



NO SMOKING RULES FOR COMMUNITY ASSOCIATIONS

STEPS TO ADOPT A NO-SMOKING POLICY

Step 1: Constructing your no-smoking rule

Choose the vehicle for rule change: Familiarize yourself with, and talk to your attorney about, the different methods of adopting a no-smoking rule for your community association. These include:

- Amendment to Declaration
- Amendment to Bylaws
- Board resolution

Define smoking: “Carrying, burning, or otherwise handling or controlling any lit or smoldering product containing tobacco, including but not limited to cigarettes, cigars or pipes.”

Where will rule the rule apply? Think about where you want to prohibit smoking on the property:

- Indoor common areas (lobby, hallways, community rooms, etc.)
- Outdoor general common areas (trails, playground, parking lot, etc.)
- Outdoor exclusive use common areas (balconies, porches, patios, etc.)
- Outdoors within a certain distance from the buildings (such as 25 feet)
- Inside units
- Everywhere on the property, inside and outside

Given that smoke drifts everywhere, consider the effect that a no-smoking rule in one area may have on other areas. Where smoking occurs, even outside, can make a difference to residents who either have to pass through the smoke or who live near a common smoking area. For example, if you prohibit smoking in individual units, more people begin to smoke on their balconies and patios. If you prohibit smoking on patios, they may start smoking outside building entrances and in other outdoor locations.

Potential solutions include extending the rule to include a certain distance from entrances, exits, operable windows and air intake vents or designating an outdoor smoking area located where smoke is unlikely to affect other residents.

When will rule go into effect? Allow time to gather owner input and to educate residents. A rule going into effect in the warmer months may increase compliance because it gives smokers a chance to get used to smoking outside.

Use the general nuisance clause: The community association’s general rule against nuisances in the declaration or CC&Rs should be reaffirmed.

For this and other tools go to www.caioregon.org

How will the rule be enforced? The no-smoking rule should state how it will be enforced, what the fine will be for infraction, and that board members have an obligation to ensure the rule is followed. Reference your enforcement provisions for violations of other community association rules such as no pets, no loud music, improper garbage disposal. All rules must be needed, fair, uniformly enforceable, and penalties must relate to the severity of the violation.

Step 2: Getting resident input

Consider doing a resident survey to assess and demonstrate support for the rule change (See *Sample Resident Letter* and *Sample Survey Questions* at www.caioreson.org). A survey gives owners an opportunity to voice their opinions, and it acts as a preliminary “vote”. Results from this will demonstrate support and may uncover areas that need special attention before moving forward. It will make residents feel included in the process and may decrease opposition.

Step 3: Educating owners

Since a vote of a super-majority of unit owners will likely be needed to enact the rule change, it is very important to take time to educate owners about the many benefits of a no-smoking rule. Share results of the resident survey to demonstrate community support. This could be done through newsletter articles, notices on your website, flyers in newspaper tubes or door slots, signs in a lobby, etc.

Consider designating a special task force to plan educational outreach and help with process of determining what the actual rule will include.

Step 4: Voting on the proposed rule

Take advantage of multiple communication channels to promote voting on this issue. This could include letters to owners, newsletter articles, web notices and even signs throughout the community. Since it may be difficult to obtain the required number of votes in a fixed time period (due to owner absence, etc.), you might leave the voting open until a quorum is reached. Consider knocking on doors and collecting proxies.

Step 5: Implementing the no-smoking rule

For Common Areas: Make sure the building and grounds comply with state law and that no-smoking signs are posted. Under Oregon and Washington state law, smoking is prohibited in most public places and workplaces. Public place means any enclosed area open to the public. Workplace means every enclosed area under the control of a public or private employer where employees frequent during the course of their regular duties (lobbies, hallways, community or laundry rooms, etc). In addition, smoking is prohibited near ALL entrances, exits, operable windows and air intake vents (within 10 feet in Oregon and 25 feet in Washington).

Since community association boards generally have the authority to establish rules for common areas, you will be able to do this right away. Check the declaration or CC&Rs. All it may take is a vote of the majority of board members at a meeting where a quorum is present. Once a common area no-smoking rule is enacted, the board must give unit owners notice of the rule change before implementing. The notice should state where smoking will be prohibited and when the rule becomes effective.

If, as in many buildings, smoking is not permitted in the enclosed common areas of your building, your next step is to implement a rule change for those common areas that are not enclosed such as fire escapes, decks, patios, exterior landings, front steps and the surrounding grounds. Because secondhand smoke often drifts from these locations back inside the building through doors and windows, it may become necessary to prohibit smoking in these areas. If a smoking area is designated, it should be far from any entrance or other area where the smoke might drift back into the building.

It is advisable to record a bylaw amendment for common area rules because it automatically provides notice to all unit owners of the rule change.

For the entire property: A no-smoking rule that restricts smoking in individual units probably requires an amendment of the community association's bylaws found in the declaration or CC&Rs. Enacting the rule will require a vote of unit owners; likely, a super-majority (75% to 95%) will be needed. Consult your own community association documents for specifics. Although you may enjoy the support of all owners, it is possible you will meet with some resistance. That is why it is critical to conduct a resident survey to gain support for the rule and educate owners about benefits.

Step 6: Enforcing the No-Smoking Rule

No-smoking rules are largely self-enforcing. Once the rule is established, you are likely to attract new owners who support no-smoking rules. Here are some tips:

Inform owners: Start by mailing each resident a copy of the rule change or bylaw amendment as soon as the amendment has passed.

Post no-smoking signs: Put them at the entrance, hallways and other conspicuous areas. If you find someone smoking in an area where it is prohibited, post a no-smoking sign there too.

Remove ashtrays and clean up cigarette butts: These items give the impression it is a smoking area.

Repair cigarette damage in common areas: If these areas have cigarette burns and smell like smoke, building residents may be inclined to ignore the no-smoking rule. Replace or patch carpet, floors or other surfaces that have cigarette burns, paint smoke-stained walls and ceilings, and take other steps to reduce the odor of stale tobacco smoke.

Respond promptly to resident complaints of smoking: Ask those who complain to document when and from where the smoke likely originated. Follow-up with enforcement in a timely fashion.

Be consistent: Taking the same steps in the same time period for every rule violation sends a clear message to everyone that smoking is not allowed. Likewise, treat violations of the no-smoking rule in the same way you respond to other rule violations such as loud noise or inappropriate garbage disposal.

Alert owners: Make owners aware they could be held financially responsible for violations on the premises and that the rule applies to everyone, including guests and tenants.