

Breathe Better in Healthy Homes

an initiative of Breathe New Hampshire



FACT SHEET

A NO SMOKING POLICY IS LEGAL

A common question is whether implementing a property-wide no smoking policy is legal

- There is no doubt as to the answer. **It is legal.**

There Is No Constitutional Right to Smoke

- No court has ever recognized smoking as a fundamental right nor has any court ever found smokers to be a protected class.

Right to Privacy

- The rights to privacy protected by the Constitution only apply to marriage, family relationships and the rearing of children.

Anti-Discrimination Laws Do Not Protect Smoking

- “No Smoking” policies fall under the same category as pet clauses, public nuisance or loud noises. Anti-discrimination laws, such as the Americans with Disabilities Act (“ADA”) and the Federal Fair Housing Act of 1988 are designed to prevent discrimination based on race, disability and certain other characteristics. Smoking is a behavior and as such policies can be implemented which are against the act of smoking not the smoker.

Housing Subsidies or Public Funding Do Not Prohibit “No Smoking Policies”

- Neither New Hampshire, nor the United States Department of Housing and Urban Development (“HUD”) prohibits property managers from implementing no smoking policies. In fact, property managers are encouraged to establish policies for the protection of the health of their tenants, which would include a no smoking policy.

Note: Property managers required to use the HUD model lease, should first contact their HUD supervisor before implementing a no smoking policy.