smoking policy to the tenants of the building. “Owner” is defined so as to include a condominium board of managers, and a cooperative board of directors.

The smoking policy should address all indoor locations and all outdoor areas of the premises (including courtyards, rooftops, balconies, patio and any outdoor areas connected to the dwelling units). The policy must apply to all tenants, invitees of tenants, and other persons on the premises.

The policy will not be binding on a tenant during the term of the lease that was in effect at the time of the adoption of the policy, unless otherwise provided in such lease. Further, the policy will not be binding on any rent controlled or rent stabilized tenant who is in possession prior to the adoption of the initial smoking policy (or any family member who succeeds to the rights of such tenant).

Upon adoption of a smoking policy, the policy must be either provided to each tenant or posted in a prominent location within the dwelling. In a regular rental building, the policy must be

incorporated into the lease. If a unit owner (in a condominium) or a shareholder (in a cooperative) rents out an apartment, the policy must be incorporated into any agreement to rent. The policy must also be incorporated into any agreement to sell a condo unit or co-op apartment.

In a condominium, the Board of Managers must incorporate the policy into the by-laws or house rules. In a cooperative, the board of directors must include the policy in the by-laws or house rules.

On an annual basis, the policy must be provided to all tenants, **or** posted in a prominent location within the apartment. Likewise, if there is any material change to the smoking policy, notification of such change must be made to the tenants, or it must be posted in a prominent location within such dwelling. The co-op and condo board must keep copies of the disclosure of the policy, the annual disclosure and any disclosure of a material change in the policy within the past year. If there is a violation of this law, a civil penalty may be imposed.

It is important to note that there is no requirement to adopt a policy prohibiting smoking in apartments, only that there be a written policy in regard to smoking. The key to this law is that the tenants and potential tenants be informed as to what the policy is. The purpose of the law is to help potential tenants make an informed decision about whether or not they want to live in the building. This information may be especially important for parents with young children or those with respiratory ailments.

The new smoking law, effective as of August 28, 2018, will require cooperatives and condominium to develop carefully worded policies, which must act in concert with their governing documents. We would be happy to help to create such documents.