

# **NEWS**

## **FOR IMMEDIATE RELEASE**

**From: Real Estate Board of New York (REBNY)**

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### **REBNY's Residential Management Council Proposes Guidelines for Implementing No-Smoking Policies**

**New York, NY – April 12, 2012:** The [Real Estate Board of New York's \(REBNY\)](#) Residential Management Council has created a guide to help managing agents to best inform their buildings and boards who are considering implementing a no-smoking policy. The guide provides best practices and serves as a starting point for understanding how no-smoking policies can be implemented.

Under existing city, state, and federal law, owners of rental apartment buildings are free to adopt a non-smoking policy with regard to the individual residential units that are free market. There are currently no laws in New York prohibiting smoking within an apartment in residential buildings, but implementing a smoking ban could lower maintenance costs and insurance rates.

“Current trends to regulate smoking in public spaces, such as in parks and restaurants, have sparked interest in pursuing non-smoking policies for residential buildings,” said Steven Spinola, President of REBNY. “Since there is no settled case law regarding this issue, our Residential Management Council has laid the groundwork to open communication and provide helpful insight into addressing this issue.”

In most instances, implementation of a smoking ban will require an amendment to the proprietary lease or by-laws, approved by a super majority of apartment owners. For all properties, it is recommended that owners of residential apartment buildings and boards of cooperatives and condominiums consult with the building's lawyer prior to implementing any policy.

#### **Rentals**

- A landlord or owner can ban smoking in the building for each new non-rent-regulated tenant. However, the landlord would have to add a rider to that effect to the lease.

- In the event that an existing tenant has smoke emanating from his or her apartment and other tenants have registered complaints, the landlord may be able to use that as a basis to attempt to terminate the smoker's lease.

### **Coops**

- An outright ban on smoking would most likely require an amendment to the proprietary lease, which would require the affirmative vote of the owners of a supermajority (typically two-thirds or 75 percent) of the shares.
- The Board of Directors may consider whether the smoker's conduct rises to the level of objectionable conduct sufficient to terminate the shareholder's proprietary lease. The Board of Directors could also use the prohibition against "objectionable odors" emanating from an apartment found in most proprietary leases to attempt to terminate the smoker's proprietary lease.

### **Condos**

- Condominium's By-Laws can generally be amended by the affirmative vote of the owners. The Board of Managers has the ability to reject any purchaser who permits smoking in the unit. The Board of Managers can also indicate a specific date in the future at which point no resident may smoke in the building including within the unit.
- If the Board of Managers has the authority under the By-Laws to fine a unit owner who smokes in a unit and the smoke enters another unit, it may impose such a fine. Absent such a provision, the Board or offended unit owner could sue the owner who smokes for monetary damages and an order enjoining the owner from smoking.

Studies by the New York State Department of Health have shown that second hand smoke or environmental tobacco smoke is dangerous to a person's health. The limitation or banning of smoking within residential units may be more prevalent in the residential market in the future. For owners of residential apartment buildings and boards of cooperatives and condominiums who wish to learn more about non-smoking policies please visit [REBNY's website](#).

### **About The Real Estate Board of New York**

The Real Estate Board of New York is the city's leading real estate trade association with more than 12,000 members. REBNY represents major commercial and residential property owners and builders, brokers and managers, banks, financial service companies, utilities, attorneys, architects, contractors and other individuals and institutions professionally interested in the city's real estate. REBNY is involved in crucial municipal matters including tax policy, city planning and zoning, rental conditions, land use policy, building codes and legislation. In addition, REBNY publishes reports providing indicators of market prices for both the residential and commercial sectors. Please visit us online at [www.REBNY.com](http://www.REBNY.com)

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