

Landlords Frequently Asked Questions about Smoke-Free Policies

Q. Why should I consider adopting a smoke-free policy for my buildings?

A. A smoke-free policy is a great way to protect your property from damage, fires, and excessive wear and tear. You will save money on turnover costs because apartments will cost less to clean, repair, and repaint. You will also gain a market advantage. As more people become aware of the health hazards of secondhand smoke, smoke-free policies are an amenity that most tenants want.

Q. Is it legal for me to ban smoking in my apartment or condominium?

A. Yes. It is completely legal for a landlord or condominium association to adopt a smoke-free policy for their units and buildings.

Q. Does this mean that smokers can't live in my building?

A. No. Smoke-free policies restrict smoking – not smokers. A smoke-free policy does not limit who can live in an apartment or condominium, so long as all residents and their guests refrain from smoking indoors.

Q. Is a smoke-free rule discriminatory?

A. A smoke-free policy is not discriminatory. Smoking is a behavior, not an inborn characteristic, like race or sex, so prohibiting smoking does not target any particular group. Also, a smoke-free rule doesn't mean you can't rent to smokers; they just have to smoke outside, which many smokers already choose to do.

Q. Don't smokers have a right to smoke in their own homes?

A. No. There is no "right to smoke" provision under any federal, state, or local laws. Smokers are not a protected class. You own the building. It is your property and you have the right to set reasonable rules that protect it.

Q. Is secondhand smoke really that dangerous?

A. Yes. Secondhand smoke contains over 4,000 chemical compounds – more than 50 of which are known to cause cancer in humans or animals. There is no safe level of exposure to secondhand smoke. Secondhand smoke causes



asthma, upper respiratory infections, ear infections, and sudden infant death syndrome (SIDS). Over 38,000 deaths annually in the United States are the result of secondhand smoke-related diseases. Ventilation and air filtration systems cannot remove the toxins in secondhand smoke. Secondhand smoke can seep from one unit into another through walls, plumbing, wiring, under doors, etc.

Q. Is smoking a disability?

A. Smoking is an addiction that causes death and disease, but it is not a disability under the Americans with Disabilities Act (ADA). No federal or state courts ever ruled that smoking is a "disability" under the meaning of the ADA. Smoking is a behavior that is remedial, in other words, a smoker can quit.

Q. Can a smoker request a Reasonable Accommodation allowing them to smoke in their unit?

A. Because smoking is not a disability, it can not be used as a reason to ask for accommodations. Smoking is not an acceptable way to treat or medicate any health conditions, including mental illness. It is much more likely that requests for reasonable accommodations will be made by non-smokers with medical conditions that are worsened by secondhand smoke. **Non-smokers may have legal protection from exposure to secondhand smoke under the Americans with Disabilities Act and the Fair Housing Act.**

Q. I manage HUD-assisted housing. May I adopt a smoke-free policy?

A. Yes. An analysis of federal and state laws, HUD rules, and legal cases found unequivocally that "a ban on smoking for new tenants who move into public or section 8 housing is permissible in all 50 states." You may allow existing tenants to continue smoking until the time of their lease renewal, at which point smoking residents will be subject to the smoking restrictions.

On July 17, 2009, HUD issued Notice PIH-2009- 21 (HA) which stated, "This notice strongly encourages Public Housing Authorities (PHAs) to implement non-smoking policies in some or all of their public housing units... PHAs are permitted and strongly encouraged to implement a non-smoking policy at their discretion, subject to state and local law. Some PHAs have established smoke-free buildings. Some PHAs have continued to allow current residents who smoke to continue to do so, but only in designated areas and only until lease renewal or a date established by the PHA.. PHAs should consult with their resident boards before adopting non-smoking policies at their projects."

Q. Aside from the health benefits, are there other advantages to going smoke-free?

A. Yes! You can actually save money by implementing a smoke-free policy. You will dramatically reduce wear and tear and save on cleaning and re-painting costs. The residue left behind by smoking contains toxins that devalue homes and health. Some insurance carriers also offer a premium reduction if your property is smoke-free.

Another compelling advantage to smoke-free buildings is that smoking-related fires are the leading cause of fire-related deaths in residential buildings.

Q. Will we lose valued residents?

A. Contrary to what you might think, smoke-free policies are popular among residents. Smoke-free policies appeal to people from all walks of life. While it is true that people with higher incomes and education levels tend to smoke less, remember that approximately 82% of New York residents do *not* smoke. Many limited income tenants have children, are elderly, or are disabled, and these groups are particularly vulnerable to the health hazards of secondhand smoke and may be especially interested in finding smoke-free housing. Smokers as well as non-smokers want to live in smoke-free homes because they understand the danger of exposure to secondhand smoke.

Q. How do I enforce a smoke-free policy?

A. Experienced landlords use a variety of strategies to enforce their smoke-free policies. They advertise their units as smoke-free to attract tenants who either don't smoke or only smoke outside. They put the smoke-free rule in their lease agreement, and talk to their tenants about it when they show the property and when tenants sign the lease. They post signs in the building and on the property. They tell tenants that if they smoke in their units, they will be financially responsible for bringing the unit back to condition, which could cost thousands of dollars. They have a system of warnings, fine, and evictions for failing to follow the smoking rule just like any other rule. They visit the properties regularly and perform inspections. Some provide a designated smoking area outside, away from windows and doors. Many residents support smoke-free policies.

In fact, once the rule is established, you are likely to attract residents who not only support smoke-free policies, but also intentionally seek out properties that are smoke-free.

In summary:

- Thoroughly clean up cigarette butts and remove ash trays prior to the smoke-free policy going into effect.

- Put the smoke-free policy in the lease or lease addendum and have the tenants sign it.
- Tell your residents why you have a smoke-free policy – it will improve the quality of the air in their home and decrease the risk of fire.
- Clearly Post “No Smoking” signs as a reminder to both residents and guests.
- Respond promptly to complaints of secondhand smoke.
- Make it clear that residents will be held responsible for complying with the smoke-free policy in the same way they are responsible for complying with other lease requirements, i.e. pets, noise, trash, etc.