

# Steps to Smoke-free Housing NY

## LANDLORD AND PROPERTY OWNERS' Q & A

### 1 What is a smoke-free residential building policy?

- Smoke-free policies are a means for landlords/management companies to prohibit tenants and others from carrying or using a lit tobacco product anywhere within multi-unit residential buildings, including places where people live.
- Some policies extend the restriction to include balconies, terraces, gardens and other outdoor areas connected with the property.

### 2 Are smoke-free housing policies legal?

- Yes. Because the US Constitution does not guarantee a right to smoke, prohibiting smoking in multi-unit dwellings is legal.
- Smokers are not a protected class. As a result, smoke-free housing policies are not discriminatory.
- Landlords may write clauses into new leases or lease addendums that prohibit smoking.<sup>\*1</sup>
- Smoke-free housing policies are not made to evict smokers, but to prohibit the act of smoking anywhere in the building.

### 3 Does the right to adopt smoke-free policies extend to affordable housing?

- Yes. HUD (U.S. Department of Housing and Urban Development) permits smoke-free policy adoption in affordable housing managed by local housing authorities.<sup>1</sup>
- Smoke-free housing policies can apply to Section 8 housing (federally subsidized buildings or units within private buildings for low-income and elderly tenants who carry Section 8 status), by making a rule change.

- Smoke-free policies can be implemented in publicly funded residential buildings, Section 8<sup>42</sup> buildings and Section 8 units at lease renewal or any time during the term of an existing lease if tenants are provided with adequate notice.<sup>3</sup>

### 4 How is a smoke-free policy adopted?

- Policies that prohibit smoking can be written as a lease addendum or within a new lease (see "Sample leases/addendums") and should be reviewed by your attorney.
- Smoke-free policy<sup>4</sup> options:<sup>2,3,4</sup>
  - a. Landlords may choose to prohibit smoking in all units, at the same time, during the term of existing leases, provided that adequate notice is given.
  - b. Smoke-free policies can be applied tenant by tenant at time of each lease renewal.
  - c. Landlords may allow all current tobacco users to continue to smoke in their units, while writing the policy into leases for new tenants. (This process can take years to solve SHS troubles.)
- Whichever option is chosen, notify all tenants, by letter, explaining the reasons for the new policy, with transition and compliance details. Require tenants to sign a copy stating their intent to comply with the new rule.

### 5 What's the best way to implement and enforce a smoke-free policy?

- Once tenants receive written notice and the policy has been written into leases, post smoke-free signs throughout the building.

- Ease the transition:

- Train your staff to comply with and answer questions about the policy.
- Until all units are smoke-free, provide apartments invaded by SHS with remedial modifications.<sup>5</sup>
- If needed, identify places where tobacco users can smoke without breaking the terms of the lease.
- Provide quitting (smoking cessation) materials and resources for tenants.<sup>6</sup>

- Enforcement:

- In most cases smoke-free policies are self-enforcing. When not, smoking violations should be treated as any other lease or rule violations.<sup>5</sup>
- Speak to the tenant regarding the violation.
  - Provide written notice with expectation of compliance.
  - Move to evict if the tenant continues to violate the terms of the lease.<sup>7</sup>
  - Consult your attorney about eviction proceedings.

*\*Indicates a definition or exception*

See "Coops & Condos Guide."

# References and Resources

## References

<sup>1</sup> *Smoke-Free Environments Law Project*. The Center for Social Gerontology, Inc., May 2005.

<sup>2,3,4</sup> MI Smoke-Free Apartments: <http://www.mismokefreeapartment.org>  
Landlord Rights.

<sup>5</sup> *Smoke-Free Environments Law Project*. The Center for Social Gerontology, Inc., May 2005.

<sup>6</sup> Exception: Rent-controlled and rent-stabilized units operate under a different set of regulations.

<sup>7</sup> Exception: Section 8 lease changes can be made following amending the rules.

<sup>8</sup> Definition: 'Adequate notice' is case dependent. Check with an attorney to confirm what's correct in your situation.

<sup>9</sup> Definition: "Smoke-free" is defined as a property whose written lease, by-laws or CC & R's explicitly prohibit(s) carrying or using a lit tobacco product in both public and private areas of the building. Landlords are advised to include the definition on promotional materials.

<sup>10</sup> Definition: Building modifications include sealing places where tobacco smoke drifts from one unit to another. Air filtration systems are not acceptable modifications, as they do not provide protection from secondhand smoke carcinogens.

<sup>11</sup> Definition: Quit resources/materials available through the NYS Quitline, 1-866-NY QUIT (in NYC call 311) or through your local tobacco use prevention coalition (see list of local contacts).

<sup>12</sup> Exception: In affordable housing the process must follow HUD regulations.

## Resources

*Coops, Condos & Secondhand Smoke*, New York Times, August 8, 2006

*Section 8 Housing, HUD & FHA*, Susan Schoenmarklin

*There is No Constitutional Right to Smoke*, Technical Assistance Legal Center



**[www.SmokeFreeHousingNY.org](http://www.SmokeFreeHousingNY.org)**

