



**PUBLIC HEALTH
LAW CENTER**
at Mitchell Hamline School of Law

Enforcing a Smoke-Free Policy in an Apartment Building

This document is intended for managers of market-rate apartment buildings that are considering, or currently have, a smoke-free policy. Public housing agencies should refer to the companion fact sheet, “Enforcing a Smoke-Free Policy in Public Housing”.

Introduction

Many states have smoke-free laws in place that prohibit smoking in lobbies, hallways, and other common areas of apartment buildings.¹ With the exception of some local jurisdictions in California,² the protection from exposure to secondhand smoke does not extend to individual apartment units. Owners and property managers can, however, designate their buildings as smoke free if they choose. Smoking is not a protected activity that is afforded constitutional protection, and private property owners have the right to restrict smoking on their property.

According to a survey of owners with smoke-free policies, the **overwhelming majority** of them did not experience an increase in staff time spent on managing the building after they put a smoke-free policy in place.³

However, the smoke-free policy should be enforced if violations occur. This fact sheet outlines some steps a manager should take to promote compliance as well as follow pursue in the case of a violation.

**Enforcing a
smoke-free policy
ensures happy
residents and
healthy homes.**

Preparing to Enforce a Smoke-Free Policy

1. Make sure that the lease and/or house rules contains a no-smoking provision or that the lease has a smoke-free lease addendum.
2. Consider adopting a graduated enforcement approach for the smoke-free policy, where the manager affords multiple opportunities for compliance yet has the right to terminate the lease

¹ See, e.g., [Ala. Stat. Sec. 22-15A-6\(a\)\(9\)](#), [Minn. Stat. Sec. 144.414](#), Subd. 1, [Tenn. Stat. Sec. 39-17-1803\(a\)\(9\)](#).

² See Americans Nonsmokers' Rights Foundation, *U.S. Laws and Policies Restricting or Prohibiting Smoking in Private Units of Multi-Unit Housing*, available at <https://no-smoke.org/wp-content/uploads/pdf/smokefreemuh.pdf>.

³ Hewett, M., D. Bohac, and J. Novacheck. “Secondhand Smoke.” *Environmental Tobacco Smoke*. Center for Energy and Environment, 2001. Web. Jan. 2013. [NEED UPDATED LINK]

as a last resort. Sample approaches to graduated enforcement can be found in “[Change is in the Air](#)”, a guide published by the U.S. Department of Housing and Urban Development. (See pages 46-47.)

3. Provide your residents with proper notification of the smoke-free policy. Giving your residents enough time to prepare for the policy will help with compliance.
4. Engage residents throughout the implementation process. Tips for resident engagement can be found at www.smokefreepublichousingproject.org.
5. Invest in compliance tools like building signage and in-unit reminder. Signage provides a constant reminder of the smoke-free policy and will also inform guests that the building is smoke free. Many state and local departments of health provide free signage for buildings that adopt smoke-free policies. Minnesota properties can access free or low-cost signage through www.mnsmokefreehousing.org.

A graduated approach to enforcement is recommended.

If a Violation Occurs

1. Review and follow the enforcement procedures in the lease, addendum, and/or house rules.
2. The manager should document the instances of violations of the smoke-free policy by sending a Notice of Infraction or a letter to the resident reminding the resident of the terms of the lease, providing the resident a description of the violation(s) and recording the date(s) of the violation(s).
3. Educating all staff who work in and around the building is pertinent. Maintenance staff, resident service providers, caretakers, etc. may be in units and have stronger relationships with residents than management. These staff can also document policy violations to management and may be able to work with the resident to resolve the problem. Staff cannot open private spaces in the unit, but they can document signs of smoking they notice while in the unit for another purpose. Tools to educate other onsite staff can be found here: www.smokefreepublichousingproject.org.
4. Managers often ask what proof is acceptable to demonstrate that smoking has occurred, observing that it is difficult to witness activity that occurs in a private residence. Evidence short of witnessing smoking can constitute acceptable proof. This evidence can include: staff observing a lighted tobacco product, burn damage caused by smoking, cigarette smells, smoke clogged filters, smoke damage to walls, repeated reports to staff by third parties, clogged plumbing caused by smoking products, and evidence of ashes. Managers sometimes ask whether it is advisable to purchase a monitor that can detect smoke. This may not be the best approach because of the cost of the monitors and questions about their effectiveness. Further, if smoke monitors are used, they should likely be placed in every unit to ensure consistent treatment. That being said, a list of monitors can be found here: <http://mysmokefreehousing.org/word/DevicesandTeststoDetectSmoking.htm>.

5. If multiple infractions occur and the manager has exhausted all strategies to gain compliance, the manager may wish to evict the resident. The manager should confer with an attorney as to the proper procedure. Rules regarding eviction vary from state to state. For example, in Arkansas, managers must give tenants 14 days to remedy a lease violation that materially affects health and safety.⁴
6. The manager will have the burden of proving the lease violation allegations if an eviction action becomes necessary. The manager should ensure evidence of violations is well-documented and talk with other residents to determine if they witnessed the lease violation and would be willing to testify in housing court.
7. If the manager decides to proceed with terminating the resident, a Notice of Termination should be sent to the resident in compliance with the notice terms specified in the lease or in compliance with state law if not specified in the lease.

Additional Resources

Live Smoke Free has many resources to assist buildings with promoting compliance and enforcing a smoke-free policy:

- **Notice of Infraction** form that managers can fill out and give to residents who violate the smoke-free policy
- **Notice of Smoking Incident** form residents can fill out to inform managers if other residents violate the policy
- **Model smoke-free lease addendum** language that can be tailored to each building
- **Smoke-free building signage** and in-unit reminders
- **Promoting Smoke-Free Policy Compliance** fact sheet
- **Foundations for a Successful Smoke-Free Policy: A Training for People who Work in Housing**
- **Resident Engagement Ideas** for Public Housing fact sheet

Free tools can help improve compliance and streamline enforcement.

All of these resources can be found on the following websites:

- www.mnsmokefreehousing.org
- www.sfpublichousingmn.org
- www.smokefreepublichousingproject.org
- www.publichealthlawcenter.org/topics/tobacco-control/smoke-free-tobacco-free-places/housing/public-subsidized-housing

⁴ Ark. Stat. § [18-17-702](#).