

## ASK THE ADMINISTRATOR

### NYC Smoking Laws

I received a telephone call from an RSA Member asking about the recently enacted New York City Smoking Law.

The new law, known as **Local Law 147 of 2017**, took effect on August 28<sup>th</sup>, and requires that owners of buildings with three or more apartment have a comprehensive policy on smoking for that building. Additionally, smoking is prohibited in all common areas.

The policy is required to apply to all locations within the building, from common areas to dwelling units and, including common courtyards, rooftops, balconies, patios and outdoor areas connected to dwelling units. The policy applies to owners, tenants and guests of the tenants, together with building personnel.

The policy is not applicable to rent stabilized or rent controlled tenants in occupancy as of the adoption of the policy or any tenant who succeeds to their apartment, but can be made applicable to future regulated tenants. In addition, it is not applicable to leases in effect for non-regulated tenants at the time of the adoption of the smoking policy but can be made applicable to future leases. The law does NOT require that an owner adopt a policy prohibiting smoking in apartments.

In addition, the prohibition on “smoking” in the law was expanded to include a prohibition on smoking electronic cigarettes (e-cigarettes) in common areas of the building.

A copy of the smoking policy must be provided to current and future tenants either by sending it to all tenants or by posting the policy in a visible location. Since tenants sometimes remove posted notices, you should take photographs of the posting, and all other postings, to protect yourself from future violations. If

it is not posted, the smoking policy must also be available to inspectors if they visit the premises and request to see the policy. I suggest a locked display box in the lobby.

Going forward, the smoking policy must be incorporated into all new leases and renewal leases. Additionally, any future material changes in your smoking policy must be shared with all tenants.

An owner is subject to a fine of \$100 if the policy is not provided to the tenants in the required manner and the owner is required to retain documentation that the policy was distributed. The law also contains additional penalties for smoking in the common areas of the building.

Given that it is an opportunity for the City to generate revenue at the expense of an owner, I assume that, sooner than later, inspectors will be visiting your buildings looking for your smoking policy. Owners are required to enforce the smoking policy and you are subject to fines if the policy is violated.

We have previously seen the City make owners responsible for acts of tenants, from bedbugs brought in by tenants or their guests, to owners being subjected to massive fines when their tenants are caught renting their apartments on Airbnb and other such services, expect the City to hold you responsible in these situations.

Smoking FAQs and a sample smoking policy are posted on RSA’s website at [www.rsanvc.net](http://www.rsanvc.net) under the Resources section. ■



*Article provided by Howard Stern, Esq., Administrator of the RSA Legal Plan for small property owners, who is solely responsible for its content.*



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