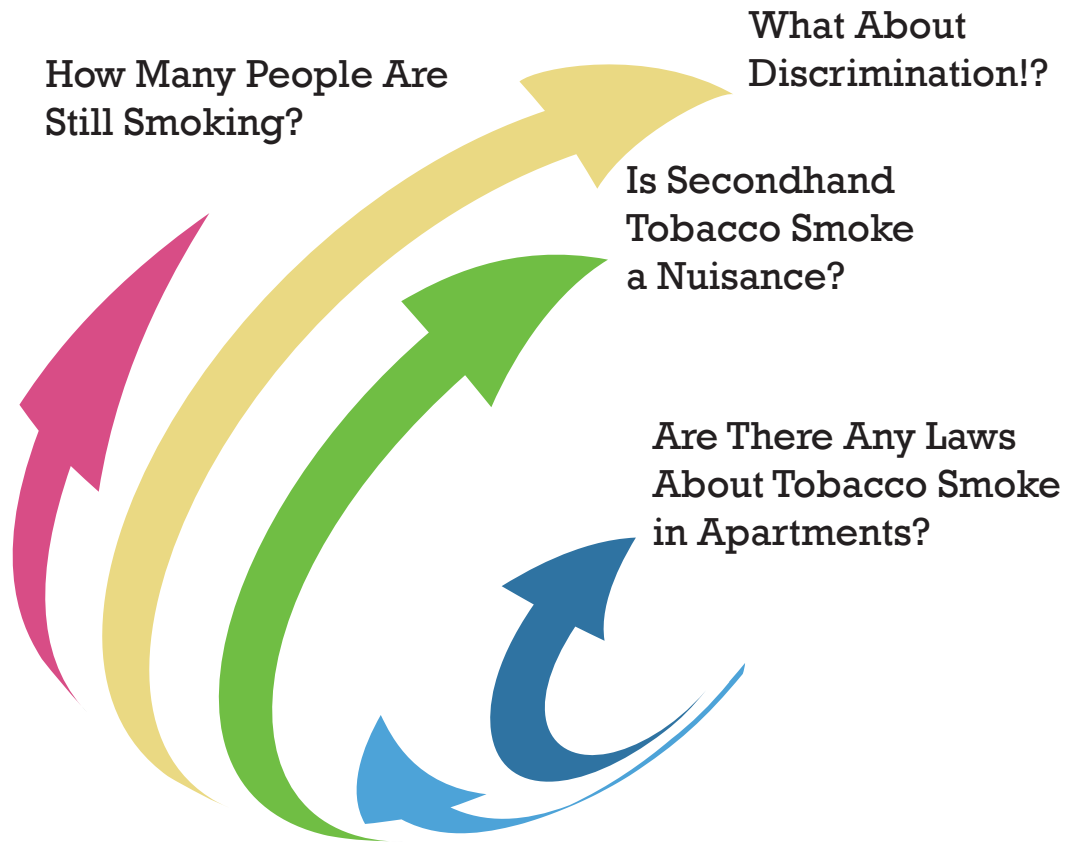


Finding and Keeping Good Tenants by Having Rules About Smoking in Apartments and Condominiums



This information is brought to you by

The Smokefree Apartment House Registry

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On the Internet: www.smokefreeapartments.org

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The Smokefree Apartment House Registry is administered by S.A.F.E.
Smokefree Air For Everyone, Los Angeles

What is the Smokefree Apartment House Registry?

The Registry provides information about the problem of drifting tobacco smoke in apartments and condominiums. Our website, <smokefreeapartments.org> has been developed for housing industry professionals including apartment managers, apartment owners, property management companies, and condominium associations.

The Registry was created in response to the thousands of surveys conducted in California cities which indicate that most residents of apartments and condominiums prefer to live in a smokefree environment.



Our web site, <smokefreeapartments.org> provides a free vacancy listing service for landlords and property management companies who offer totally or partially smoke-free buildings. It is available at no charge to persons seeking smokefree housing.

Our goal is to assist apartment owners, property management companies and condominium associations to respond to the changing needs of the multi-unit housing community with regard to the problem of drifting tobacco smoke.

Question #1

Why would an apartment owner choose to make his/her apartment building totally or partially smokefree? What are the advantages for the owner?

Answer:

Smokefree apartment or condominium units are less costly to prepare for the next tenant. Tobacco smoke covers walls, ventilation systems, and other exposed surfaces with a dirty, brownish yellow coating.

When a unit has been subjected to smoking for many years, it is almost impossible to remove the smell of the tobacco smoke, even when rugs are replaced and walls are scrubbed before painting.

On the other hand, smokefree apartment buildings attract tenants. Owners of smokefree apartment buildings say that vacancies are rare.

Cigarette butt litter is reduced when smoking is permitted only in certain outdoor common areas of the property.

Fire danger is reduced when apartment buildings are totally or partially smokefree.

Smokefree buildings may be eligible for insurance discounts.

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Question #2

Do tenants care about tobacco smoke?

Answer:

Although surveys show that most tenants don't complain about tobacco smoke exposure, most don't want to be exposed to drifting tobacco smoke, even outside. Eighty-nine percent of non-smokers and 64% of people who smoke prefer that common areas be smokefree according to a poll by the Field Research Corporation. The California Air Resources Board (ARB) identified tobacco smoke as a Toxic Air Contaminant in 2006.

According to the ARB, there is no safe level of exposure to tobacco smoke, even outside.

During several months in 2009-2010, the Registry and other non-profit organizations conducted surveys of 1,351 apartment and condominium residents on the subject of secondhand smoke in different Council Districts in the City of Los Angeles.

Questions from those surveys:

"Is secondhand smoke harmful to people's health?" **91% to 98% said YES**

"Would you prefer to live in a completely smokefree residential building?" **65% to 83% said YES**

Question #3

Can managers and owners make rules about where people can smoke their cigarettes, cigars and pipes? Isn't that discrimination?

Answer:

No, it is not discrimination. Smoking is a behavior and a person's behavior does not make him/her eligible for protection under state and federal fair housing laws. Fair housing laws are designed to protect people from discrimination based on unchangeable characteristics such as gender, age, race, or national origin. Protected groups also include people who have disabilities such as wheelchair users and people with chronic illnesses such as asthma. Because smoking is an activity that can be changed, choosing to smoke is not considered a disability under state or federal disability rights laws.

Using tobacco is a lifestyle choice as is pet ownership. You can require no pets (except for companion animals), and you can require no smoking. In fact, California law (Civil Code 1947.5 effective January, 2012) specifically states that landlords can adopt no smoking policies for their premises including units, balconies, patios, and common areas. (However, in cities with rent control, no smoking policies for apartment units, balconies and patios can only apply to new tenants.)



"Discrimination against smokers by landlords serves legitimate business interests by potentially reducing the risk of fire damage, and, in turn, reducing insurance and maintenance costs." (California Legislative Counsel Opinion, September 23, 1999.)

Question #4

Why bother to make rules about the use of tobacco?

Answer:

According to research conducted in 2011 by Stanford researcher Dr. Neil Klepeis, "tobacco smoke particles travel from unit to unit through cracks in fixtures, electrical outlets, plumbing, vents and baseboards as well as through shared ventilation systems and windows."

"As much as 30-50 percent of air in a residential building comes from other units. Both old and new buildings are affected. In fact, tobacco smoke particles in units of non-smokers can reach significant levels equal to and exceeding those of a smoky bar or casino." (News Conference, November 16, 2011, Los Angeles County Department of Public Health)

A research study published January 2011 and reported by the American Academy of Pediatrics showed that 84% of children who live in apartments with parents who don't smoke had evidence in their bodies of exposure to tobacco smoke. The research proves that residents who live in multi-unit housing where smoking is permitted are at risk for tobacco-caused diseases.

"Secondhand smoke can seep into and out of open windows and doorways." (Apte, M.G. et al. "Indoor Transport of Environmental Tobacco Smoke Particles and Tracers." Conference proceedings, August 1999, Berkeley, CA: Indoor Environment Dept. Lawrence Berkeley National Laboratory, University of California.)

Tobacco smoke can also enter windows and doors from outside, sometimes even when they are closed. It can move from common areas such as hallways and stairways into other apartments.

Question #5

What is secondhand tobacco smoke and why should we care about it?

Answer:

Secondhand smoke includes the smoke that comes off the tip of a burning cigarette, and the smoke exhaled by someone smoking.

Secondhand smoke has been known to be a health risk for more than 14 years. According to the 2010 report by the U.S. Surgeon General, It contains over 7,000 chemicals and compounds. Hundreds are toxic and more than 70 can cause cancer in humans. According to the California Environmental Protection Agency's Air Resources Board, secondhand smoke can also cause nasal sinus cancer, heart disease, and sudden infant death syndrome.

Exposure to tobacco smoke is especially harmful to children and can cause an increased risk of bronchitis, pneumonia and ear infections. It can cause asthma in adults and children, and makes the symptoms of asthma worse. At the very least, tobacco smoke can cause eye, nose and throat irritation, and headaches.



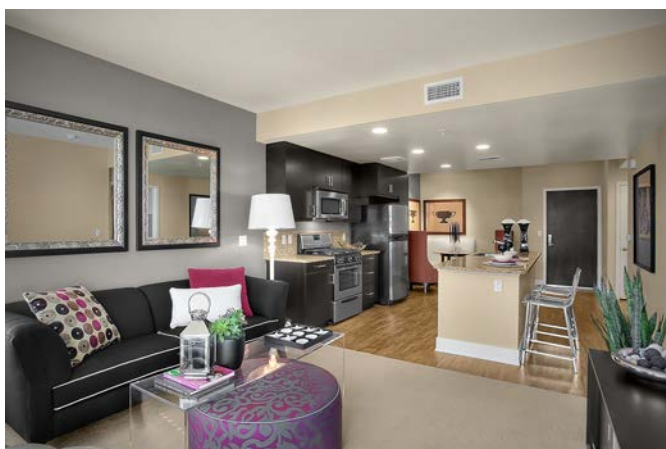
Ralston Courtyard owned by the Towbes Group

Question #6

When people live in apartments and condominiums, they understand that they will be exposed to the sounds and smells of the residents living around them. Isn't this simply part of the experience of living in multi-unit residential properties? Management cannot be responsible for every sound and smell.

Answer:

Management is responsible when residents are injured or sickened by their environment. Several attorneys have suggested that "management has a contractual obligation to maintain the lease space in a manner that can be used by the tenant. Where one resident's smoking is interfering with another resident's use and enjoyment of the leased premises, a landlord may be violating their contractual obligation to provide a useable space."



Westgate Apartment Building, Pasadena

Attorneys have also stated that "as a general proposition, landlords have a duty to use 'ordinary care or skill in the management' of their property. Accordingly, an argument could be made that under ordinary principles of landlord-tenant law, a landlord (under certain circumstances) would have an obligation to eliminate risks of harm caused by secondhand smoke. A court could rule that landlords must take reasonable steps to protect against such harms."

In addition, liability insurance for apartments and condominiums identifies tobacco smoke as a pollutant and there is a pollutant exclusion in these policies.

Question #7

Isn't it unfair to tell people they can't smoke in their own apartment or condominium? That they can't smoke on their balcony or patio? Where can they smoke? Many states, including California, have laws which require no smoking in workplaces, restaurants and bars. Even parks and beaches are becoming smokefree by law.

Answer:

Change is happening. Many hotels have adopted no smoking policies for their entire premises. Apartment buildings and complexes large and small are also adopting no smoking policies. Tobacco smoke is simply too dangerous and its effects too costly to be allowed in buildings where people live. Also, most people who smoke want to quit, and smokefree environments will help them to quit. For those people who smoke and do not want to quit, there is the option of taking a walk while smoking.

Some of the chemicals in secondhand tobacco smoke:

- Carbon monoxide (auto exhaust poison)
- Benzene (causes cancer)
- Toluene (industrial solvent, also in explosives)
- Formaldehyde (embalming fluid)
- Acetone (poisonous solvent)
- Hydrogen cyanide (rat/insect poison)
- Ammonia (poisonous gas, cleaning agent)
- Formic acid (caustic solvent)
- Polonium-210 (radioactive element, causes cancer)

When residents of apartments and condominiums have smoking occurring below or next to them, they have no choice except to move to avoid the smoke which will drift into their own units. Being forced to move in order to protect their own health and the health of their family members may be considered "constructive eviction." Constructive eviction occurs when residents can no longer "use and enjoy" their premises because of the risk of harm. This kind of turnover is expensive for owners and unfair to residents.

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Question #8

Is it legal to require tenants to stop smoking on their patio or balcony, or even in their own apartments?

Answer:

Yes, if the apartment is not covered by rent control or a lease agreement. (For rent control information, contact the local Rent Stabilization Board.)

If a tenant's smoke has become a nuisance in the opinion of management, a 30 or 60-day notice of Change in the Conditions of Tenancy can be sent to the person who has signed the lease or contract for the unit. The notice should indicate that as of a certain date, "smoking will no longer be permitted in the following locations," and should list the locations. It is possible, in fact, to transition an entire apartment building to a non-smoking policy in this manner.

It is possible that an apartment resident who wishes to continue smoking in his/her unit or balcony/patio will choose to move rather than comply with the notice.

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Question #9

How many people are still smoking?

Answer:

Here in California, fewer than 12% of the adult population is still smoking, and according to the American Lung Association, 70% of them want to quit. However, in some lower economic communities and in some communities of color or certain nationalities, the numbers could be as high as 20%.



Question #10

Are there any laws about tobacco smoke in apartments?

Answer:

California law requires enclosed common areas to be smokefree. Fair Housing Laws can apply if a tenant is disabled or has a chronic illness, and tobacco smoke from another unit is causing a worsening of the tenant's symptoms. The tenant may be entitled to a reasonable accommodation. The landlord may be required to make the units adjacent to the affected tenant non-smoking. Or the landlord may be required to allow the tenant to relocate to a different unit, away from drifting smoke. Or, the tenant may be able to break his/her lease without penalty. (42 U.S. Code Section 3604 and Cal. Gov. Code Section 12955)

According to the California Legislative Counsel in an Opinion dated September 23, 1999, California's Smokefree Workplace Law (Section 6404.5 of the California State Labor Code) applies to multi-unit housing which employs workers whether they are regular employees or contractors such as painters or plumbers. The law requires that all enclosed common areas including lobbies, halls, laundry rooms, stairs, elevators, recreation rooms, and the manager's office be smokefree.

If the tenant moves to another unit, all new tenants moving into units adjacent to the tenant who has just been moved should be required by lease or month-to-month contract to refrain from smoking in their units and balconies or patios.

More than 20 California cities have adopted housing ordinances which regulate smoking in apartments. Some cities are requiring no smoking in all units. Some cities also regulate smoking in condominiums.

Question #11

Can secondhand smoke be considered a "nuisance" like loud music or a loud party that continues after midnight?

Answer:

California law defines a nuisance as "anything which is injurious to health, ... or is indecent or offensive to the senses, ...so as to interfere with the comfortable enjoyment of life or property."



Smoke, odors, noise or vibration can be considered a nuisance.

Courts require that a plaintiff prove the behavior is both "substantial" and "unreasonable."

However, now that the California Air Resources Board has identified tobacco smoke as a Toxic Air Contaminant, many attorneys agree it is appropriate to consider secondhand tobacco smoke a nuisance.

Question #12

How can a manager or owner begin to establish a smokefree policy in a building or complex which is fully occupied?

Answer:

Begin by adopting a House Rule (or lease addendum) which requires that common areas be smokefree. This will include enclosed indoor areas and outdoor areas around spas, swimming pools, play equipment and barbecues. Notify all of your tenants of this new rule. If there is room outside, establish a smoking-permitted area at least 25 feet away from all non-smoking areas including balconies, patios, and units.

Survey your tenants. Ask if they would prefer their unit to be considered a smoking-permitted or a non-smoking

unit. If tenants do not respond, consider their unit to be a smoking-permitted unit. Inform prospective tenants of the location of smoking-permitted units. This will enable prospective tenants who have chronic illnesses or disabilities to avoid renting a unit which could adversely affect their health and also help management to avoid unnecessary liability.

As tenants move out, advertise the vacant unit as "smokefree" or "no smoking."

Inform current and prospective tenants that you are transitioning your building or complex to non-smoking. Be sure you include in the lease or rental agreement a statement that there is no smoking permitted in the unit or



Patterson Place owned by the Twobes Group

on the balcony or patio by residents or guests. (A smokefree lease agreement is available from the California Apartment Association at www.smokefreeapartments.org)

Advertise your vacancies as "smoke-free" or "non-smoking." Also, once your building has become non-smoking, contact the Smokefree Apartment House Registry to list your vacancies at no charge.

IF YOU HAVE ADOPTED NO SMOKING POLICIES FOR YOUR BUILDING(S), PLEASE LET US HEAR FROM YOU OR IF YOU HAVE QUESTIONS, PLEASE CONTACT US.

Name (Please Print)

Name of Company

Street Address:

City, County and State:

Phone:

Email:

Location of apartment buildings:

Comments:

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