

Smokefree Housing

As smokefree air in workplaces and indoor public places becomes the norm, nonsmokers are increasingly advocating for their right to breathe smokefree air in their homes, especially in apartments and other multi-family buildings.

The following “how to” information can help you advocate for clean indoor air in your home. The Coalition for a Smoke-Free Valley is available to assist you in your efforts.

How Landlords Can Prohibit Smoking in Rental Housing

This describes how a landlord can make common areas nonsmoking, and outlines the steps a landlord must follow to change a lease to make an individual unit smokefree. The information in this fact sheet does not apply to a condominium complex that is seeking to adopt a no-smoking policy. Also, if rental housing is subsidized by a government agency, such as the U.S. Department of Housing and Urban Development (HUD), additional procedures might be required to adopt a no-smoking policy.

Q. Why would a landlord want to prohibit smoking?

A: In addition to the important health benefits of reducing exposure to secondhand smoke, restricting smoking can decrease the risk of accidental fires and may even reduce fire insurance premiums. Landlords also may see a significant reduction in maintenance and turnover costs. Cleaning and refurbishing a smoker’s unit can require additional time and effort to repaint and to replace carpets and drapes. By prohibiting smoking in a unit, landlords can minimize or eliminate these expenses altogether.

Secondhand smoke is not just a nuisance; according to the Environmental Protection agency, it is a substance known to cause cancer in humans for which there is no safe level of exposure.

Unfortunately, secondhand smoke doesn’t respect boundaries, seeping through light fixtures, ceiling crawl spaces, and doorways into all areas of a building with smokers. Air quality surveys in apartment buildings in Chicago revealed that 60% of the air in apartments comes from other units.

Secondhand smoke cannot be controlled by ventilation, air cleaning or the separation of smokers from non-smokers. The only complete solution to this problem is to make buildings smoke-free.

Q: Is it legal for a landlord to prohibit smoking?

A: Yes. A ban on smoking in common areas is similar to other rules tenants typically must follow regarding the use of common areas, such as the hours for using the

laundry facility or the requirement that children be accompanied by an adult when using the pool.

It is also legal for a landlord to ban smoking in individual units. Landlords have the legal right to set limits on how a tenant may use rental property—for instance, by restricting guests, noise, and pets. A “no-smoking” term is similar to a “no pets” restriction in the lease - another way for a landlord to protect his or her property.

Not only do landlords have the right to prohibit smoking, but they may in fact be liable under local health or safety codes, the Federal Fair Housing Act, or other common law legal theories for failure to prohibit smoking when a tenant is sensitive to secondhand smoke. In a number of cases, tenants affected by secondhand smoke were able to recover against their landlords for failing to protect them from secondhand smoke.

Q: How would a landlord restrict smoking in the common areas?

A: A landlord may prohibit smoking in common areas, such as lobbies, hallways, parking lots, laundry rooms, and swimming pools, by changing the rules for those areas. Such a change does not require changing an individual tenant’s lease. Instead a landlord should provide reasonable notice to tenants of the new no-smoking policy, usually 30 days prior to it becoming effective; describe what areas are to be non-smoking, and post signs in those areas. The landlord also may designate a specific area where smoking would be allowed.

Q: How would a landlord prohibit smoking in an individual unit?

A: A landlord would amend the lease with the tenant to add a no-smoking provision. The process the landlord uses depends on the type of lease involved.

New Lease: The easiest time for a landlord to establish a no-smoking policy is when a new lease is created, either when a new tenant moves in or when an expired lease is replaced. Once the landlord and the tenant sign the new agreement, the smoking restriction becomes a requirement like any other provision in the lease. Note that such a provision does not prevent a smoker from renting the unit; instead, it prohibits smoking by anyone in the unit – whether tenants or guests.

Existing Lease-with consent of the tenant: If a current tenant and landlord both agree to change an existing lease to include a no-smoking provision, the landlord should either:

- add an amendment to the existing lease specifying the no-smoking provision, or
- create a new lease that includes the no-smoking provision.

Existing Lease – without the consent of the tenant: If a landlord wants to include a no-smoking clause in an existing lease but the current tenant does not, the landlord may still change the lease to prohibit smoking in the unit. The process depends on the type of rental agreement:

- **Month-to-Month rental agreement:** A landlord may add a smoking prohibition to a month-to-month rental agreement by giving written notice to the tenant of the

new condition and by making the no-smoking restriction effective at least 30 days after giving notice to the tenant. A tenant who does not accept this new lease term is, in effect, ending the tenancy by refusing to renew the month-to-month rental agreement.

- **Fixed-Term lease:** When a lease is for a fixed term (typically a six or 12-month period), the landlord cannot change the lease during that time period without the tenant's consent. This type of lease fixes all the conditions in the lease, and the landlord cannot make any changes to the lease during that time. However, when a fixed-term lease ends, it may convert to a month-to-month agreement. If so, the landlord may then add a no-smoking provision to this new month-to-month agreement by following the same steps outlined for the month-to-month rental agreement, above. Otherwise, at the end of the fixed term, the landlord and tenant may need to create a new lease, which can include the no-smoking clause.

Q: Can a landlord prohibit smoking on the balcony or patio?

A: Yes. A landlord may use the lease to restrict smoking both inside and outside the unit. A no-smoking provision in the rental agreement should clearly state whether smoking is prohibited only inside the unit or on any outdoor space that only the tenant can use, such as the balcony or patio of that unit.

Q: What effect does a no-smoking lease term have?

A: The smoking prohibition becomes part of the lease. This new term will be like any other condition of the lease: if the tenant or the tenant's guests fail to comply with the provision, the tenant is in breach of the agreement, which could be grounds to end the tenancy.