

# Going Smoke-Free (including Cannabis) in Condominiums and Rental Properties



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# Presentation Overview:

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- Why Go Smoke Free
- Cannabis
- The Process of Going No Smoking
- Enforcement

# Combustion Inside the Home

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Candles

Incense

***Tobacco***

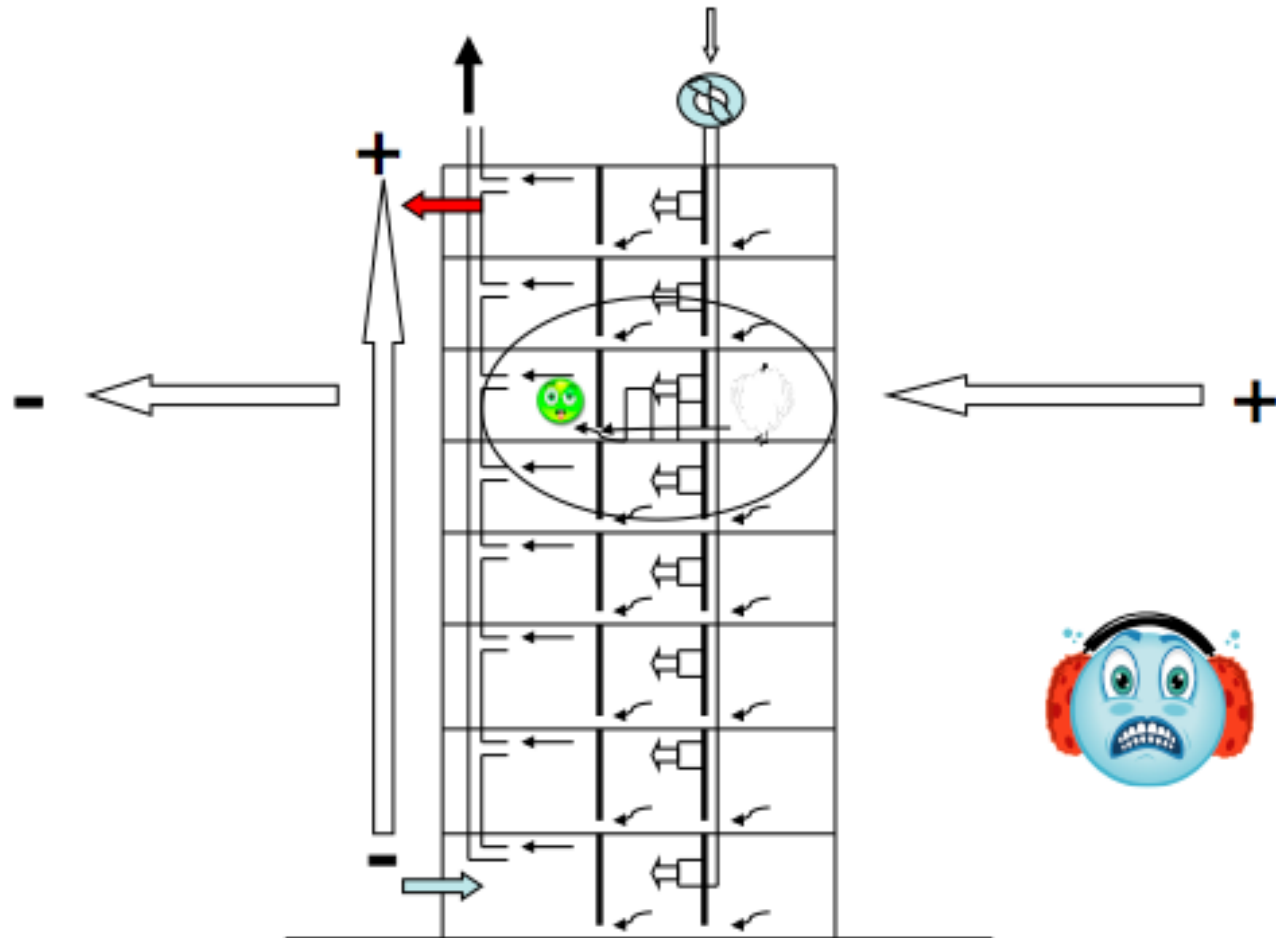
***Cannabis***

Cooking food

Natural Gas

# Air Movement: Temperature, Wind Mechanical Forces

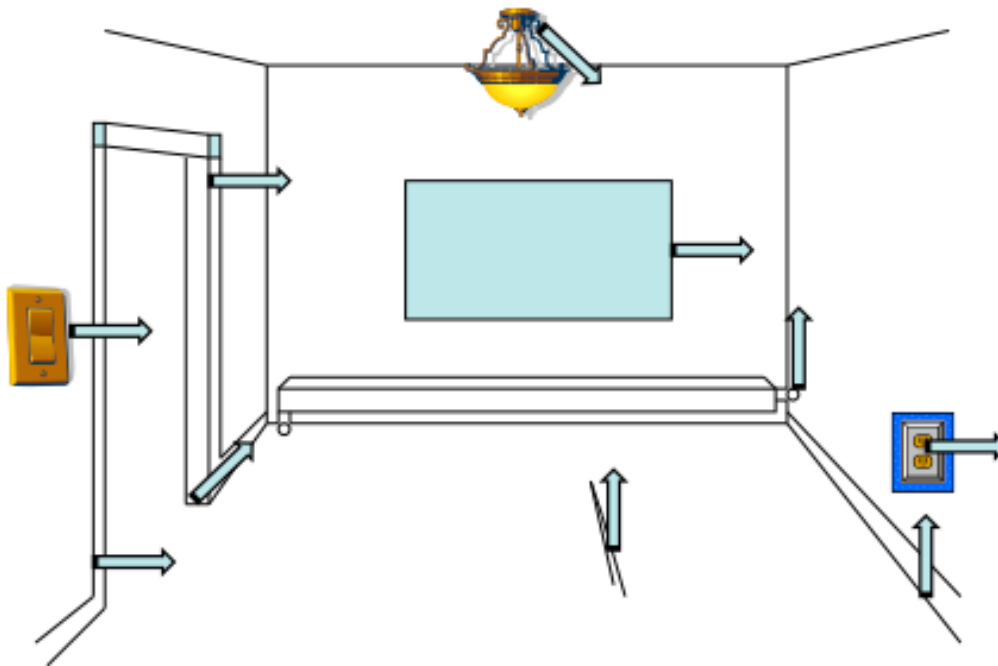
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# Pathways

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## Leakage Points



# Cannabis or Tobacco Secondhand Smoke

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- ◆ Smoke from marijuana has many of the same toxins, irritants, and carcinogens (cancer-causing chemicals) as tobacco smoke.\*
- ◆ Particulates (+ chemicals) disperse
- ◆ Ultra-fine particles stay suspended a long time
- ◆ Formaldehyde, Benzene, Lead, Cadmium, Carbon monoxide, and more.

\*Moir D, Rickert WS, Levasseur G, et al. A comparison of mainstream and sidestream marijuana and tobacco cigarette smoke produced under two machine smoking conditions. *Chemical Research in Toxicology*. 2008;21(2):494-502

# Health & Safety

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- ◆ Secondhand smoke travels from unit to unit through air ducts, under doors, holes for piping, electrical outlets, wall and ceiling fixtures, exterior windows, and other pathways.
- ◆ Ventilation and other mechanical changes are costly and rarely prevent smoke incursion. *Remember that the American Society of Heating, Refrigerating and Air-Conditioning Engineers refuses to set ventilation standards for secondhand smoke because they are impractical.*
- ◆ Once it seeps into a unit, secondhand smoke can remain in the air for hours, exposing occupants.



Smoke-Free by Sept. 2012

# Health & Safety

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- ◆ “Home is the place where children are most exposed to secondhand smoke” and “a major source of exposure for adults.” (*U.S. Surgeon General 2006*)
- ◆ Nonsmokers who are exposed to secondhand smoke at home increase their risk of developing lung cancer by 20% to 30% and their risk of heart disease by 25% to 30%. (*Surgeon General 2006*)
- ◆ Children exposed to secondhand smoke are more likely to develop bronchitis, pneumonia, asthma and ear infections. (*Surgeon General 2006*)
- ◆ Cigarettes are the leading cause of fire-related mortalities and a leading cause of fire. (*CDC*)



Smoke-Free as of Oct. 2011





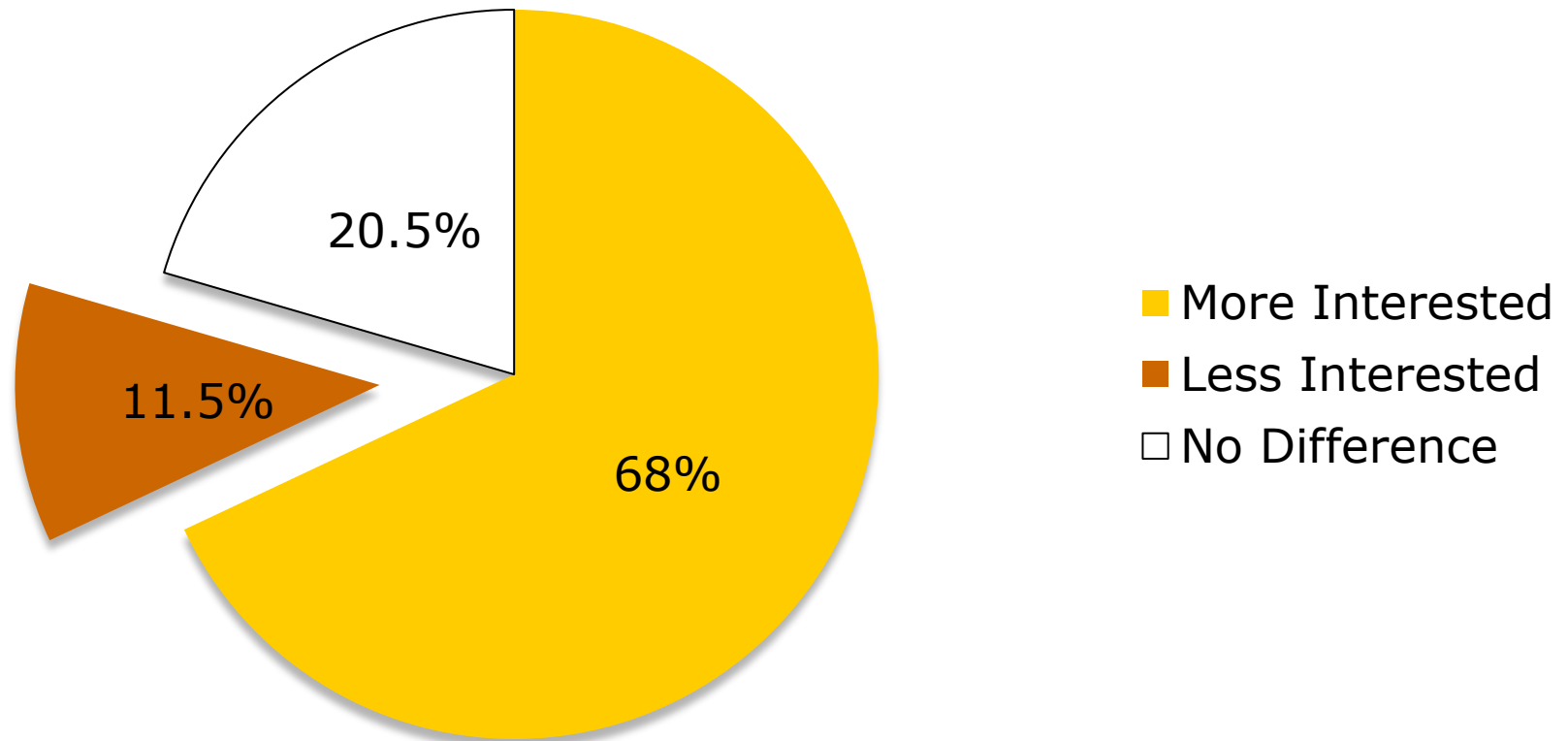




# Market Demand

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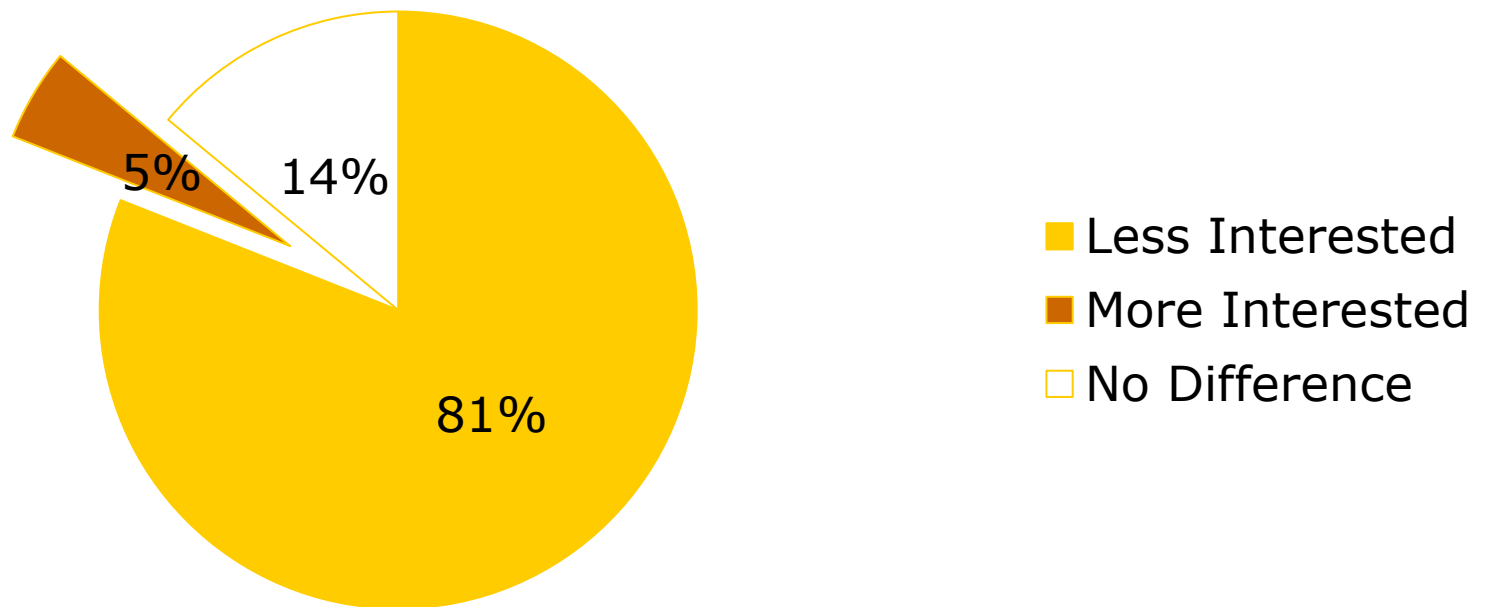
## Effect of No Smoking Rule Included in a Property Listing



# Market Demand

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## Effect of Prospective Resident Smelling Tobacco Smoke

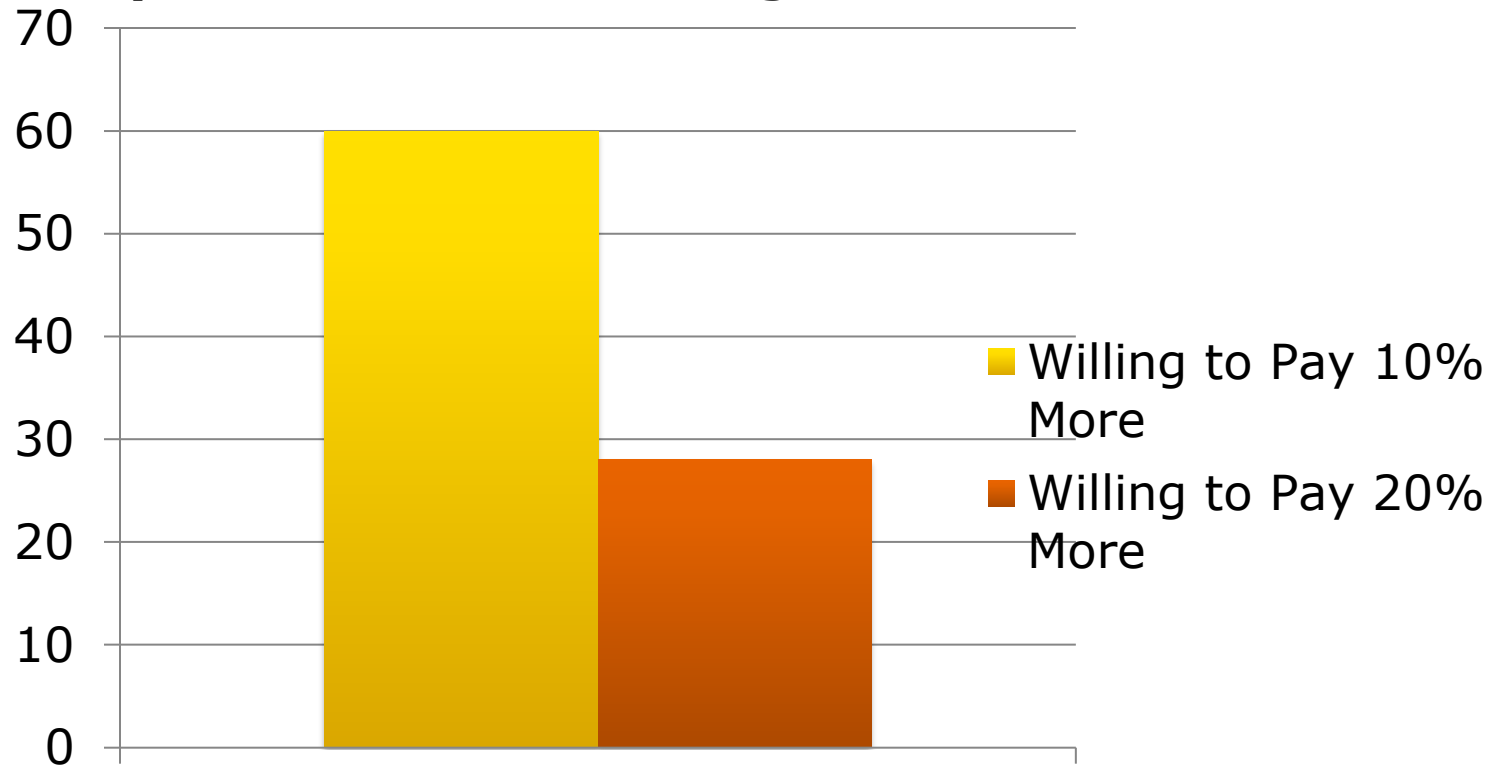




# Market Demand

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**41 % of Prospective Residents are Willing to Pay More for a No Smoking Rule**



# The Landlord's Story:

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**99%** of all landlords who had a smoke-free rule believed it was a “good decision,” and **90%** it was easy to implement

- **16%** of the landlords reported that a smoke-free rule decreased their vacancy rates and a **19%** decrease in turnover rates. The balance reported largely no effect.
- **39%** of landlords reported that a smoke-free rule decreased disputes among tenants. The balance report largely no effect.

# Is it legal? Yes:

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- Landlords and condominium associations may prohibit smoking. Prohibit smoking, not smokers.
- There is **no** constitutional right to smoke tobacco. *American Lithuanian Naturalization Club, Athol, Mass., Inc., v. Board of Health of Athol, 446 Mass 310 (2006).*
- Neither tobacco nor nicotine is not a clinically recognized treatment for any health condition.

# Cannabis

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- “Nothing in 935 CMR 500.000 shall be construed to limit the applicability of any other law as it pertains to the rights of landlords, employers, Law Enforcement Authorities, or regulatory agencies, except as otherwise provided in 935 CMR 500.000” (Adult Use)
- “Nothing in 935 CMR 501.000 shall be construed to limit the applicability of other law as it pertains to the rights of landlords, employers, Law Enforcement Authorities, or regulatory agencies, except as otherwise provided in 935 CMR 501.000” (Medical)



# Cannabis

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- Smoking marijuana is not a reasonable accommodation under the law. The various federal statutes and cases that tell us which accommodations are reasonable all preclude “ongoing illegal drug use.” Marijuana is an illegal drug under Schedule I of the Controlled Substance Act, which means that it “has no currently accepted medical use in treatment in the United States.” So, it is not legally reasonable to allow marijuana use in contravention to a no-smoking rule.
- A reasonable accommodation does not include an accommodation that “would constitute a direct threat to the health or safety of other individuals or whose [occupancy] would result in substantial physical damage to the property of others” ... that can not be eliminated or acceptably minimized. 42 U.S.C. § 3604(f)(8).
- An accommodation does not include a “fundamental alteration” to the nature of a program when it eliminates an “essential aspect of the relevant” program. *Groner v. Golden Gate*, 250 F.3d 1039 (2001)

# Which No Smoking Rule?

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- ◆ **REMEMBER No Smoking means “No Smoking”. It Does Not Mean “No Smokers”.**
- ◆ **Grandfathering?**
  - ◆ Mostly used in condominiums, but most condominiums go completely no smoking
  - ◆ Makes Enforcement Difficult. Doesn't address ongoing complaints.
  - ◆ Do not get benefits of being 100% smoke-free.
- ◆ **Designated Smoking Area**
  - ◆ Various from location to location. Use temporarily? Access and safety?
  - ◆ Keep away from the building and entrances.
- ◆ **Cannabis**
  - ◆ Edibles still allowed.

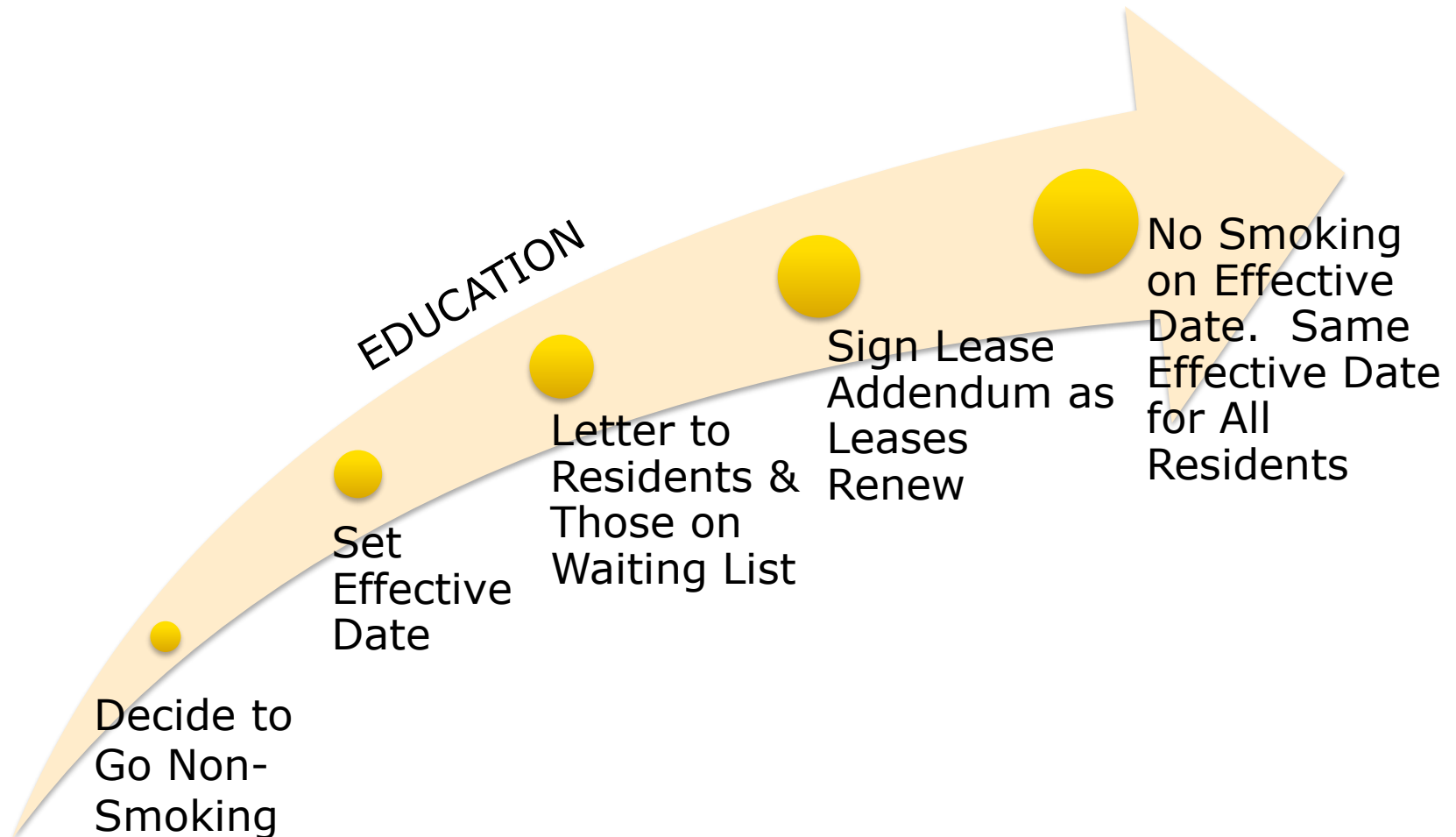
# E-Cigarettes

- ◆ E-cigarettes produce a nicotine infused vapor, which is often highly flavored, although not in MA.
- ◆ E-cigarettes are not cessation products. Manufacturers of these products include Philip Morris, Lorillard, R.J. Reynolds, and others.
- ◆ Use is increasing, including among youth. Dual use with traditional tobacco products is increasing.



# Implementation: Rental

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# Implementation: Condominium

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Going smoke-free involves amending the condominium's bylaws(trust) or master deed, which requires a vote of the unit owners. So, get out the vote:

- Educate unit owners on the benefits of a non-smoking building before and during the voting process. Distribute information and host informational meetings.
- Engage unit owners in the process including by recruiting volunteers to get out the vote.
- The condominium trustees should support the change.
- Make the voting process as easy as possible. Circulate ballots for voting and make it easy for completed ballots to be returned, for example, electronically or by dropping them off at a convenient location.
- Keep the vote open for several weeks or even months if possible.
- Make sure to comply with the voting process described in the condominium document that you are amending, that is, the master deed or bylaws (trust).
- When you receive enough votes for the amendment (e.g., 65%) record the amendment at the Registry of Deeds.

# Enforcement

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- ◆ Create & Maintain a Smoke-Free Environment
  - ✓ Educate at every opportunity, including during enforcement.
  - ✓ Use no-smoking signs and the like.
- ◆ What is the Resident's Perspective
  - ✓ Listen to people who are reporting violations.
  - ✓ Be clear and consistent about the rule and enforcement process.
- ◆ Respond Quickly
  - ✓ Have a plan and materials in place beforehand.
  - ✓ Stick to your timeline.

# Enforcement:

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# Enforcement

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## ◆ Evidence

- ✓ Complaints by residents and inspection reports by staff should be written.
- ✓ Management should verify, use 2 staff on an inspection or different staff for different inspections.
- ✓ Smell and look for smoke in complainant's unit and in hallway outside smoker's door.
- ✓ DO NOT enter unit without permission or proper notice.
- ✓ There are a variety of secondhand equipment used for secondhand smoke measurements, but they are not needed.
- ✓ Keep a comprehensive, written evidence log, throughout enforcement.
- ✓ Document condition of unit before renting and look and smell for signs of smoking during authorized inspection of unit after complaint.



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