

Steps to Smoke-free Housing NY

LANDLORD AND PROPERTY OWNERS' GUIDE

1 Adopt A Smoke-free Housing Policy

- Smoke drifting from lit tobacco products and/or exhaled by smokers seeps into the living spaces of other tenants and common areas of residential buildings. Secondhand smoke (SHS) travels through lighting fixtures, cracks in walls, around plumbing, under doors and shared heating/ventilation.
- Smoke-free Policy: Leases that prohibit carrying or using lit tobacco products in both public and private areas of multi-unit housing are legal ways for landlords and management companies to protect property and tenants from the damage caused by secondhand smoke.*¹

2 Save Money

- Avoid the excess building maintenance costs caused by smoking:
 - Extensive cleaning when smokers vacate a residence.
 - Increased repainting.
 - More frequent rug and window treatment cleaning and replacement.
 - Repair or replacement of floors and countertops burned by cigarettes.

3 Protect Property and Lives

- Cigarettes are a leading cause of residential building fires.¹
- Cigarette-caused fires are the #1 reason for fire death in the US.²

- In New York, cigarette-caused fires kill 5 times more people than fires from other causes.³
- Discounts on fire, life and property insurance are offered by some companies to smoke-free buildings.⁴

4 Invest in the Demand

- In New York, 74% of non-smokers favor no-smoking policies where they live.⁵
- Many renters view smoke-free housing as a desirable amenity.
- 50% of NYC renters expressed a willingness to pay more to live in a smoke-free building (2005 survey).
- Smoke-free policies help to maintain property values:⁶
 - Apartments that smell of secondhand smoke are harder to rent.
 - Coops and condos are harder to sell.
- Promote your smoke-free property to realtors, consumers and in newspaper ads.

5 For the Health of it

- More than a nuisance or bad smell: Secondhand smoke is class 'A' carcinogen, like radon and asbestos, with more than 4,000 toxic chemicals that seep from unit to unit.⁷
- Among the many illnesses caused or made worse by SHS are: lung cancer, asthma, sinus infections, ear infections, chronic cough, sudden infant death syndrome and heart disease.⁸

6 Liability Protection

- Public tolerance for exposure to SHS at home appears to be rapidly decreasing as the hazards become known.⁹
- An increasing number of secondhand smoke and housing cases are being heard in the courts.¹⁰
- Tenants with pre-existing physical conditions aggravated by SHS may file complaints under the FHA (Fair Housing Act).¹¹
- Landlords, management companies, condo associations, coop owners and smokers are vulnerable to nuisance suits, warrant of habitability suits, quiet enjoyment suits and FHA complaints.¹²
- Adopting smoke-free building policies are legal and a way to avoid possible future secondhand smoke law suits.

■■■ **RECENT NYC CASE:** In 2006 (Poyck v. Bryant), a NYC judge ruled that tenants who broke a lease because of secondhand smoke exposure were not liable for \$12,000 in back rent. The landlord's failure to take action to protect the tenants from SHS was considered a 'breach of warrant of habitability,' guaranteed in every lease.

**indicates a definition or exception*

References and Resources

References

^{1,2,3} New York State Office of Fire Prevention and Control
Revised Regulatory Impact Statement (Published 9/3/03).

⁴ *Smoke Signals*. Report by Susan Schoenmarklin and Jacque Petterson, December 2007 - www.naahq.org.

⁵ The New York State Adult Tobacco Survey (ATS). Data collected between May and July 2007.

^{6,9} MI Smoke-Free Apartments: <http://www.mismokefreeapartment.org>
A Smoke-Free Apartment Policy is Legal and Protects Health While Saving Money.

^{7,8} *2006 U.S. Surgeon General's Report on Secondhand Smoke Exposure in the Home*. United States Department of Health and Human Services.

¹⁰ *Smoke Signals*. Report by Susan Schoenmarklin and Jacque Petterson, December 2007 - www.naahq.org.

^{11,12} MI Smoke-Free Apartments: <http://www.mismokefreeapartment.org>
Tenants' Rights; Your Risk.

^{*1} Exception: Rent-controlled and rent-stabilized units operate under a different set of regulations.

Resources

Annual Tobacco Attitudes and Actions Survey, Zogby International, for the NYC Coalition for a Smoke-free City, December 2005

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

Section 8 Housing, HUD & FHA, Susan Schoenmarklin

Smoke Free Maine: www.smokefreeforme.org

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

What's That Smell?, New York Times, August 8, 2006



www.SmokeFreeHousingNY.org



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.*¹
- 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.¹
- 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*² 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.*³

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*⁴ options:^{2,3,4}
 - 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.⁵
- 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.⁶

- Enforcement:

- In most cases smoke-free policies are self-enforcing. When not, smoking violations should be treated as any other lease or rule violations.⁵
- 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.⁷
 - Consult your attorney about eviction proceedings.

**indicates a definition or exception*

See "Coops & Condos Guide."

References and Resources

References

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

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

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

¹ Exception: Rent-controlled and rent-stabilized units operate under a different set of regulations.

² Exception: Section 8 lease changes can be made following amending the rules.

³ Definition: 'Adequate notice' is case dependent. Check with an attorney to confirm what's correct in your situation.

⁴ 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.

⁵ 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.

⁶ 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).

⁷ 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

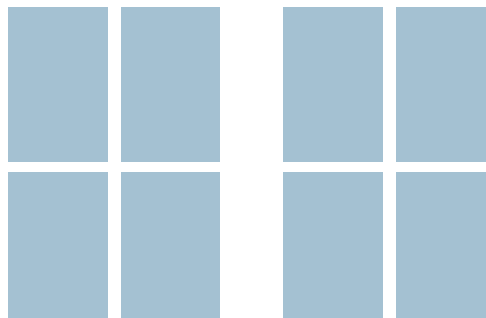


www.SmokeFreeHousingNY.org



Steps to Smoke-free Housing NY

TENANTS' GUIDE



Secondhand smoke exposure

While New York's smoke-free workplace laws protect workers from secondhand smoke exposure, no laws protect people from secondhand smoke (SHS) where they live. SHS drifts from smokers' apartments to those of non-smokers, forcing many apartment, coop, condo, and public housing residents to breathe secondhand smoke.

If you or your family are exposed to unwanted SHS from a neighboring tenant, try these tips to help combat the problem.

1 Know the facts

- Smoke drifting from lit tobacco products and/or exhaled by smokers seeps into the living spaces of other tenants and common areas of the building. SHS travels through lighting fixtures, cracks in walls, around plumbing, under doors and shared heating/ventilation.¹
- More than a nuisance or bad smell: Secondhand smoke is a class 'A' carcinogen, like radon and asbestos. Its toxicity warranted a 2006 report from the U.S. Surgeon General, which included a section on secondhand smoke exposure in the home.²
- Among the many illnesses caused or made worse by SHS are: lung cancer, asthma, sinus infections, ear infections, chronic cough, sudden infant death syndrome and heart disease.³
- Smoking is not a right guaranteed under the Constitution. You have a right to ask landlords/management companies to protect you from unwanted SHS and to expect reasonable action.⁴

- It's legal for landlords/management companies of private and public housing to adopt smoke-free building policies which protect your health and their property.¹

2 Document the problem

- Write down how often SHS enters your home, when it's noticeable, where it seems to come from and how it affects your family.
- Obtain a letter from a physician stating how the SHS is impacting you/your family's health.
- Find other neighbors also affected by the smoke who will join you to address the problem.

■■■ SPECIAL NOTE: If you have a serious, pre-existing condition made worse by secondhand smoke, like heart disease, Chronic Obstructive Pulmonary Disease, asthma, lung cancer, you may be eligible to file a Fair Housing Act (FHA) complaint, requiring landlords to provide you with 'reasonable accommodation'. (See "Fair Housing Act" fact sheet.)

3 Talk it Out

- Consider friendly ways to talk to the smoker. Offer solutions. Smokers are not always aware of their impact on neighbors.
- Phone, write or meet with your landlord/building management.
- If necessary, make an appointment. Provide documentation on health and SHS.

- List how the smoke is affecting you and ask the landlord for solutions. Offer solutions: like asking the smoker to smoke outside or reduce smoking.
- Follow-up with a letter documenting conversations with the landlord. Thank him/her/them for their time and ask for notification when something is done.

■■■ NYC: Smoking in common areas (lobbies, stairwells, hallways, elevators, laundry rooms, etc.) in all residential buildings with 10 or more units is illegal. Violations should be reported by calling 311.

4 Explore legal solutions

- Last resort: find an attorney who knows tenant law.
- Tenants are beginning to bring lawsuits regarding secondhand smoke, and some are winning.⁵
- The basis for a lawsuit could include: nuisance, quiet enjoyment breach and breach of habitability.
- Some cases can be filed by disabled persons under the Fairness in Housing Act.
- Caution: Law suits are costly, with no guarantee of winning and the results can be minor, like, 'you can break your lease and move without penalty.'

5 Advocate for Smoke-free Housing

- Gather support from neighbors to urge your landlord/building management to write a smoke-free policy into the lease (See "Making Your Building Smoke-free".)

**indicates a definition or exception*

References and Resources

References

¹ MI Smoke-Free Apartments: <http://www.mismokefreeapartment.org>
A Smoke-Free Apartment Policy is Legal and Protects Health While Saving Money.

^{2,3} *2006 U.S. Surgeon General's Report on Secondhand Smoke Exposure in the Home.* United States Department of Health and Human Services.

⁴ *There Is No Constitutional Right to Smoke*, Technical Assistance Legal Center.

⁵ *Smoke Signals.* Report by Susan Schoenmarklin and Jacque Petterson, December 2007 - www.naahq.org.

^{*1} Exception: Rent-controlled and rent-stabilized units operate under a different set of regulations.

Resources

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

New York State Housing Law: www.dhcr.state.ny.us/ora/ora.htm

Smoke Free Maine: www.smokefreeforme.org

The NYS Attorney General and Tenant Rights:
www.oag.state.ny.us/realestate/tenants_rights_guide.html

The Smoker Next Door: Handling Unwanted Tobacco Smoke In Apartments And Condominiums, Americans For Non-Smokers' Rights Foundation, July 2004

What's That Smell?, New York Times, August 8, 2006



www.SmokeFreeHousingNY.org



Steps to Smoke-free Housing NY

REALTORS' GUIDE

AS PUBLIC TOLERANCE for secondhand smoke exposure decreases, consumer demand for smoke-free apartments, coops and condos is rapidly increasing. Health and value-minded individuals and families want to live free from the annoyance and hazards of drifting secondhand smoke. They also understand that smoke-free properties have lower maintenance costs and higher value.

1 Capitalize on the Demand

- Consumers prefer smoke-free housing:
 - In New York, 74% of non-smokers favor no-smoking policies where they live.¹
 - Many renters view smoke-free housing as a desirable amenity.
 - In fact, in a 2005 survey, 50% of NYC renters expressed a willingness to pay more to live in a smoke-free building.²

2 Know the Value

- Smoke-free properties preserve their value:
 - Apartments that smell of secondhand smoke are harder to rent.
 - Smokey coops and condos are harder to sell.
- Smoke-free properties lower maintenance costs:
 - Less cleaning is needed when turning over a unit.
 - Less painting is required.
 - Decreased need to clean or replace carpets or window treatments.
 - Less floor and counter damage.
- Smoke-free properties reduce fire loss:
 - Cigarettes are a leading cause of residential building fires.³
 - Discounts on fire, life and property insurance are offered by some companies to smoke-free buildings.⁴
- Smoke-free policies are a means for landlords and management companies to protect property and tenants from the damage caused by secondhand smoke. And smoke-free policy adoption is legal.¹

3 Profit from Promotion

- Let consumers know that you represent smoke-free properties.²
- Add 'smoke-free' to the drop-down 'amenities selections' for consumers on your web-site.
- Create a special web section for smoke-free housing and/or list properties as smoke-free.
- Include special 'smoke-free housing' sections in brochures and newspaper ads.
- Remind prospective sellers and buyers of the added value.

**indicates a definition or exception*

References and Resources

References

¹ The New York State Adult Tobacco Survey (ATS). Data collected between May and July 2007.

² *Annual Tobacco Attitudes and Actions Survey*, Zogby International for the NYC Coalition For A Smoke-free City, December 2005.

³ Revised Regulatory Impact Statement, New York State Office of Fire Prevention and Control (Published 9/3/03).

⁴ *Smoke Signals*. Report by Susan Schoenmarklin and Jacque Petterson, December 2007 www.naahq.org.

*¹ Exception: Rent-controlled and rent-stabilized units operate under a different set of regulations.

*² 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.

Resources

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

MI Smoke-Free Apartments Factsheet
www.mismokefreeapartment.org

Section 8 Housing, HUD & FHA, Susan Schoenmarklin

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



www.SmokeFreeHousingNY.org

