



CHAPTER 6

WORKING WITH OWNERS AND MANAGERS TO ADOPT SMOKE-FREE POLICIES

PURPOSE

Learning and implementing the policy adoption process

OUTCOMES

- Managers go through multiple stages when adopting a policy
- Policy adoption differs for renter- and owner-occupied multi-unit housing

LEARNING THE POLICY ADOPTION PROCESS

It's the moment you've been waiting for! All of the effort put into learning about the benefits of smoke-free policies, the multi-unit housing industry, program strategies, and legal issues has led to this. You can put all of that knowledge to use and assist managers through the process of adopting a smoke-free policy for their buildings.

Over the years, Live Smoke Free has developed a system of categorizing the policy adoption process into stages. This allows us to track the progress of a policy's adoption and to better assist managers by providing them with appropriate materials and messages at appropriate times. These stages can be used by any smoke-free multi-unit housing program though you might find that you need to modify the messages or materials to fit your needs.

Working with rental properties versus owner-occupied properties

Many people wrongly assume that residents in owner-occupied multi-unit housing are not exposed to secondhand smoke. Secondhand smoke exposure can be an issue for anyone living in multi-unit housing because smoke can travel through all kinds of multi-unit housing buildings (for more information on air transfer, read Chapter 1, "The Case for Smoke-Free Multi-Unit Housing"). Working with rental properties as well as owner-occupied properties is especially important in cities where the density of multi-unit housing is very high and much of the population lives in multi-unit housing.

It is often incorrectly assumed that residents of owner-occupied buildings do not need assistance in solving their secondhand smoke exposure problems because they have higher incomes than those living in rental buildings, but that's not always the case. In some areas, owner-occupied multi-unit housing may be the least expensive form of home ownership and is occupied by middle-income and low-income residents. There may also be a fair number of renters who live in an owner-occupied building, so your goal to protect renters can still extend to working with owner-occupied buildings. Association members who own their unit often feel trapped when they experience secondhand smoke drifting into their

KEY TERMS FOR RENTAL PROPERTIES:

LEASE: *A contract between a manager and resident. Some buildings may not have a written lease (the laws regulating written leases differ from state to state).*

MONTH-TO-MONTH LEASE: *A rental agreement without a specific ending date; the agreement automatically renews every month until one of the parties gives notice to end the lease. Also known as Periodic Tenancy.*

FIXED-TERM LEASE: *A rental agreement that has specific start and end dates; usually for a period of six months or one year.*

HOUSE RULES: *Documents that some buildings, particularly subsidized buildings, use in addition to a lease to outline the rules and regulations of the building.*

NOTIFICATION: *The legal length of time necessary before a manager can change a resident's lease. Notification periods vary by state but many states require 30 days of notice.*

GRANDFATHERING: *A process by which some residents are exempt from a smoke-free policy. An old rule (e.g., being allowed to smoke) continues to apply for current renters while a new rule (e.g., no smoking) applies for new renters.*

INDEFINITE GRANDFATHERING: *A situation in which a resident is permanently exempt from the smoke-free policy.*

TEMPORARY GRANDFATHERING: *A situation in which a resident is exempt from a smoke-free policy for a specified amount of time.*

MESSAGES TO SAY TO MANAGERS IN PRE-CONTEMPLATION:

“Consider adopting a smoke-free policy.”

- Smoke-free policies have many benefits;
- Many buildings in our region are going smoke free;
- Renters are looking for smoke-free buildings;
- Smoke-free policies can save you money; and
- There is a smoke-free housing program that can be of assistance.

MESSAGES TO SAY TO MANAGERS IN CONTEMPLATION:

“Survey your residents.”

- Remind managers that not all households with smokers will allow smoking indoors and some units with nonsmokers will allow guests to smoke indoors;
- A survey allows managers to determine how many residents smoke in their unit;
- A survey gathers information that can be beneficial when deciding to go smoke free;
- A survey alerts residents that a change may be ahead and may open a dialogue between residents and management; and
- Sample surveys are available to modify and send to residents.

unit because they have invested a lot of money to purchase the unit, and they cannot move unless they rent out or sell their home.

The bottom line is that residents are affected by secondhand smoke and threatened by fire risks in all types of multi-unit housing. It's most effective to work with both rental and owner-occupied properties if your program goals allow this.

THE STAGES OF POLICY CHANGE: RENTAL PROPERTIES

A property manager goes through several stages when deciding to adopt a smoke-free policy:

- Pre-Contemplation
- Contemplation
- Adoption
- Implementation
- Evaluation and Maintenance

You will have the most contact and provide the most resources to managers who are in the Contemplation, Adoption, and Implementation stages.

STAGE 1: *Pre-Contemplation*

In this stage, managers may have never thought about adopting a policy, may not know why a policy is a good idea, or know that there are resources available to help them decide whether to adopt a policy. Your goal is to provide these managers with a basic introduction to the benefits of smoke-free policies and your services.



Outreach strategies involved during Pre-Contemplation could include bulk mailings, cold calls, trade shows, media articles, and referrals from other organizations. You can provide managers with simple materials such as an overview guidebook and general information on your program. In order to encourage managers in this stage to move on to the next stage, you need to spread your outreach as wide as possible.

STAGE 2: *Contemplation*

During the Contemplation stage, managers are thinking of adopting a smoke-free policy. In order to decide if they want to adopt a policy, you will need to explain the benefits of policy adoption. Illustrate to them that smoke-free policies are good for the health of their residents and employees, reduce the risk of fire and other property damage, reduce legal liabilities, and are desired by renters. Give managers a basic overview of the policy adoption process to help them understand that it's a simple process and will not be time intensive. Offer your assistance in order to reassure them that they will not have to embark on the process alone.

Outreach at this stage needs to be personalized and a little more high-level than in Pre-Contemplation. You do not want to overwhelm managers, but you want them to feel comfortable with moving forward with the next stage. Managers who hear your message at presentations or during in-person consultations should be considered to be in the Contemplation stage because they will have received enough information to begin to make a decision about policy adoption. Managers may find it useful to receive: factsheets on secondhand smoke, testimonials from managers of smoke-free buildings, information about current indoor smoking laws, research on the demand for smoke-free housing, media clips, legal synopses from the Tobacco Control Legal Consortium, and sample surveys to give to their residents.

Encouraging managers to conduct a simple survey of their residents is a key strategy to move them from the Contemplation stage to the Adoption stage, especially if the manager is unsure about adopting a smoke-free policy. Even after you share data about local smoking rates and support for smoke-free environments, many managers believe their buildings are unique and overestimate both the number of residents who smoke in the building and the amount of opposition to a smoke-free policy. Most often, the opposite is actually the case, so a survey of residents in the building will assure the manager that moving ahead with a smoke-free policy is the right decision.

The survey can be as short as three questions that assess the residents' current smoking practices, exposure to secondhand smoke, and support for living in a smoke-free building:

- Do you smoke in your unit?
- Can you smell smoke in your unit?
- Would you like to live in a smoke-free building?

Survey distribution can be easy as well. Managers can distribute paper surveys through resident mailboxes, under unit doors, or through monthly newsletters. Community health workers can also administer the survey orally to residents that speak other languages, or do not read, write or hear well (see chapter 3 for additional information about partnering with community health workers). Many managers choose to tabulate the survey results themselves, but you can assist if necessary.

To be better able to assist managers, you can ask them a few questions at this stage:

- Are you planning for new construction?
- Are you renovating your building or purchasing a building?
- Are you moving ahead with a smoke-free policy with no other changes to your building's construction?
- Who makes the policy decisions for your building?
- Would you be interested in receiving a presentation on smoke-free policies to learn more?

Most managers will not be planning for new construction, renovations, or a purchase. Although those are effective times to implement policy change, you can assure managers that it is perfectly fine to adopt a smoke-free policy without any other changes to the building. Determining who makes the policy decisions will help you invite the right people into the discussion.

THE DIFFERENCE BETWEEN RENTAL PROPERTIES AND OWNER-OCCUPIED PROPERTIES

DEFINITIONS	
<i>Rental Properties</i>	<i>Owner-Occupied Properties</i>
Building owner is a sole individual or company; Residents do not have any ownership stake in the property	Each unit is owned by the resident or the building/property is divided into owned shares among the residents
The owner may hire a manager or management company to oversee daily property needs	An association board is in charge of coordinating property business; the board may hire a management company to help with property operations, but the residents play an active role in property decisions
Building owner is a sole individual or company; Residents do not have any ownership stake in the property	The property's Declaration outlines policies; residents are provided these rules when they purchase the unit
HOW POLICY CHANGE HAPPENS	
<i>Rental Properties</i>	<i>Owner-Occupied Properties</i>
Owner can make changes to policies without consulting residents	The association board—made up of residents—takes up an issue or residents organize and bring the issue to the board
Depending on company policies, an owner may have to consult with a Board of Directors, but often has unilateral decision-making power	Board members can vote to change association rules (see more about this in the section “The Stages of Policy Change: Owner-Occupied Properties”)
Some owners allow property managers to make policy decisions for the property the manager oversees	The board can ask for an association vote to change the Declaration (see more about this in the section “The Stages of Policy Change: Owner-Occupied Properties”)
Policy changes can go into effect simply by giving residents proper notice of the change and sometimes by putting the change in writing	
SAMPLE HIERARCHY CHARTS	
<i>Rental Properties</i>	<i>Owner-Occupied Properties</i>
<p>Board or Directors, Independent Owner or Owner Company hires the</p> <p>▼</p> <p>Management Company hire the</p> <p>▼</p> <p>Regional Property Manager oversees a portfolio of buildings</p> <p>▼</p> <p>Property Manager oversees daily operations in building</p>	<p>Association Board hires the</p> <p>▼</p> <p>Management Company oversees daily operations in building</p>
You will most often have contact with the property manager while working toward policy change. Depending on the property, you may not encounter all the levels of management listed above.	You will most often have contact with some association members or the association board while working toward policy change.

STAGE 3: Adoption

Managers are finally ready to take action and begin to move forward with a smoke-free policy! Discussions at this stage will center on setting policy details and a timeline, drafting lease language, and notifying residents. A model smoke-free lease addendum was developed by Live Smoke Free in the early 2000s with assistance from an advisory committee of attorneys. This lease addendum has been updated several times since then by attorneys. The model lease addendum is available for you to share with property managers so that neither you nor they have to create new lease language. At this stage, it is a good idea to give a presentation about the benefits and policy adoption process to all property manage-



ment staff if you have not done so already. Even though the decision has already been made by the manager, leasing agents and maintenance staff will be responsible for answering questions from the residents about the policy.

Managers are likely to request tools to help the adoption process move along quicker. You can create sample materials that managers can easily modify such as a notification letter for residents, lease language, and enforcement documents. You may also want to have fact sheets on notice requirements and enforcement tips as well as a form that managers can use to order signs and other materials from your program.

Ultimately, it will be up to the manager to decide

MESSAGES TO SAY TO MANAGERS IN ADOPTION:***“Set a quit date.”***

- Set a time frame for implementing the new policy;
- Notify residents of your reasons for going smoke free, provide educational resources on secondhand smoke and cessation options if necessary;
- Inform the residents that they will need to abide by the new policy if they wish to remain in the building. Remember that residents who smoke can still live in the building as long as they abide by the smoke-free policy;
- Renew leases using the a smoke-free lease addendum;
- Initiate all new leases with the smoke-free lease language; and
- Your local smoke-free multi-unit housing program can offer presentations to residents to explain the importance of a smoke-free policy.

“Determine if you will offer incentives.”

- Consider what you can afford;
- Offer incentives to get residents to sign the smoke-free lease addendum early, especially during the Phase-In Method to get the policy fully implemented more quickly;
 - Incentives can be inexpensive;
 - Free use of a community room
 - Free or prime parking space for a month
 - Refreshments in the rental office; and
- Consider offering smoking residents the option to move to another building in the complex (if other buildings remain smoking permitted); conversely, offer residents living in other buildings the option to move to the smoke-free building.

details like which areas of the property will be covered by the policy, how to notify residents, and which policy adoption method to use, but you can provide consultations to encourage managers to adopt the most comprehensive policy possible.

What makes a good policy?

- It is written in a lease or house rules;
- “Smoke free” is defined and what is meant by

MESSAGES TO SAY TO MANAGERS IN IMPLEMENTATION:

“Post signs and remind your residents of the policy.”

- Send out a reminder announcement to residents a few days prior to the policy going into effect;
- Post signs at building entrances and other places on the property that are covered by the policy; and
- Order signs and other implementation materials from your local smoke-free multi-unit housing program.

“Advertise your policy.”

- Renters are looking for smoke-free buildings;
- Advertising that your building is smoke free will make it stand out to renters searching for an apartment; and
- List your building on our online directory of smoke-free buildings for a free advertising opportunity.

“smoking” is explained;

- Does the policy cover cigarettes as well as pipes, cigars, and e-cigarettes?
- Does the policy cover incense, candles, and marijuana?
- Areas of the property which are covered by the policy are listed;
- At minimum, 100% of all indoor areas are covered, and outdoor areas are a plus!
- It has no grandfathering of existing residents; and
- Consequences for violations are clearly defined.
 - Is there a process for reporting and documenting a smoking incident?
 - Is there a process for notifying the resident of the violation?
 - Are there stronger consequences for subsequent violations?

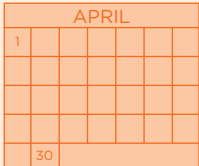
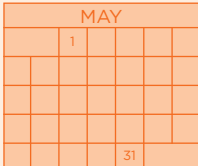
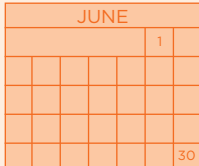
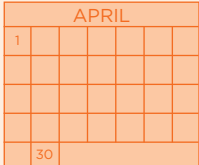
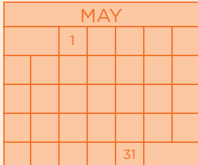
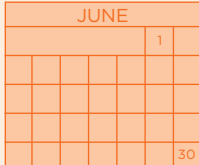
Possible Policy Coverage Areas

- Indoor spaces of individual apartment units;
- Indoor common areas (hallways, laundry rooms, community rooms, etc.);
- Patios, decks, and balconies of apartment units;
- Building entrances and doorways; and
- Parking lots, playgrounds, pools, garages, and other outdoor common areas.

POLICY ADOPTION METHODS

Managers have several methods to adopt and implement a smoke-free policy. Either method works, but managers may prefer one over the other depending on the kind of lease that residents sign. Managers can tell you if their residents are on month-to-month or fixed-term leases, and which method may work best for their leasing situation.

REMEMBER: *A lease is a contract between the manager and the resident. In most cases, the contract cannot be altered unless both parties agree to the change. It's for that reason that the*

POLICY ADOPTION METHODS	
<i>Quit-Date Method</i>	<i>Phase-In Method</i>
All residents begin the smoke-free policy on the same date	Residents sign on to the policy as their individual lease renews
Policy is in full effect within a few months	Policy gradually goes into effect—it can take about a year to be in full effect because many lease agreements are 12 months long
Works best when most residents are on month-to-month leases	Works best when most residents are on fixed-term leases
<i>Quit-Date Method Example</i>	
In this example, unit is rented on a month-to-month basis.	
<div> <div>  <p>APRIL</p> </div> <div>  <p>MAY</p> </div> <div>  <p>JUNE</p> </div> </div> <p><i>Manager gives notice of policy change on April 1.</i></p> <ul style="list-style-type: none"> All renters must sign a smoke-free agreement before the policy goes into effect. Some buildings with month-to-month leases may not have written leases, but the manager should have a written smoke-free policy and have renters sign the policy; a written policy will help the manager enforce the policy. <p><i>All renters who pay rent on June 1 are agreeing to stay through June or longer.</i></p> <p><i>Smoke-free policy goes into effect on June 1.</i></p>	
<i>Phase-In Method Example</i>	
In this example, unit is rented on a month-to-month basis.	
<div> <div>  <p>APRIL</p> </div> <div>  <p>MAY</p> </div> <div>  <p>JUNE</p> </div> </div> <p><i>Manager gives notice of policy change on April 1.</i></p> <p><i>Renter has until May 1 to notify manager if he/she plans to move.</i></p> <p><i>Smoke-free policy goes into effect on June 1. If renter renewed lease, he/she must now follow the policy.</i></p> <ul style="list-style-type: none"> Current residents who are willing and new residents can sign the policy right away. Current residents who do not wish to sign the policy right away have until their lease renewal to do so (they do not have to sign the policy right away because their current lease is a contract that can only be changed if both parties agree); if they do not wish to sign the policy upon lease renewal the manager does not have to renew the lease. Use of a written temporary exemption form for residents waiting for lease renewal is recommended to document exemption rules 	


OFFERING PROMOTIONAL ASSISTANCE BEFORE A POLICY IS IN FULL EFFECT

You can offer signs and begin to advertise the policy as soon as the policy is adopted. If a manager is using the Phase-In Method of adoption, you may be giving promotional assistance before the building is 100% smoke free. It may be tempting to wait until a policy is in full effect before starting the Implementation stage, but there are many good reasons why implementation should not be delayed.


- The implementation stage can be fun and encourages managers to celebrate the choice they've made to protect the health of their residents;
- If your funding or program's tactics change before a policy is in full effect, you may not be able to provide the materials and assistance that enticed managers to adopt a policy;
- You can keep your inventory moving as quickly as possible; stacks of signs sitting in your office don't do anyone any good;
- You can count a policy toward your grant goals when the policy begins; if you wait until a policy is in full effect you may miss an opportunity to count policies and/or tell success stories to your funders.

Quit-Date Method works best with month-to-month leases.


Notifying residents

-  Managers are legally required to notify residents of changes to building policies, but the notification period and the method of notification varies by state. Many states require at least 30 days notice and may require that the notice be in writing. Even if your state only requires a 30-day notice period, encourage managers to give residents a 60 to 90-day notice period. Extra notice gives all residents time to adjust to the policy change ahead. Consult your local laws for notification requirements in your area.

Planning for cessation options

-  During the time leading up to policy implementation, outline a plan for offering cessation options to the residents. Work with the manager to identify residents' interest in cessation classes and other cessation information. For details on providing cessation in smoke-free buildings, read Chapter 7, "Providing Cessation Resources in Smoke-Free Multi-Unit Housing."

Once the adoption date arrives, make sure to confirm that the policy is in effect. If you were working with a manager on policy adoption months prior to the adoption date, you may not be aware of challenges that prevented the manager from following through. You can confirm that the policy went into effect by:

- Asking the manager;
- Looking for publicity about the policy;
- 
 - Are any smoke-free signs posted on the property?
 - Do the building's advertisements include information about the smoke-free policy?
- Obtaining a copy of the written policy that includes the adoption date; and
 - A written copy of the policy or lease addendum provides documentation for program evaluation.

STAGE 4: Implementation

The smoke-free policy has begun to go into effect! Now it's time to celebrate the manager's efforts

and the fact that the residents will soon be living in a completely smoke-free environment. You can assist both the managers who worked with you during policy adoption as well as managers of buildings that you discovered were already smoke free (to learn more about working with existing smoke-free buildings, read chapter 5 “Reaching Out to the Multi-Unit Housing Industry”). Ask the manager how you can help promote the policy; some managers want to “go big” with promotional efforts, but others aren’t comfortable being in a media spotlight.



Out to the Multi-Unit Housing Industry”). Ask the manager how you can help promote the policy; some managers want to “go big” with promotional efforts, but others aren’t comfortable being in a media spotlight.



Sample publicity approaches your program can offer:

- Permanent “smoke-free building” signs;
- Outdoor “smoke-free building” banners that the manager can borrow;
- Writing and distributing a press release;
- A listing on your smoke-free housing directory;
- A Certificate of Recognition; and
- A celebration for residents (be sure to provide refreshments and invite the media).

STAGE 5: *Evaluation and Maintenance*

Once a policy has been implemented, managers will continue to promote and enforce the policy indefinitely; therefore, the Evaluation and Maintenance stage is on-going. The good news is that smoke-free policies are easy to maintain, so this stage does not have to be intimidating. Managers can often handle policy maintenance on their own, but there are a few things that you can do to help ensure the success of the policy.

For example, you can check in with managers approximately six months after policies begin to take effect to see how the policy is working. You can also offer continued promotional assistance and suggestions for any enforcement challenges that have arisen. These conversations can be informal; the goal is remind managers that you are still available to help with any struggles that the manager may be having.

In the process of helping managers evaluate their policies, you may be able to find ways to evaluate your program as well. Ask if managers would be willing to send a post-policy survey to residents. A post-policy survey can ask similar questions as the pre-policy survey that managers may have conducted in the Contemplation Stage. While the post-policy survey may give managers some information on how the policy is working, the survey is likely more useful for your project evaluation. The survey results will allow you to gauge how residents feel about the smoke-free policy. Be



conducted in the Contemplation Stage. While the post-policy survey may give managers some information on how the policy is working, the survey is likely more useful for your project evaluation. The survey results will allow you to gauge how residents feel about the smoke-free policy. Be

MESSAGES TO SAY TO MANAGERS IN EVALUATION AND MAINTENANCE:

“Continue to enforce your policy when necessary.”

- Smoke-free policies are largely self-enforcing, but you should be prepared to enforce consequences if someone violates the policy;
- Be sure that the smoke-free policy lease language prohibits smoking and specifies that it is a violation of the lease to smoke; if an eviction becomes necessary, you will want to have that information written in a lease that was acknowledged by the resident;
- Document policy violations and get witnesses who would be able to testify to incidents of smoking; and
- Enforce a smoke-free policy the same way you enforce other policy or lease violations (e.g., documented warnings and possible eventual termination of the lease).

CASE STUDY: Secondhand Smoke and Common Interest Communities: Policy Options

In 2008, the Public Health Law Center in Minnesota, along with the Center for Energy and Environment and the Association for Nonsmokers-Minnesota, received funding from ClearWay MinnesotaSM to conduct research on secondhand smoke and common interest communities (CICs). The purpose of the project was to provide guidance to owner-occupants, homeowners' associations and CIC property management companies on transitioning existing properties from being smoking-permitted to smoke free or on establishing new properties as smoke free. A second goal of the project was to determine public policy options that could encourage more CICs to go smoke free. While similar research had been conducted for rental properties, this study was the first in the country to extensively assess the experience with secondhand smoke for owner-occupied properties.

The research project was divided into three areas:

- A survey of owner-occupants of CICs to determine the prevalence of secondhand smoke transfer in their housing units and to assess the owner-occupants' interest in smoke-free policies;
- Interviews with CIC property managers to collect their opinions on problems with secondhand smoke transfer and their perspectives on various solutions; and
- A review of the law on CICs: evaluating the applicable legal standards and strategies for addressing conflicts, and reviewing possible private and public policy options to promote the creation and availability of more smoke-free CICs.

Key findings from the owner-occupant survey:

- Approximately 30% of owners experienced smoke entering their unit;
- About 65% of owners felt that smoke coming in just one day per week would decrease the resale value of their unit; and
- 80% of owners would definitely or probably choose a non-smoking building if they were looking for a new residence.

Notable responses from condominium property managers:

- All of the managers contacted favored smoke-free policies for indoor common areas;
- Over half of the managers supported smoke-free policies for individual units; and
- Almost 90% favored smoke-free policies for outdoor common areas.

Conclusions: The owner-occupant surveys demonstrated that residents of CICs are experiencing secondhand smoke transfer between units, in both apartment style buildings and in townhomes. Owners experiencing secondhand smoke are bothered by it, but the majority of complexes do not have smoke-free policies. A significant majority of owners would prefer a smoke-free property if purchasing another unit. Most property managers had experience with secondhand smoke complaints, but only one property had a smoke-free policy for the units. Property managers are concerned with legal, marketability and enforcement issues. Smoke-free policies for CICs are legal and can be adopted through a change in the declaration or in the rules and regulations. Fact sheets summarizing this project can be found at: www.healthyhousinglaw.com/secondhand-smoke/condominium-common-interest-community-materials

aware that post-policy survey results may not be able to be directly compared to pre-policy survey results since residents may have moved in and out of the building during the policy adoption process.

THE STAGES OF POLICY CHANGE: OWNER-OCCUPIED PROPERTIES

The trend of smoke-free policies in owner-occupied properties is not as prominent as it is in rental properties. Managers and residents in owner-occupied properties are less likely to have been educated on the benefits of adopting a smoke-free policy. Take your time when working with owner-occupied properties; you may need to spend more time educating the home owners' association. You may not experience as many policy successes as you do in your work with rental properties, but it's worth your time to plant the seeds for future policy change.

Owner-occupied properties follow the same stages of policy change as rental properties. The strategies in the Pre-Contemplation, Contemplation, Implementation, and Evaluation stages are very similar to the strategies used for rental properties. The Adoption stage, however, is very different for owner-occupied properties. Since owner-occupied properties do not have an individual owner/manager who can unilaterally make policy decisions, owner-occupied properties have to do more to get the residents (association members) involved.

You may have initial contact with a resident, a board member, or a manager. The role of a manager at an owner-occupied property is very different than the role of a manager at a rental property. Managers of owner-occupied properties are usually employed by a professional management company and are hired by the property's association to help with the day-to-day operations of the property. Association boards may ask the manager to seek out information about smoke-free policies, the manager might be involved in some discussions about how to adopt a policy, and in some cases the manager can influence the board's decision, but managers of owner-occupied properties do not make decisions about whether or not



KEY TERMS FOR OWNER- OCCUPIED PROPERTIES:

OWNER-OCCUPIED PROPERTIES:

Each resident purchases and owns their unit. This includes town-homes, condominiums, housing cooperatives (co-ops), and other homeowner associations. Also known as a Common Interest Community (CIC).

GOVERNING DOCUMENTS: *The documents that control establishment and management of an owner-occupied property. The documents usually include:*

- **DECLARATION:** *Sometimes called the covenants, conditions, and restrictions, or CCRs. The declaration controls establishment and major use restrictions in the owner-occupied community.*
- **BY-LAWS:** *Establishes the rules for setting up the association board and running meetings.*
- **RULES AND REGULATIONS:** *Policies that control the day-to-day operations of the property.*

a policy is adopted.

When association boards and members discuss adopting a smoke-free policy, you may want to counsel them to consider several factors:

- What is the level of support for a policy among association members? Support can be measured through community surveys or meetings (the survey can be very similar to the survey used in rental buildings).
- Which areas of the property should the policy cover?
- What is the likelihood that the association would want to modify the policy in the future?

SIMPLE POLICY RANKINGS

Any policy with indefinite grandfathering



Any policy with short-term or temporary grandfathering



100% of the building's interior*



100% of the building's interior + some exterior areas



100% of the building's interior + all exterior areas (a curb-to-curb policy)



*minimum policy that most smoke-free housing programs will accept

- What approaches are possible for working with existing residents who smoke in their units?
- What is the likelihood that the policy would be challenged by some residents?
- How much money is the association willing to spend for this policy change?

Adopting a comprehensive policy

If the association has support for a strong policy, it is best to adopt the policy by changing the

Declaration. A policy that is placed in the Declaration is unlikely to be changed if the association board membership changes. It is also more likely to be upheld if there is a legal challenge brought by a resident. Courts are deferential to association decisions to amend a Declaration because Declaration changes are harder to get put in place. Declaration changes require the association members to vote for the change—the policy cannot be adopted only through an association board vote. Each property's Declaration will outline how many votes are necessary to make a change, but many declarations require a super-majority of the association members to vote for the change. A Declaration change may require that the association pay an attorney to modify the documents. However, if an association can afford the attorney fees and has enough support to get the necessary votes, a change to the Declaration is the strongest way to adopt a smoke-free policy and keep it in place.

Adopting a gradual policy

If an association does not have support for a strong policy, or if they want to implement a policy incrementally, then the board can add the smoke-free policy into the rules and regulations.

- ⊗ A change to these documents is easier to adapt over time if additional provisions are needed and is less costly to implement than a declaration change (an attorney is usually not necessary when changing rules and regulations). Since changes in the rules only requires a majority of the association board (there is no need for association members to vote), a gradual policy may be easier to pass than a strong policy. Unfortunately, changing a policy by way of the rules and regulations also has disadvantages. The policy may not withstand a legal challenge since the association members do not vote for the change. The policy may be reversed if board members who supported the smoke-free policy are not re-elected.

Because of the possibility of legal challenges and policy reversals, the board may decide to adopt a smoke-free policy that allows for grandfathering of current residents. The board may also believe that grandfathering is the fairest way to implement a policy since smoking residents have purchased their homes. Remind the board that

grandfathering does not create a smoke-free environment and will not help current residents that have problems with secondhand smoke incursion. However, if a board decides to adopt a gradual, incremental policy, try to help them adopt the

best policy that still protects as many residents as possible.

EXAMPLE:

WORKING WITH A RENTAL MANAGER THROUGHOUT THE STAGES OF POLICY CHANGE

PRE-CONTEMPLATION STAGE

- You meet a manager at a multi-unit housing trade show; you briefly describe the benefits of a smoke-free policy and the resources your program offers; and you provide them with a handout summarizing this information.

CONTEMPLATION STAGE

- The manager calls a few months later to learn more about the benefits and how a policy is adopted; and
- You encourage the manager to survey the renters about whether they would like the building to go smoke free.

ADOPTION STAGE

- The manager calls again a few months after the initial phone call; he/she has decided to adopt a smoke-free policy! You schedule a site visit to discuss policy details, an enforcement plan, and to create a timeline for adoption;
- You assist the manager in writing a lease addendum;
- You continue to answer any questions the manager has as the policy gets closer to going into effect; and
- You begin to develop an implementation plan and discuss whether you will assist with hosting a celebration, distributing a press release, providing signs, or other implementation activities.

IMPLEMENTATION STAGE

- You call the manager with congratulations when the policy goes into effect;
- If you have not done so already, send signs or other implementation materials;
- Hold a celebration for the residents; and present a Certificate of Recognition to the manager at the celebration.

EVALUATION AND MAINTENANCE STAGE

- You call the manager six months after the policy goes into effect to check on the policy's success and to discuss any further needs.

CHAPTER CONCLUSIONS:

- The policy adoption process differs between rental multi-unit housing and owner-occupied multi-unit housing.
- There are five stages of policy change for rental properties: *Pre-Contemplation, Contemplation, Adoption, Implementation, and Evaluation/Maintenance*.
- In Stage 1: Pre-Contemplation, conduct broad-based outreach to educate as many property managers as possible.
- In Stage 2: Contemplation, provide managers with smoke-free policy information and encourage them to survey their residents.
- In Stage 3: Adoption, provide managers with a smoke-free lease addendum, encourage them to adopt a comprehensive policy, assist them in choosing the appropriate policy adoption method, and create a timeline for policy implementation.
- In Stage 4: Implementation, assist managers with policy publicity and provide resources such as smoke-free signs
- In Stage 5: Evaluation and Maintenance, assist managers with any policy enforcement challenges.
- In order for owner-occupied properties to adopt a smoke-free policy, the policy must be approved by the home owners' association board or by the home owners themselves.

SAMPLE TOOLS

- *Model Smoke-Free Lease Addendum*
- *Materials for managers contemplating, adopting, and implementing smoke-free policies*
- *Materials for CIC association boards contemplating, adopting, and implementing smoke-free policies*
- *Smoke-free signs*
- *Smoke-Free multi-unit housing online directory*

PRACTITIONER'S CHECKLIST:

ARE YOU READY TO HELP MANAGERS AND OWNERS ADOPT A SMOKE-FREE POLICY?

- Can you explain the differences in the policy adoption process between rental and owner-occupied properties?
- Can you describe the components of a comprehensive smoke-free policy for multi-unit housing?
- Do you have materials available such as policy guides and smoke-free signs?
- Stage 1—Pre-Contemplation: Do you have a plan to reach property managers with smoke-free policy information?
- Stage 2—Contemplation: Do you have a sample resident survey available for managers to distribute?
- Stage 3—Adoption: Do you have a model smoke-free lease addendum available?
 - Can you explain both methods of policy adoption: Quit-Date Method and Phase-In Method?
 - Can you describe the appropriate process for proper resident notification of a lease change?
 - Do you have a sample policy adoption timeline to share with managers?
- Stage 4—Implementation: Have you created sample tools to assist managers in publicizing their smoke-free policy?
- Stage 5—Evaluation and Maintenance: Do you have tools available to assist managers with policy enforcement?

RESOURCES

• HUD's "Smoke-Free Housing Toolkit for Public Housing Authorities and Owners/Managers": www.hud.gov/hudportal/HUD?src=/smoke-freetoolkits1

• Live Smoke Free program: www.mnsmokefreehousing.org

• Tobacco Control Legal Consortium (TCLC): www.publichealthlawcenter.org/programs/tobacco-control-legal-consortium