

NAME: _____ ADDRESS: _____ DATE: _____

Oshkosh/Winnebago County Housing Authority

No-Smoking Policy Lease Addendum

Tenant and all members of Tenant's family or household are parties to a written lease with Landlord. This lease addendum states the following terms, conditions and rules which are hereby incorporated into the lease. A breach of this lease addendum shall give each party all the rights contained herein, as well as the rights in the Lease.

1. Purpose of No-Smoking Policy. The parties desire to mitigate (i) the irritation and known health effects of secondhand smoke; (ii) the increased maintenance, cleaning, and redecorating costs from smoking; and (iii) the increased risk of fire from smoking.

2. Definitions:

Smoking. The term "smoking" means the use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product. *Smoking also includes use of an electronic cigarette.*

Electronic Cigarette. The term "electronic cigarette" means any electronic device that provides a vapor of liquid nicotine and/or other substances to the user as she or he simulates smoking. The term shall include such devices whether they are manufactured or referred to as e-cigarettes, e-cigars, e-pipes or under any product name.

3. No-Smoking Complex. Tenant agrees and acknowledges that the premises to be occupied by Tenant and members of Tenant's household have been designated as a no-smoking living environment. Tenant and members of Tenant's household shall not smoke anywhere in the unit rented by Tenant, or the building where the Tenant's dwelling is located and must be at least 25 feet away from dwelling unit or garage/shed nor shall Tenant permit any guests or visitors under the control of Tenant to do so.

4. Determining tenant violation of no smoking policy. Examples of violations include, but are not limited to:

- Staff witnesses a tenant, tenant's guest, family member, or service provider smoking in non-smoking areas under tenant's control.
- Staff witnesses a lighted smoking product in an ashtray or other receptacle in non-smoking areas under tenant's control.

- Damages to the interior of the property (i.e. carpets, countertops) that are the result of burns caused by smoking products.
- Evidence of smoking in a unit includes, but is not limited to, cigarette or other smoking product smells, smoke clogged filters, ashes, smoke film including smoke damage to walls.
- Repeated reports to staff of violations of this policy by third parties.

5. Tenant to Promote No-Smoking Policy and to Alert Landlord of Violations. Tenant shall inform Tenant's guests of the no-smoking policy. Further, Tenant shall promptly give Landlord a written statement of any incident where tobacco smoke is migrating into the Tenant's unit from sources outside the Tenant's apartment unit.

6. Landlord to Promote No-Smoking Policy. Landlord shall post no-smoking signs at entrances and exits, common areas, hallways, and in conspicuous places on the grounds of the apartment complex

7. Other Tenants are Third-Party Beneficiaries of Tenant's Agreement. Tenant agrees that the other Tenants at the premises are third-party beneficiaries of Tenant's no-smoking lease addendum with Landlord. A Tenant may bring legal action against another Tenant related to the no-smoking lease addendum, but a Tenant does not have the right to evict another Tenant. Any legal action between Tenants related to this no-smoking lease addendum shall not create a presumption that the Landlord breached this no-smoking lease addendum.

8. Effect of Breach and Right to Terminate Lease. A breach of this lease addendum shall give each party all the rights contained herein, as well as the rights in the Lease. A material breach of this lease addendum shall be considered a material breach of the lease and grounds for enforcement actions, including eviction, by the Landlord. A waiver of the lease requirement of no-smoking can only be made in writing.

The enforcement steps are as follows:

1. First violation: Tenant shall receive a verbal warning
2. Second violation: Tenant shall receive a written warning
3. Third Violation: Tenant shall receive a fine of \$200
4. Fourth Violation: Tenant shall be considered in default under the terms of the residential lease agreement

9. Disclaimer by Landlord. Tenant acknowledges that Landlord's adoption of a no-smoking policy and the efforts to designate the rental complex as no-smoking do not in any way change the standard of care that the Landlord or managing agent would have to a Tenant household to render buildings and premises designated as no-smoking any safer, more 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 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.

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. Landlord shall take reasonable steps to enforce the no-smoking policy.

Landlord is not required to take steps in response to smoking unless Landlord knows of said smoking or has been given written notice of said smoking.

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

DATE

(2015)

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Resources:

Clear Gains: Wisconsin's Smoke-Free Housing Initiative

www.wismokefreehousing.com

Public Health Law Center – Housing

www.publichealthlawcenter.org/topics/tobacco-control/smoking-regulation/housing

Attorney Douglas J. Carney, of Hanbery, Neumeyer & Carney, P.A., prepared the initial version of this Model Lease Addendum. He received ongoing advice, consultation, and recommendations from a legal advisory committee that included attorneys who regularly advise property owners and managers, who serve as tenant attorneys and advocates, or who advise public housing agencies. Representatives from Center for Energy and Environment and Association for Nonsmokers-Minnesota were also on the committee. The modification about where smoking is allowed (Section 3) was included by Initiative for Smoke-Free Apartments. The addition of language addressing electronic cigarettes was added by Warren Orland of the Public Health Law Center.