

Landlord/Property Managers'

Smoke-Free Housing Toolkit

Use this toolkit to help you create a smoke-free building for yourself, your tenants and your staff. This toolkit includes:

- Information on your legal right to eliminate smoking
Learn why “no smoking” restrictions are the legal equivalent to “no pet” or “no loud noise” restrictions and why this is allowed under the US constitution.
- Step-by-step smoke-free guide
Decide on and enact a policy option that works best for your building and residents’ needs.
- Cost savings from smoke-free units
Going smoke-free can save you thousands per unit on cleaning and maintenance costs and makes your units more desirable to future tenants.
- Letter to residents: Outdoor Smoke Free Notice
A sample letter that you can use to inform residents of new smoke-free outdoor policies.
- Letter to Resident: Indoor Smoke-Free Notice
Let your residents know why indoor smoke-free living is the best choice for everyone involved.
- Tobacco Smoke-Free Areas Addendum
Sample lease addendum to formalize policy changes.
- Model Enforcement Letter
Send warning letters to violators to stop smoking at your site.

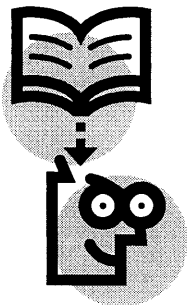
If you have additional questions about going smoke-free or to request free smoke-free decals, please contact the Tobacco Related Disease Control Program at **(415) 499-3020** or visit our Web site at www.smokefreemarin.com

*Thank you for making Marin a
healthier place to live!*

Landlords/Property Managers: You Can Choose to Make Your Building Smoke-Free!¹

Smoke-Free Units and Buildings are Legal

- ✦ You have the legal right to ban smoking in all or part of your property, including individual rental units.
- ✦ There is no state or federal right to smoke. Banning smoking is not discrimination.
- ✦ “No Smoking” restrictions are the legal equivalent of “No Pets” or “No Loud Noise” rules.
- ✦ It is legal to ask tenants to acknowledge in a lease or month-to-month rental agreement that they will not smoke or allow guests to smoke in their units.
- ✦ It is legal to advertise a unit as “smoke-free.”

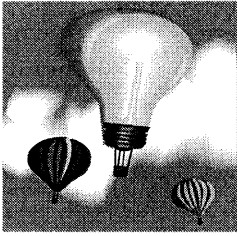


There is No Constitutional Right to Smoke²

- ❖ No court has ever recognized smoking as a constitutional right.
- ❖ Smoking is not protected under the First Amendment “right to privacy.” This right only applies to marriage, contraception, family relationships, and the rearing and education of children.
- ❖ Smokers are not a protected class under the equal protection clause of the U.S. or California constitutions. Smoking regulations are not grounds for discrimination claims. Only conditions of birth such as race, national origin, and gender receive protection against discrimination. *Smoking is a behavior, not a condition of birth.*

¹ RESPECT, a statewide project of the American Lung Association of the East Bay, “Building on a Smoke-Free Foundation,” June 14, 2007 <<http://www.respect-ala.org/drift.htm>>.

² Legal information is from the Technical Legal Assistance Center (TALC), a project of the Public Health Institute. “There is No Constitutional Right to Smoke,” June 14, 2007 <http://talc.phlaw.org/pdf_files/0051.pdf>. This fact sheet was created to provide general information only and is not offered or intended as legal advice.



Four Steps for Developing a Smoke-Free Policy

First Step: Survey Tenants (sample below)³

1. Should smokers be allowed to smoke wherever they want?
2. Is it fair to restrict smokers from smoking in their own units?
3. Should people have the right to choose whether or not they are exposed to secondhand smoke?
4. Does secondhand smoke bother you?
5. Does it bother you if people smoke in common outdoor areas where you live, such as the swimming pool, playgrounds or patios?
6. Does it bother you if people smoke in common indoor areas where you live, such as the club house, hallways and laundry room?
7. Would you support rules that restrict smoking in outdoor common areas?
8. Would you support rules that restrict smoking in indoor common areas?

You can also use this as an opportunity to inform tenants about the harmful effects of secondhand smoke. You may decide to organize a meeting to present survey results and discuss smoke-free policies.

Second Step: Decide on a policy option⁴

Option #1: Ban smoking throughout entire building, including in units.

Option #2: Designate specific units/buildings as smoke-free.

- Non-smoking bans involving individual units need to be included in the lease. Non-smoking clauses can be placed in new *or*

³ "Providing healthy options for tenants," American Lung Association of California, Superior Branch, 2000.

⁴ Information from this section is primarily taken from an article that appeared in the June 2003 issue of Assisted Housing Financial Management Insider. This monthly news service is published by Vendome Group, LLC, formerly Brownstone Publishing Co., and subscription information about all of Vendome's real estate tools can be found at www.vendomegrp.com.

renewing leases. Sample lease provisions are included in this toolkit.

- TALC publication's "*How Landlords Can Prohibit Smoking in Rental Housing*" provides a detailed legal explanation on how to modify leases.

Option #3: Ban smoking in common areas only (indoor and/or outdoor)

- Bans in common areas are considered house rules and do not need to be included in the lease. As a courtesy, you should give tenants advance notice of the change and post signs that clearly communicate the new rules.

Option #4: Create designated outdoor smoking areas.

- This is best done in conjunction with the other options above while providing smokers with a place to smoke.

Step Three: Notify tenants of the plan

- Provide written notice of the new policy
 - Send each unit written notice
 - Post notice in the common areas
- Allow at least 30 days to pass before the changes are enforced.
- Include the new smoke-free policy in lease agreements, where applicable.

Please see the document entitled "*Smoke-free Housing Policy Notice*" as an example.

Step Four: Monitor the policy

- Help tenants with complaints when they arise
- Give violators three warnings before starting the eviction process.
 - The "*Model Letters*" document provides samples.

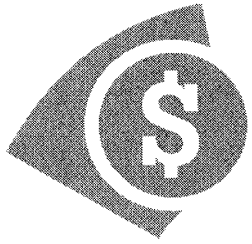
Learn more about the effects of second hand smoke and your legal right to control it: www.smokefreemarin.com- *Smoke Free Marin* provides information on local tobacco ordinances and resources for quitting.

www.smokefreehousing.org – *Smoke Free Housing* provides information on smoke-free housing in Northern California.

<http://www.phi.org/talc> - *Technical Legal Assistance Center* provides free technical assistance on tobacco control policy issues, such as smoke-free housing.

http://www.tobaccoscam.ucsf.edu/Secondhand/Secondhand_lid.cfm- *Tobacco Scam* documents exposure to second hand smoke over time.

www.tobaccosmoke.org- *Tobacco Smoke* presents recent studies on second hand smoke exposure.



Cost Savings from Smoke-Free Units

Save on Cleaning:

- Save as much as \$1,000 per unit in additional cleaning and maintenance expenses necessary to remove tar, smoke particulates, and other damage from walls, blinds, rugs, and countertops.⁵
- Save money required to sanitize air.
- Save maintenance costs necessary to remove cigarette butts from grounds.

Increase Business:

- 86% of locals don't smoke and most tenants don't want to live in a building that permits smoking.
- Smoke-free buildings are highly desirable for tenants with asthma, allergies, and other health conditions.
- Reduce turnover of non-smoking tenants.
- Improve the resale value of your building.⁶
- List your building on the Smoke-free Apartment House Registry at <http://www.smokefreeapartments.org/2005brochure.pdf>.

Save Time:

- Eliminate need to mediate disputes between smoking and non-smoking tenants.
- Eliminate needed to clean smoke-filled apartments.
- Attract more prospective tenants and fill vacant units faster.

Save on Insurance:

- Save money on insurance premiums.
- Eliminate risk of fire due to smoking in bed, on furniture, or through improperly extinguished cigarette butts.

⁵ Smoke Free Housing, "How Much Does Secondhand Smoke Cost a Landlord?" June 14, 2007
<http://www.smokefreeforme.org/presentation/maintenance_cost.pdf>.

⁶ Antoinette Martin, "Real Estate & Secondhand Smoke: On Tobacco Road, It's a Tougher Sell," New York Times, 8 Feb. 2004.

Letter to Residents: Outdoor Smoke Free Notice¹

We recognize the rights of tenants and visitors to smoke. However, as representatives of property owners we are obligated to comply with federal, state and local laws that protect the public from environmental tobacco smoke or fire hazards caused by smoldering cigarette butts. Therefore, all building entrances, including windows and doors, will be kept smoke-free. Violations will result in fines ranging from \$ 100 - \$ 500 per incident, with CAL-OSHA fines of \$ 7,000 for the fourth complaint. Under the Americans with Disabilities Act, we can be sued for \$ 50,000 - \$ 100,000 plus attorney's fees if an individual with respiratory illness such as asthma, experiences damage to their health while doing business on our premises.

In complying with these laws, our policy is that no member of the public should ever have to inhale secondhand smoke upon entering our building(s). Likewise, no employee shall be subject to inhaling smoke drifting in through doors or windows. Please refrain from smoking any tobacco products both indoors (including restrooms) and within 20 feet of any entrance, walkway or sidewalk leading to building entrances. Due to the stiff legal penalties we face if these regulations are violated, infractions of this policy will be treated in the same manner as other policies on our premises. These rules are in effect 24 hours a day.

Outdoor ashtrays have been provided for your convenience at locations where it is permissible to smoke. For your personal safety, smoke in a safe, well-lit area and be aware of your surroundings. In order to reduce fire hazards and to protect the safety and cleanliness of the buildings and entrances, please extinguish all cigarettes in the outdoor ashtrays. To be considerate, please don't smoke on balconies especially during the warm months when smoke may drift into your neighbors' balconies and open windows.

For those smokers wishing to quit or cut back, there are now many new programs and products to help you go smoke-free. Contact Bay Area Community Resources in San Rafael at 415-444-5580 ext. 399 for upcoming cessation classes. The Smoker's Helpline also provides free phone cessation services to all California smokers at 1-800-NO-BUTTS or www.californiasmokershelpline.org.

We thank you for your cooperation.

¹ SmokeFREE housing, "Smoke Free Housing Policy Sample," July 24, 2007
<<http://www.smokefreehousing.org/Policy/Policy.asp>>.

Letter to Residents: Indoor Smoke Free Notice¹

Dear Resident:

<<Property name>> has decided to go smoke-free in order to provide a healthier environment for its residents. The harmful effects of secondhand smoke and the fire danger caused by indoor smoking are simply too great to ignore. Effective immediately, smoking is prohibited in all (indoor) common areas (such as entrances, hallways, exercise areas, and laundry rooms). A smokefree policy for individual units will be phased in as leases are renewed.

Secondhand smoke is a serious health hazard. It is the third leading cause of preventable death in the United States, causing approximately 53,000 deaths each year. The 2006 Report of the U.S. Surgeon General states that there is no safe level of exposure to secondhand smoke.

Secondhand smoke is particularly dangerous to children and has been linked to Sudden Infant Death Syndrome (SIDS). In addition, approximately 900 people in the U.S. die each year from fires caused by smoldering cigarettes.

This is an issue for the entire complex because cigarette smoke travels from unit to unit. Secondhand smoke can seep through outlets in walls, and spread through air conditioning and heating systems. The remodeling required to prevent secondhand smoke from transferring to another residence can be costly and ineffective. The only effective method to stop the spread of secondhand smoke is a smoke-free policy.

Smoking will not be prohibited in individual units until leases come up from renewal. However, all leases from this point forward will include a smoke-free addendum. (In addition, existing lease terms may prohibit smoking in individual units if the resulting secondhand smoke is causing irritation to neighbors.)

Please consider this letter as notice about the changes that will be taking place upon your next lease renewal. We hope this new policy will help everyone breathe a bit easier.

For those smokers wishing to quit, there are now many new programs and products to help you go smoke-free. Contact Bay Area Community Resources in San Rafael at 415-444-5580 ext. 399 for upcoming cessation classes. The Smoker's Helpline also provides free phone cessation services to all California smokers at 1-800-NO-BUTTS or www.californiasmokershelpline.org.

Please sign this letter and return to management within one week. If you have any questions or concerns please contact management.

Regards,

Property Manager/ Owner

¹ Tobacco Public Policy Center, "Smoke-Free Housing Toolkit", March 14, 2008 <<http://ohiosmokefreehousing.com/>>.

Sample Smoke-Free Lease Addendum

Tenant and all members of Tenant's family or household are parties to a written lease with Landlord (the Lease). This Addendum states the following additional terms, conditions and rules which are hereby incorporated into the Lease.

A breach of this Lease Addendum shall give each party all the rights contained herein, as well as the rights in the Lease.

- 1. Purpose of No-Smoking Policy.** The parties desire to mitigate (i) the irritation and known health effects of secondhand smoke; (ii) the increased maintenance, cleaning and redecorating costs from smoking; (iii) the increased risk of fire from smoking; and (iv) the higher costs of fire insurance for a non-smoke-free building.
- 2. Definition of Smoking.** The term "smoking" means inhaling, exhaling, breathing, or carrying any lighted cigar, cigarette, or other tobacco product or similar lighted product in any manner or in any form.
- 3. Smoke-Free Complex.** Tenant agrees and acknowledges that the premises to be occupied by Tenant and members of Tenant's household have been designated as a smoke-free living environment. Tenant and members of Tenant's household shall not smoke anywhere in the unit rented by Tenant, or the building where the Tenant's dwelling is located, or in any of the common areas or adjoining grounds of such building or other parts of the rental community, nor shall Tenant permit any guests or visitors under the control of Tenant to do so.
- 4. Tenant to Promote No-Smoking Policy and to Alert Landlord of Violations.** Tenant shall inform Tenant's guests of the no-smoking policy. Further, Tenant shall promptly give Landlord a written statement of any incident where tobacco smoke is migrating into the Tenant's unit from sources outside of the Tenant's apartment unit.
- 5. Landlord to Promote No-Smoking Policy.** Landlord shall post no-smoking signs at entrances and exits, common areas, hallways, and in conspicuous places adjoining the grounds of the apartment complex.
- 6. Landlord Not a Guarantor of Smoke-Free Environment.** Tenant acknowledges that Landlord's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, do not make the Landlord or any of its managing agents the guarantor of Tenant's health or of the smoke-free condition of the Tenant's unit and the common areas. However, Landlord shall take reasonable steps to enforce the smoke-free terms of its leases and to make the complex smoke-free. Landlord is not required to take steps in response to smoking unless Landlord knows of said smoking or has been given written notice of said smoking.

7. Other Tenants are Third-Party Beneficiaries of Tenant's Agreement. Tenant agrees that the other Tenants at the complex are the third-party beneficiaries of Tenant's smoke-free addendum agreements with Landlord. (In layman's terms, this means that Tenant's commitments in the Addendum are made to the other Tenants as well as to Landlord.) A Tenant may sue another Tenant for an injunction to prohibit smoking or for damages, but does not have the right to evict another Tenant. Any suit between Tenants herein shall not create a presumption that the Landlord breached this Addendum.

8. Effect of Breach and Right to Terminate Lease. A breach of this Lease Addendum shall give each party all the rights contained herein, as well as the rights in the Lease. A material breach of this Addendum shall be a material breach of the lease and grounds for immediate termination of the Lease by the Landlord.

9. Disclaimer by Landlord. Tenant acknowledges that Landlord's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free does not in any way change the standard of care that the Landlord or managing agent would have to a Tenant household to render buildings and premises designated as smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental premises. Landlord specifically disclaims any implied or express warranties that the building, common areas, or Tenant's premises will have any higher or improve air quality standards than any other rental property. Landlord cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke. Tenant acknowledges that Landlord's ability to police, monitor, or enforce the agreements of this Addendum is dependent in significant part on voluntary compliance by Tenant and Tenant's guests. Tenants with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that Landlord does not assume any higher duty of care to enforce this Addendum than any other landlord obligation under the Lease.

LANDLORD

TENANT

Optional Paragraph for Existing Rental Communities that Adopt "No-smoking Policies"

10. Effect on Current Tenants. Tenant acknowledges that current tenants residing in the complex under a prior lease will not be immediately subject to the No-smoking Policy. As current tenants move out, or enter into new leases, the smoke-free policy will become effective for their new unit or new lease.

Model Letters¹

Send Letters Warning Residents to Stop Smoking at Your Site

Here are three letters you can use when residents smoke at your site in violation of a no-smoking policy.

Use Model Letter #1 if a resident covered by a lease clause that bans smoking in her unit violates the lease clause. The letter reminds residents who've violated the clause that they're not allowed to smoke in their units or anywhere else in the building, tells them that you know they've been violating that rule, and warns them not to do it again. Show this letter to your attorney before you use it. If your state or locality has a law restricting smoking in apartment buildings, talk to your attorney about using that law to make this letter even stronger.

Letter #1: For Violations of Lease Clause

[Insert date]

Dear John Resident:

Paragraph [insert par. # in lease] of your lease prohibits smoking in your unit, anywhere in the building, or within 50 feet of the building. Yesterday, at approximately 3:30 p.m., a maintenance staff member on a call in your unit observed cigarette stubs and ashes in ashtrays and smelled tobacco smoke in your unit. If you violate your lease again, we may take appropriate legal action, including terminating your lease and starting an eviction lawsuit against you. Thank you for your cooperation.

Yours truly,
Jane Manager

¹ This article appeared in the June 2003 issue of *Assisted Housing Financial Management Insider*. This monthly news service is published by Vendome Group, LLC, formerly Brownstone Publishing Co., and subscription information about all of Vendome's real estate tools can be found at www.vendomegrp.com.

Use Model Letters #2 and #3 to enforce a house rule banning smoking in common areas.

Model Letter #2 politely but firmly reminds residents that they're not allowed to smoke in the building's common areas or within 50 feet of the building, tells them that you know they've been violating that rule, and warns them not to do it again.

If that doesn't work, use the more forceful letter (Model Letter #3). Again, be sure to show these letters to your attorney before using them.

Letter #2- Polite Letter: For Violation of House Rules

[Insert Data]

Dear John Resident:

It has come to our attention that at approximately 6:30 p.m. you were observed smoking on the steps leading to your building. As I am sure you are aware, our house rules at XYZ Apartments prohibits smoking anywhere in the building's common areas or within 50 feet of the building. Please comply with this rule in the future by refraining from smoking in any area where smoking is not permitted. Thank you for your cooperation.

Yours Truly,
Jane Manager

Letter #3-Get-Tough Letter: For Violations of House Rules

[Insert date]

Dear John Resident:

You are in violation of your lease and a house rule because of your repeated instances of smoking in the building. Despite the written warning you received on *[insert date]*, you have continued to smoke in areas where the house rules at XYZ Apartments prohibit smoking.

Violations of house rules are also violations of Paragraph *[insert par. # of lease]* of your lease. If you violate the rule against smoking again, we may take appropriate legal action, including terminating your lease and starting an eviction lawsuit against you. Thank you for your cooperation.

Yours Truly,
Jane Manager