

A SMOKE-FREE CONDOMINIUM POLICY IS LEGAL AND PROTECTS HEALTH WHILE SAVING MONEY

A Smoke-free Condominium Policy Protects Health

Condominium owners can play a role in eliminating a significant cause of illness in the home and a major cause of preventable death in the United States: secondhand smoke. Secondhand smoke is not just a nuisance; according to the Environmental Protection Agency, it is a substance known to cause cancer in humans for which there is no safe level of exposure. Secondhand smoke kills almost 2,500 annually in Michigan.¹

The Centers for Disease Control (CDC) recently warned people with heart problems to avoid all buildings that permit smoking indoors.² As little as 30 minutes of exposure to secondhand smoke can have serious and possibly lethal effects to those with heart conditions, according to the British Medical Journal (BMJ).³ Children exposed to cigarette smoke in the home are twice as likely to develop and suffer persistently from asthma.⁴

Secondhand Smokes Spreads Throughout Multi-Unit Buildings

Unfortunately, secondhand smoke doesn't respect boundaries, seeping through light fixtures, ceiling crawl spaces, and doorways into all areas of a building with smokers.⁵ Air quality surveys in apartment buildings in Chicago revealed that 60% of the air in apartments comes from other units.⁶

According to the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE), secondhand smoke cannot be controlled by ventilation, air cleaning or the separation of smokers from non-smokers. ASHRAE encourages smoke-free policies as the *only complete solution to the problem of secondhand smoke*.⁷

Restricting or Banning Smoking in Condominium Buildings is Legal

Condominium boards and associations have the legal right to make their condominium property smoke free, just as they are free to prohibit pets. Michigan's Attorney General in a 1992 Opinion stated that under Michigan and federal law a landlord may choose to rent only to nonsmokers and may prohibit smoking in individual units, as well as in common areas.⁸ The reasoning in this opinion applies to all multi-unit buildings, including condominiums, which may prohibit smoking in individual units as well as in common indoor areas and outdoors. There is no state or federal constitutional right to smoke.⁹

Not only do condominium owners have the right to prohibit smoking, but they may in fact be liable under local health or safety codes, the Federal Fair Housing Act, or other common law legal theories for failure to prohibit smoking when a neighbor is sensitive to secondhand

¹ Michigan Department of Community Health, Vital Records & Health Data Development, SAMMEC 3.1; 2002.

² Pechacek TP, Babb S, Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke? *Brit. Med. J.*, Vol. 328, Apr. 24, 2004.

³ Whincup PH et al, *Passive smoking and risk of coronary heart disease and stroke: prospective study with cotinine measurement*, *BMJ*. 2004 Jul 24; 329 (7459):200-5.

⁴ Samet, J., *Risk Assessment and Child Health*, *Pediatrics* 113 (4 Supp.) 952-56 (April 2004).

⁵ John Howard, M.D., Chief of the California Division of Occupational Safety and Health, Testimony before the Labor and Employment Committee, California Assembly (Oct. 20, 1994).

⁶ Diamond RC, Feustel HE, Dickerhoff DJ. Ventilation and infiltration in high-risk apartment buildings. LBL Report # 38103 p.4, UC 1600, March, 1996.

⁷ ASHRAE report, June 30, 2005, www.ashrae.org.

⁸ Mich. Op. Att'y Gen. 6719 (May 4, 1992)

⁹ See Samantha Graff, Tobacco Control Legal Consortium, *There is No Constitutional Right to Smoke*, 2005; *Kurtz v. City of N. Miami*, 653 So. 2d 1025 (1995), where the court stated, "There is no state or federal constitutional right to smoke."

smoke. In a number of recent cases, a smoking condominium owner was held liable for exposing a neighbor to secondhand smoke.¹⁰

The Public Prefer Smoke-Free Condominiums

Providing smoke-free condominiums will increase the market value of the complex, because the demand for smoke-free housing is strong. According to a recent survey conducted in the Midwest, nearly three quarters of renters would prefer to live in smoke-free apartments.¹¹ In a national Harris poll taken in 2002, a majority of Americans said they supported the decision of a co-op (an apartment building partly owned by residents) in New York City to ban smoking for persons moving into the co-op.

Polling indicates that the general public supports smoke-free condominiums, so it is reasonable to assume similar levels of support from condominium residents themselves. For example, according to a recent survey by the Los Angeles Department of Health, 85% of non-smokers support having designated smoke-free condominium units. Astonishingly, 60% of *smokers* supported a designated smoke-free condominium.¹²

Smoke-free Condominiums are A Smart Investment

Smoke-free policies save owners money by reducing cleaning and re-painting costs and lowering the risk of fire. According to the U.S. Fire Administration of the Federal Emergency Management Agency (FEMA), cigarettes are a leading cause of fires in buildings, and the number one cause of fires that result in death.¹³ In Michigan, fires resulting from smoking cost the state at least \$36 million in damages.¹⁴

Recent research suggests that smoke-free condominium buildings may have higher resale value. Real estate agents agree that as the number of public places in which a person can smoke has shrunk, so has the number of buyers who are even willing to consider the property of a smoker.¹⁵

Ease of Enforcement

Don Williams, an officer in the Mendham Knolls condominium association, reported that compliance with the smoke-free policy in his condominium has been very good. He said that the smoke-free policy has been in effect for a year and a half in his 12-unit condominium without complaints or problems. Similarly, enforcement of smoke-free policies in apartments has not been a problem, according to an overwhelming majority of building managers in a recent survey.¹⁶

Learn more about smoke-free condominiums at www.tcsg.org/sfelp/condos.htm

¹⁰ Susan Schoenmarklin, Smoke-Free Environment Law Project, *Analysis of the Voluntary and Legal Options of Condominium Owners Confronted with Secondhand Smoke from another Condominium Unit*, (March 2006).

¹¹ D Henrikus, P R Pentel and S D Sandell, *Preferences and practices among renters regarding smoking restrictions in apartment buildings*, Tobacco Control 2003;12:189-194

¹² Los Angeles County Department of Health Services Tobacco Control and Prevention Program, 2002-2003 survey.

¹³ Federal Emergency Management, U.S. Fire Administration/National Fire Data Center, *Residential Smoking Fires and Casualties*, Topical Fire Research Series, Volume 5-Issue 5 (June 2005).

¹⁴ Michigan Fire Marshal, *Frequently Reported Statistics Year 2003*. This amount does not include the costs of fires started by matches and cigarette lighters, for which no information is available.

¹⁵ NY Times, "Real Estate & Secondhand Smoke: On Tobacco Road, It's a Tougher Sell," February 8, 2004

¹⁶ Initiative for Smoke-Free Apartments, *Adopting a No-Smoking Policy in Apartment Buildings: A Guide for Owners and Manager*, St. Paul, Minnesota