

# Breathe Better in Healthy Homes

## A No Smoking Policy Guide for Multi Family Dwellings



**Your property is an important investment. Protect it!**  
**A no-smoking policy will help you**  
**save money by reducing damage to your property, preventing fires, and avoiding liability**



Implementing a smoke-free policy will depend on your individual situation, whether you are constructing a new building or complex, remodeling an older one, or simply converting the status of units in an older building.

### **Planning for new construction**

If you are building a new complex, your road to creating a smoke-free environment may be easier than for owners facing a conversion. By providing smoke-free buildings from the outset, you will avoid problems like cleaning walls and windows streaked with tar, and replacing carpet and counter tops with cigarette burns. As you design your new complex, you have the opportunity to locate an outdoor smoking space at an appropriate site if you choose to do so.



### **Renovating or purchasing an older building**

If you are renovating an apartment building, you are in a particularly good position to complete renovations and repairs and reopen as a smoke-free building. Likewise, you are probably in a good position to make an apartment building smoke free if you just purchased it. A change in owners usually signals to tenants that some kinds of changes may be in the offing. The changes necessary to accommodate truly smoke-free and smoking-permitted units in an older building are probably cost prohibitive. This means it may make more sense to designate the whole building smoke-free. Enforcement would be much easier as well. Businesses with smoke-free workplace policies find compliance better and enforcement easier than businesses with policies that allow smoking in some areas and not others.

### **Moving ahead without major changes**

If you simply want to initiate a smoke-free policy and are not making any other major changes, consider the following steps.

Survey your tenants. Find out how many tenants smoke in their apartments. Not all households with smokers allow residents or guests to smoke indoors. You may already have this information if you manage or own only a few units. A multi-building complex presents a bigger challenge. You may have to conduct a survey, which will serve two purposes: gathering information and alerting tenants that change may be forthcoming.

Set a time frame for change. Since most leases are for a year, you can institute a no-smoking policy about 12 months out. Well ahead of your target date, notify tenants that you want to make the building smoke-free by a certain date and that if they wish to remain in the building; they will have to abide by the new policy. That target date is probably going to be at least one year from the date the most recent lease expires.

Provide tenants with your reasons for making the change so they understand you are targeting the issue of the smoke rather than the smoker. The reasons typically include a combination of health, safety and business concerns, such as:

- Protecting your tenants from secondhand smoke
- Reducing the danger of fires
- Reducing maintenance, cleaning and redecorating costs
- Saving on insurance
- Capitalizing on consumer demand for smoke-free units



Let tenants know the building or other area will not be truly smoke-free for a while. Some owners decide to grandfather in existing tenants. If you pursue this route, it may take several years before you can declare a building smoke-free.

Determine a budget if you are using incentives. You probably want to let your current tenants know you would be glad to have them remain in the building as long as they agree not to smoke. Make the no-smoking policy apply to any new tenants. You also can offer incentives to tenants who want to smoke in their apartments to encourage them to move to other buildings you own, incentives similar to those many owners offer new tenants. If you find you have only two smoking tenants in Building A, you may want to offer them half a month's free rent to reimburse for moving expenses if they will not move to Building B. That will allow you to declare Building A smoke-free.

Introduce new leases. You will need to include some language in your leases to makes tenants aware of the policy and of their obligations not to smoke and prevent guests from smoking in their units. If you allow smoking on a specific part of the property, specify in the lease where smoking is allowed. A model smoke-free lease addendum can be found on the Breathe New Hampshire website at [www.breathenh.org](http://www.breathenh.org).

Post signs. A few days before the building becomes smoke-free, send out an announcement to tenants. Then post signs at the entryways. Here's some suggested language:

*Welcome to our smoke-free building.*

*To protect the health and safety of residents, smoking or carrying lighted smoking materials is prohibited.*

*This policy applies to all tenants and their guests.*

Advertise your policy. There is a substantial market for smoke-free buildings. Some tenants are willing to pay more to avoid smoke, and others are willing to make sacrifices like walking farther to a bus. If your advertisements state something like "no-smoking building," they will stand out from similar apartment advertisements. They also will screen out potential tenants who are not interested in a place where they cannot smoke.



### **Enforcing the policy**

In worksites and other public areas, smoking policies have been largely self-enforcing. No heavy policing is necessary. There is not enough experience with smoke-free rental housing to know if this will hold true in residential situations, but a small survey of owners with smoke-free policies found the overwhelming majority reported time spent to manage the building did not increase after adopting a smoke-free policy.

In any case, you can be sure that someone will test the rules. If you do not enforce the no-smoking policy, you will not have smoke-free units and you will have unhappy tenants. You may even face a lawsuit for breach of contract. Use approximately the same policy you use for other violations of rules, such as throwing loud parties or parking in prohibited areas. You may decide to issue one or two warnings before you evict someone for breaking the lease.

You will have no legal ground for an eviction if you do not have the no-smoking rules spelled out in the lease. Once tenants know you are serious about your new policy, most will follow it.

### **Providing an outdoor smoking area**

If you don't allow smoking in the units, you may want to provide an outdoor smoking area or structure that is at least 25 feet from entrances, decks, windows and ventilation systems. You are under no obligation to provide an outdoor smoking area, although this may help keep your tenants from using adjacent properties for smoking. A disadvantage of providing such an area is the difficulty of keeping it clean. This prospect is reduced if you provide sturdy ash containers, heavy enough not to be stolen. You could follow the example of employers who provide picnic tables, a gazebo or a special structure that resembles a bus shelter, designed specifically for smoking.



On small lots with no room for a shelter, place the smoking area as far away from the building as possible so that drifting smoke will not be a problem. Particularly in summer, smoke can waft through an open window or be drawn inside by air-conditioning units. If a tenant smokes right outside a door, you can be assured smoke will be drawn into the building. Your efforts to prevent this problem can include a sign on the door that reads, "No smoking within 25 feet of the door." Note, however, that you cannot regulate smoking on a public sidewalk. That requires a city ordinance.

### **Enjoying the benefits**

Establishing a smoke-free policy entails some effort. However, it also provides many benefits. You will not have to face the cost of redecorating units whose windows coverings or walls are streaked with cigarette tar. Dangers from fire are significantly reduced. Your whole building will smell fresher and cleaner making it more appealing to current renters, prospective tenants and the people you employ. You will have the satisfaction of knowing you are protecting the health of your tenants, particularly children and those with allergies or heart or lung ailments.

*\*\*Adapted with permission from the Indiana Medical Association.*

## Frequently Asked Questions: Managers or Owners

### **As a manager/owner, can I tell someone that they can or cannot smoke in their own home?**

Most complexes restrict behavior to some degree, whether it involves loud noise or pets. As the manager/owner, you have the right to create reasonable rules for your tenants

### **Would a smoke-free policy illegally and unfairly discriminate against smokers?**

The right to smoke or not to smoke is not a right that is protected under the Civil Rights Act of 1964 because smokers are not a protected class under federal law. In addition, owners may use as a legitimate argument that smoking adds maintenance expenses and damages carpets, drapes and paint. A smoke-free policy is acceptable only if it targets the behavior, not the smoker. That is, you can rent to a smoker, but they are not allowed to smoke in the units. You have the right to restrict smoking in the units, building, common areas, and on the premises.

### **Why are smoke-free apartments legal?**

The right of nonsmokers to be free from exposure to secondhand smoke is protected by both legislation and judicial rulings. There are federal, state, and local laws protecting nonsmokers. Apartment owners are permitted by federal and state law to adopt total smoke-free policies. There are numerous cases involving tenants who have sued based on nuisance, breach of common law, covenant of quiet enjoyment, etc. In federally subsidized housing, one cannot refuse to rent a unit to a smoker, but can prohibit smoking in the unit. Anyone can rent, however they or their guest cannot smoke in the unit. Advertising "smoke-free" or "no-smoking facilities" is also legal.

### **Won't I lose money if I implement a smoke-free policy?**

Actually you could save money with a smoke-free policy. Smoking is the cause of a variety of expensive property damages, ranging from extra cleaning to costs to fire-related repairs. It can cost up to twice as much to prepare an apartment that a smoker has lived in. When a tenant who smokes moves out, costly cleaning and repairs are often necessary to prepare the unit for new tenants. These costs include removing tar and nicotine from walls, cabinets, blinds and fixtures, eliminating smoke odors in drapes, carpets, and walls, and repairing damaged, burned, or singed carpet, tiles, and drapes.

## Would a smoke-free policy instigate a lawsuit from an angry smoker?

You will more likely face a lawsuit from a frustrated nonsmoker than from a smoker. Today's legal climate tends to favor nonsmokers in these kinds of disputes. Many legal cases involving various apartment dwellings throughout the United States have been filed and won by residents. Under Utah law, secondhand smoke is considered a nuisance in apartments and condominiums. For more information on the Secondhand Smoke Amendments, contact your legal advisor.

## Would enforcement of a smoking ban be difficult?

Once you implement a policy, smoking will be so noticeable by other residents that you are likely to hear about it. Enforcing a policy is less of a headache than mediating disputes between smoker and nonsmokers without a policy in place. "No Smoking" signs help increase awareness and decrease the need for management intervention. You would use roughly the same enforcement policy you use for other violations of rules such as throwing loud parties, or parking in prohibited areas. If you do have a "no-smoking" policy in place and you do not enforce it, you may be held liable for the consequences.

*\*\*Adapted with permission from Utah Smoke Free Coalition*

