

Smokefree Apartment House Registry

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Letter to Apartment Owners and Management Companies

Please be assured that it is legal for any landlord, nationwide, to require no smoking in an entire apartment building or complex including the units, balconies/patios and common areas. It is also legal for condominium complexes and co-ops to adopt no smoking policies. In California, state law provides legal protection for adoption of no smoking policies in apartments (CA Civil Code 1947.5).

There is no law that prevents managers and owners of apartment buildings and Homeowner's Associations from regulating the use of tobacco on the premises, both inside individual units and outside in common and private use areas. The reason: there is no Constitutional right to smoke, and people who smoke are not protected by Fair Housing laws. **The CDC (Centers for Disease Control and Prevention) is encouraging all providers of affordable and market rate housing to adopt 100% smokefree policies.**

There are obvious advantages to maintaining smokefree policies:

- 1. A unit that has been smoked in is more expensive to prepare for the next resident.**
- 2. It is possible in some States to secure a discount on insurance for a smokefree building.**
- 3. Fire danger is diminished.**

According to the U.S. Surgeon General, there is no known safe level of exposure to secondhand tobacco smoke. It is a group A carcinogen in the same group as asbestos. The California Environmental Protection Agency states that secondhand smoke can cause cancer, heart disease and sudden infant death syndrome. If a person has a chronic illness, the illness will be aggravated by the tobacco smoke.

The California Air Resources Board (ARB) in January 2006 identified tobacco smoke as a Toxic Air Contaminant. (The ARB regulates outdoor air.) That means it is formally identified as an air borne toxic substance that may cause and/or contribute to death or serious illness. With regard to indoor environments, scientists have proven that "tobacco smoke particles will travel from unit to unit through cracks in fixtures, electrical outlets, pipes, vents and baseboards; as well as through shared ventilation systems and windows." (*L.A. County Dept. of Public Health Press Release, Nov. 16, 2011.*)

Third hand Smoke is the newest concern in multi-unit housing. When smoking is occurring in a unit or when secondhand smoke is drifting into a unit, chemicals from the tobacco smoke attach to walls, floors, furniture and clothing and then will outgas back into the room, even when no one is smoking. In addition, third hand smoke leaves a strong odor which is almost impossible to get rid of. People can be exposed to dangerous third hand smoke residue through inhalation, ingestions, or skin contact. Scientists had stated that third hand smoke is especially dangerous because it is extremely difficult to eliminate. Studies found that even two months after smokers moved out of an apartment, smoke particles can still be detected in dust. If tenants are complaining about drifting tobacco smoke, or the smell of tobacco smoke residue, we hope you will take action to protect them.

Because of all that is known about the harm that can be caused by involuntary exposure to tobacco smoke, we believe that environmental tobacco smoke should be considered a nuisance in the same way that loud noise or an infestation of rats or insects would be considered a nuisance. A nuisance includes:

“...smoke, odors, noise, or vibration... everything that endangers life or health, gives offense to senses or obstructs reasonable and comfortable use of property. An offensive, annoying, unpleasant, or obnoxious thing or practice; a cause or source of annoyance, especially a continuing or repeated invasion or disturbance of another’s right, or anything that works a hurt, inconvenience or damage.”*(Black’s Law Dictionary, sixth edition)*

If a resident is injured or made seriously ill by involuntary exposure to tobacco smoke in one of your buildings and chooses to take legal action, your insurance coverage might not cover that liability. The pollution exclusion in the Commercial General Liability policy (CGL) could cause coverage to be denied for claims resulting from exposure to secondhand smoke.

If a resident or prospective resident has a disability or chronic illness which is made worse by exposure to tobacco smoke, Fair Housing Laws may require a “reasonable accommodation.” It is possible that a reasonable accommodation could only be achieved by the adoption of a 100% no smoking policy.

Providing smokefree choice to apartment and condominium residents and all residents of multi-unit housing should be considered a new amenity.

We urge you to develop no smoking policies. There are several ways to begin. You might want to conduct a one-question survey of your residents: “Would you prefer to live in a totally smokefree building including units, balconies/patios and common areas inside and outside?” Surveys of apartment residents have shown that more than 80% of residents indicate a preference for a smokefree environment. Information about the smokefree results will help to convince other residents of the need for change. If there is space, a smoking –permitted area could be set up outside, but only if that area would be sufficiently distant from non-smoking areas.

Advertise your apartment building as a **no smoking or smokefree building**.

Another way to begin: You could transition the buildings to non-smoking by making all new vacancies non-smoking. Inform your residents that you are transitioning the building and advertise it as a smokefree apartment or condo complex. However, it is important to disclose to potential residents where smoking –permitted units are located in the building or complex. This will prevent persons with chronic illnesses or disabilities from moving in adjacent to a unit where a resident is smoking.

Or you could notify all of your tenants that as of a certain date, smoking will no longer be permitted in units, on balconies and patios, and common areas inside and outside. The letter that you send to all of your tenants about your new smokefree policy could contain the following language:

Due to the known health effects of secondhand tobacco smoke, and the fact that smoke will drift from unit to unit (and can drift into windows and doors of adjacent units) as of (date), smoking will no longer be permitted in the following areas: Then list the non-smoking areas and add whatever language you would usually use to explain how the new policy will be enforced. Call for everyone’s cooperation. Note: *A building under rent control cannot immediately adopt a non-smoking policy for the units and balconies/patios. These can only be transitioned to smokefree status as residents move out or with the written agreement of tenants who smoke.*

Our goal is to encourage and provide support to housing industry professionals who wish to adopt smokefree policies. We will be pleased to list the vacancies in your smokefree buildings at no charge. If you have questions, please contact us at info@smokefreeapartments.org

Esther Schiller, Director