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Up In Smoke : Recently Passed Smoke Free Air Act Requires NYC Buildings To Implement Building Wide Smoking Policy Before August 28th, 2018

Stephen Lasser · Friday, August 10th, 2018

In order to discourage smoking throughout New York City, on August 28, 2017 the New York City Council passed Chapter 5 of the New York City Health Code, the Smoke Free Air Act. The legislation includes NYC Administrative Code 17-506.1 which requires all class A multiple dwelling buildings, including cooperatives and condominiums, to create and distribute a building-wide smoking policy on or before August 28, 2018. Failure to implement a smoking policy could result in violations punishable with civil fines.

The new law does not provide guidance as to the specific details to be included in the smoking policy. Rather, it merely states that a smoking policy must be implemented, it must exempt current rental tenants and permanently exempt existing rent regulated tenants and must state, in detail, the indoor and outdoor areas where smoking is permitted or prohibited. In addition, a copy of the smoking policy must be disclosed to the building residents annually by providing a copy of the smoking policy to all residents or posting the policy in a prominent location in the building.

In addition, cooperative and condominium boards must incorporate the smoking policy into the building's governing documents. Cooperative and condominium boards may also want to consider making their building smoke free, including within individual apartments. However, implementing such a restrictive smoking policy covering apartment interiors would require a super majority vote of its owners to amend its proprietary lease or by-laws, respectively.

In any event, buildings should make certain the smoking policy is comprehensive and clear, accounting for the entire property, including, but not limited to, hallways, stairwells, terraces, all outdoor areas surrounding the building, sidewalk entryways, patios, rooftops, and courtyards. This will help avoid issues when the smoking policy must be enforced. In addition, the new law requires buildings to keep records of the smoking policy itself and proof of the annual notification of the smoking policy to the residents. Any further changes to the smoking policy must also be disclosed to the building residents and properly documented.

Below is a sample smoking policy for informational purposes.

Sample Smoking Policy

Smoking Policy

#. Smoking is not permitted in any of the common areas of the Building or within 25 feet the Building's entrance. [(Optional) Notwithstanding the foregoing, Building residents may smoke on the Building's roof deck and in the Building's courtyard backyard, provided they are considerate and try not to interfere with the use of these areas by other Building residents.]

Shareholders and all other Building residents, including their visitors and guests, shall only be permitted to smoke within an apartment if the shareholder takes all necessary measures to prevent smoke and odors from emanating from the apartment, including, but not limited to, installation and use of an air filtration system of a capacity satisfactory for the apartment, sealing of duct work, electrical outlets and switches and the closing of all gaps within the apartment capable of allowing smoke to emanate from the apartment. The Board of Directors, in its sole discretion, shall from time-to-time determine the adequacy of such measures.

For purposes of these House Rules, the definition of "smoking" includes the use of cigarettes, cigars, pipes, hookahs, electronic cigarettes and other smoke or vapor causing devices.

If a shareholder receives a notice of violation of this Smoking Policy and fails to comply or have the residents in his or her apartment comply with any requested remedial measures set forth herein within thirty (30) days of receipt of the notice, the shareholder of the offending apartment will be fined \$250.00. If the offending shareholder or resident continues to violate this Policy after the imposition of the \$250.00 fine set forth herein, additional fines of \$250.00 will be assessed against the shareholder of the offending apartment thirty (30) days later or on the first day of the next calendar month, whichever comes later, and such \$250.00 fines will continue to be assessed on the first day of each calendar month thereafter until the smoking issue is reasonably resolved based on an assessment by Building Management and the Board of Directors.

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