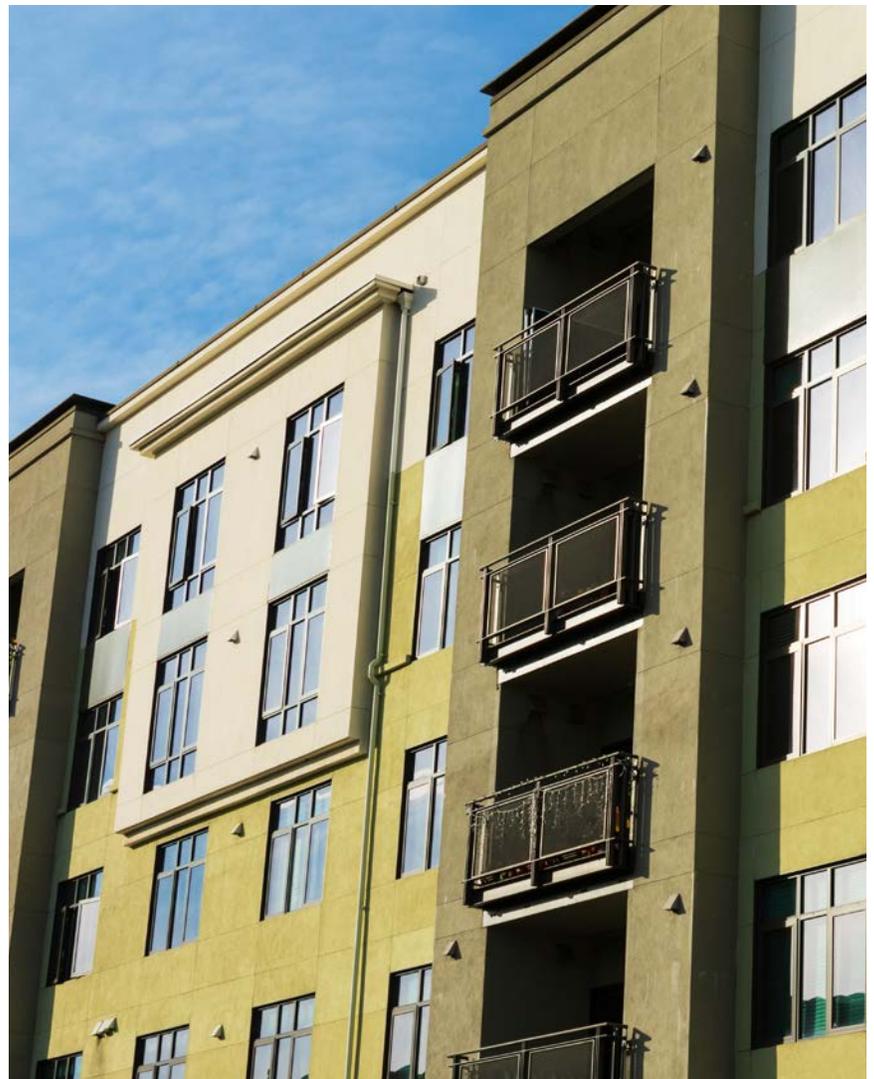




MODEL SMOKE-FREE LEASE ADDENDUM



This model lease addendum prohibits smoking of all commercial tobacco products, including e-cigarettes, everywhere on property—both inside and outside. It can be modified to fit your property's needs. Changes to one part of the policy may require changes to other parts as well. This document is provided for educational purposes only and should not be considered legal advice.



Model Smoke-Free Lease Addendum

Tenant and all members of Tenant’s household are parties to a written lease (“the Lease”) with the property owner or “Landlord.” This Addendum states the following additional terms, conditions, and rules that are incorporated into the Lease through this addendum (“Lease Addendum”). A breach of this Lease Addendum gives each party all the rights contained herein, as well as the rights in the Lease.

Section 1. Purpose of Smoke-Free Policy

The parties desire to mitigate (i) the irritation and known adverse health effects of secondhand commercial tobacco smoke; (ii) the health dangers and property damage caused by thirdhand smoke; (iii) the increased maintenance, cleaning, and redecorating costs from commercial tobacco smoke; (iv) the increased risk of fire from smoking; and (v) the higher costs of property insurance for a non-smoke-free building.

Section 2. Definitions

“Smoke” or “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco, nicotine, or plant product intended for inhalation, including hookah and marijuana, whether natural or synthetic.

“Smoking” also includes the use of an electronic smoking device.

Note

Some smoke-free policies provide exceptions for traditional, ceremonial, and sacred uses of tobacco practiced by some tribal communities, while prohibiting the use of commercial tobacco. If you would like more information about this area, please visit keepitsacred.org. Also, if you include this exception, consider the following language as an add-on to this definition of smoking: “‘Smoking’ does not include the use of traditional, sacred tobacco as part of an Indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.”

“Electronic smoking device” means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, a(n) e-cigarette, e-cigar, e-pipe, vape pen, Juul, or e-hookah.

Section 3. Scope of Smoke-Free Policy

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, members of Tenant's household, and any guests under control of the Tenant will not smoke anywhere:

- a) In the unit rented by Tenant, including any associated balconies, decks, or patios;
- b) In the common areas of the property, including, but not limited to, lobbies, hallways, stairwells, elevators, laundry rooms, community rooms, community bathrooms, or offices; or
- c) On the outdoor grounds of the property, including, but not limited to, entryways, playgrounds, pool areas, walking paths, or sitting areas.

Section 4. Tenant to Promote Smoke-Free Policy and Alert Landlord of Violations

Tenant will inform Tenant's guests of the smoke-free policy. Tenant will also promptly give Landlord a written statement of any incident where Tenant observes smoking not allowed by this policy or believes smoke is migrating into the Tenant's unit from sources outside the Tenant's unit.

Section 5. Landlord to Enforce Smoke-Free Policy

Landlord will post no-smoking signs at entrances and exits, common areas, and in conspicuous places adjoining the property grounds. Landlord will also take reasonable steps to promptly remedy known and reported violations of the smoke-free policy. Landlord is not required to take steps in response to smoking unless Landlord knows of the violation.

Note

Consider describing the ways in which tenants can notify the landlord of violations and include examples of what will be considered evidence of smoking

Section 6. Other Tenants are Third-Party Beneficiaries of Tenant's Agreement

Tenant agrees that other Tenants of the rental community are third-party beneficiaries of Tenant's smoke-free Lease Addendum 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 lawsuit between Tenants does not create a presumption that the Landlord breached this Lease Addendum.

Section 7. Effect of Breach and Right to Terminate Lease

Tenant acknowledges that a breach of this Lease Addendum may render Tenant liable to Landlord for the costs to repair Tenant's unit due to damage from smoke odors or residue. A breach of this Lease Addendum is a breach of the Lease and grounds for immediate enforcement action, including potential termination of the Lease by the Landlord.

Note

The sample language below is intended to be a sample of what graduated enforcement of the policy might look like. Please consult with your attorney to determine the specific provisions that would work best in your jurisdiction.

Section 8. Violation Enforcement

- a) The first violation shall result in a verbal warning and reminder of the smoke-free policy.
- b) The second violation shall result in a verbal warning and provision of smoking cessation resources and materials.
- c) The third violation shall result in a written warning and provision of smoking cessation resources and materials.
- d) The fourth violation shall result in a notice to vacate with an option to remedy/cure, and provision of smoking cessation resources and materials.
- e) The fifth violation may result in a 10-day notice to vacate without the option to remedy or cure.

Note

A graduated penalty structure helps to ensure better compliance with a smoke-free lease addendum. If eviction is used as a penalty, it should be used only as a last resort. Many housing advocates have expressed concern that smoke-free policies could be used as a pretext to remove tenants disfavored by management. This increases liability for discrimination claims. Efforts should be made to work with tenants, recognizing the challenge of nicotine dependence or addiction. However, while residents are not required to quit smoking, they are prohibited from smoking wherever smoking is prohibited by the lease or lease addendum.

This enforcement structure allows for tenant education and the provision of cessation resources, if desired. It is possible to support tenants suffering from nicotine dependence or addiction while working to ensure that tenants, guests, and property management/staff are safe from the harms of secondhand smoke exposure.

In supplying information and resources on tobacco cessation during the enforcement process, property management, boards, and owners should rely on evidence-based cessation programs, such as the Minnesota Department of Health's "Quit Partner" website, which includes counseling and medication information for youth and adults. Refer tenants to <http://www.quitpartnermn.com> or refer them directly to the Minnesota Quit Partner line at 1-800-QUIT-NOW (784-8669).

Any cessation products available are those the FDA has already approved for cessation purposes. Please note that e-cigarettes are not an approved FDA cessation device. For more information, visit [fda.gov/ForConsumers/ConsumerUpdates/ucm198176.htm](https://www.fda.gov/ForConsumers/ConsumerUpdates/ucm198176.htm).

Section 9. Disclaimer by Landlord

Tenant acknowledges that Landlord's adoption of a smoke-free living environment and the efforts to designate the premises as smoke-free do not in any way change the standard of care that Landlord or its managing agents owes a Tenant and do not ensure that the smoke-free designated buildings and premises are any more safe, 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 have any higher or more improved air quality standards than any other rental property. Landlord cannot and does not warranty or promise that the rental premises or common areas will be free from

secondhand smoke. Landlord and its managing agents are not the guarantor of Tenant’s health or the smoke-free condition of the premises. Tenant acknowledges that Landlord’s ability to police, monitor, or enforce the agreements of this Lease 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 relating to smoke are put on notice that Landlord does not assume any higher duty of care to enforce this Lease Addendum than any other landlord obligation under the Lease.

LANDLORD

TENANT(S)

[_____]

[_____]

DATE

DATE

[_____]

[_____]

Additional Resources to Assist with Supporting Nicotine Dependence or Addiction Recovery

Many free resources are available to help overcome nicotine dependence or addiction.

Minnesota-Specific Resources

- Minnesota residents of all ages — whether covered by a health plan or not — have access to free resources to help stop using commercial tobacco products. The first place residents can seek help are the free services provided by the state health department and supporting institutions. Quit Partner, a program maintained by the Minnesota Department of Health, provides free support for Minnesota residents and includes personalized coaching, email and text support, educational materials, and quit medication (nicotine patches, gum or lozenges) delivered by mail. You may refer residents to the toll-free line 1-800-QUIT-NOW (784-8669) or website <https://www.quitpartnermn.com>.
- Quit Partner offers specialized programs for people living with mental illnesses or substance use disorders and those who are pregnant and post-partum. Quit Partner maintains quitlines tailored to American Indian communities (<http://www.quitpartnermn.com/american-indian-quitline>) and youth ages 13-17 (<https://www.mylifemyquit.com>).

Additional Resources to Assist with Supporting Nicotine Dependence or Addiction Recovery *(continued)*

- Contact Association for Nonsmokers–Minnesota (ANSR MN) at 651-646-3005, your local public health agency, and/or your health care provider to find local cessation resources.

National Resources

- The National Cancer Institute cessation website (smokefree.gov) contains tools and tips to quit, including smoke-free texting programs, information on nicotine replacement therapy, smoke-free apps, and building your own quit plan.
- The National Cancer Institute’s trained counselors provide information and support for quitting in English and Spanish. Call Monday through Friday 8 a.m. to 8 p.m. CST at 877-44U-QUIT (877-448-7848).
- The Centers for Disease Control and Prevention website (cdc.gov/tobacco/campaign/tips/quit-smoking/index.html) provides information on quitlines, apps, texting support, developing a quit plan, and much more.
- To learn more about quitline services available outside Minnesota, visit the North American Quitline Consortium website and click on your state (map.naquitline.org).
- All states have quitlines with counselors who are trained specifically to help smokers quit. Call this number to connect directly to your state’s quitline (hours of operation and services vary from state to state): 800-QUIT-NOW (784-8669).

This publication was prepared by the Public Health Law Center at Mitchell Hamline School of Law, St. Paul, Minnesota, and made possible by a Tobacco-Free Communities Grant from the Minnesota Department of Health Tobacco Prevention and Control Program. The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. This document should not be considered legal advice.