



Smokefree Multi-Unit Housing Policies

Strategies to Support Resident Compliance

This fact sheet discusses voluntary,¹ proactive actions landlords can take to facilitate compliance with a smokefree multi-unit housing policy among residents with disabilities.

Smokefree multi-unit housing policies affect all tenants living on the premises. Overall, these policies provide significant health benefits by greatly reducing the amount of secondhand smoke to which residents are exposed.² In addition, smoking is a fire hazard.³ By facilitating compliance among all tenants, landlords improve tenant and property safety.

But it's important to remember that because smokefree housing policies require tenants to smoke outside the home, some tenants who smoke may face difficulties complying with the policy. For example, some tenants may have physical impairments that affect their ability to go outside to smoke. Similarly, tenants with a cognitive disability may forget that they are required to smoke outside. In these ways, a smokefree policy may pose particular compliance challenges for residents with disabilities.

Ensuring compliance among residents with disabilities is important because a smokefree policy will not succeed without consistent observance from all residents. Furthermore, tenants with disabilities deserve to be able to meet the demands of the smokefree policies while also avoiding the potential adverse consequences of non-compliance.



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Tenants with Disabilities and Disability Rights Law

Disability rights laws such as the Americans with Disabilities Act (ADA), the Rehabilitation Act, the federal Fair Housing Act (FHA), the California Fair Employment and Housing Act (FEHA), and the Unruh Civil Rights Act protect tenants with disabilities from discrimination in housing.⁴ In cases where a tenant or prospective tenant has a legally recognized disability that interferes with their ability to fully benefit from the tenancy, landlords must consider “reasonable accommodations” in rules, policies, practices, or services to ensure the tenant has an equal opportunity to use and enjoy their housing unit.⁵ Common examples of reasonable accommodations are waiving a pet-free policy to allow a vision-impaired tenant to have a service dog, or providing a sign language interpreter to a hearing impaired person during their application process.

Some tenants who smoke because of an addiction to nicotine have attempted to argue that they should receive a reasonable accommodation that would allow them to continue to smoke on the premises, despite a smokefree policy. **But, because smoking and nicotine addiction are not legally recognized disabilities, landlords have no legal obligation to make exceptions for people simply because they claim they need to smoke.**^{6,7}

Similarly, tenants with legally recognized disabilities, such as impaired mobility, have at times requested exemptions from smokefree housing policies as an accommodation to their disability. Landlords are not legally obligated to grant this request. **Because drifting secondhand smoke poses a serious health hazard to other tenants, an accommodation that exempts any tenant, even a resident with disability, from a smokefree policy should not be considered “reasonable.”** This is especially true given that there are alternative means for using tobacco or nicotine (e.g., nicotine gum, nicotine patches, etc.) that would not expose non-smoking tenants to secondhand smoke.⁸

In fact, existing **disability laws may obligate landlords to accommodate the needs of disabled tenants who are harmed by exposure to secondhand smoke.** For more details see ChangeLab Solutions’ fact sheet *“How Disability Laws Can Help Tenants Suffering from Drifting Tobacco Smoke.”*⁹ For example, a tenant with chronic obstructive pulmonary disorder (COPD) may experience a severe worsening of symptoms if he or she is exposed to secondhand smoke coming from a neighbor’s unit,¹⁰ and may be entitled to what is called a reasonable accommodation to their unit in order to reduce exposure to secondhand smoke.



Strategies to Support Compliance with Smokefree Policies

Landlords can take proactive, voluntary steps to ensure that all tenants who smoke can successfully comply with a smokefree policy. Based on research and prior experience, ChangeLab Solutions recommends the following strategies to help facilitate compliance.

- **Advanced Notice:** When a landlord implements a voluntary smokefree policy on a property where smoking was previously allowed, a landlord may grant more advanced notice than the legally required amount. For example, landlords may include smokefree lease terms immediately as each lease is renewed or rolls over to month-to-month. In some cases, this could leave tenants with as little as 30 days notice that smoking is no longer allowed on the property. To give tenants a longer period of time to prepare themselves for the new policy, many landlords instead choose to set a future date for the new smokefree policy to become effective that is at least one year in advance. This allows all tenants equal time to prepare regardless of when the smokefree policy was incorporated into their lease.¹¹
- **Clear Communication:** Residents with disabilities should receive notices or documents regarding the smokefree policy in a way they can understand or read (e.g., at an appropriate reading level or in Braille).

- Health/Cessation Resources:** 70% of tobacco users, including individuals with disabilities, would like to stop smoking.¹² Landlords can help tenants who smoke by including informational health pamphlets in tenant notices (e.g., a pamphlet on quitting tobacco). Additionally, landlords can contact their local health department to request assistance or information. Many resources such as nicotine replacement products, medication, and counseling are also available at low or no cost through government programs.¹³ Notably, the Illinois¹⁴ and Michigan¹⁵ Health Departments provide tobacco cessation programs specifically tailored to smokers with disabilities.
- Multi-step Enforcement Policy:** Eviction or threat of eviction should not be the consequence of a first-time failure to comply with a smokefree policy, especially if a resident's failure to comply may have been due to a cognitive, emotional, or physical disability. Instead, multi-phase enforcement policies which include incremental penalties are more effective and fair. For example, a multi-step enforcement policy could include an initial notice of violation and a reminder of the policy (by person and/or mail), an in-person meeting as a second warning of potential eviction, and the third step could be the landlord's decision to end the lease. The Boston Housing Authority uses a five-step¹⁶ enforcement policy and an internal review showed that the Boston Housing Authority has not had to go past the third step of its enforcement policy.¹⁷ If residents are granted a chance and proper warning, residents are likely to abide by a smokefree multi-unit policy.
- Designated Smoking Areas:** Landlords are under no legal obligation to provide smoking areas on their property, however some landlords choose to designate an outdoor portion of their property as a smoking area. If provided, designated smoking areas should be ADA accessible. In choosing to designate a smoking area, location is important. A designated smoking area should be far enough away from doors, windows, or vents so that smoke does not drift into the building, and so that people entering or exiting the property are not exposed to smoke as they arrive or leave.¹⁸

Conclusion

Smokefree multi-unit housing policies protect the health of everyone who lives in or visits apartment buildings.

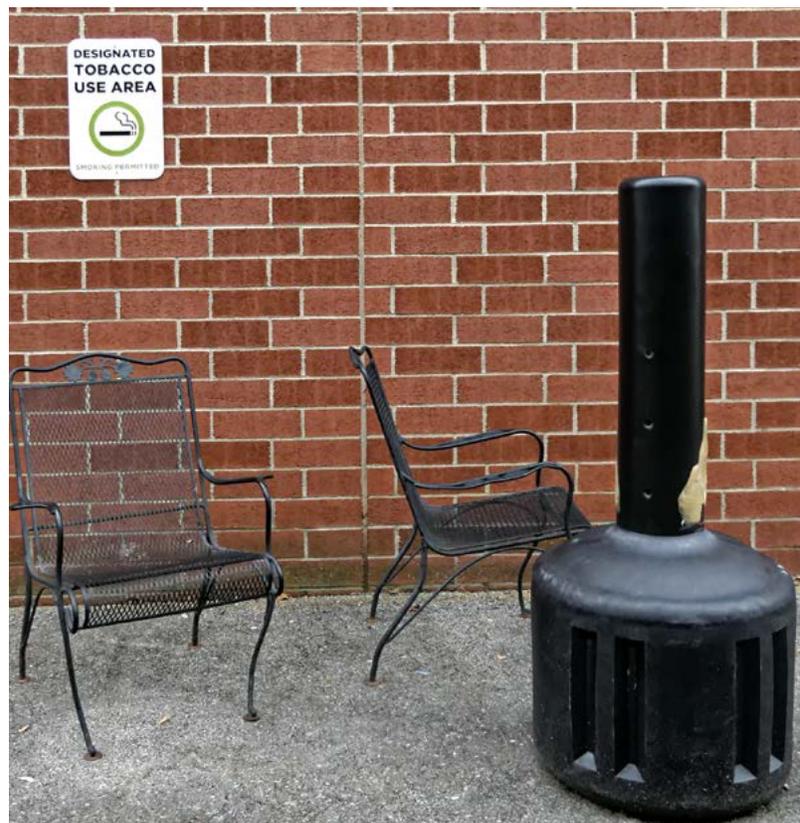
Although tenants who smoke, in particular those with disabilities, may have a difficult time complying with a smokefree policy, landlords aren't legally obligated to make exceptions to permit smoking on the property. Indeed, landlords may have a legal obligation to accommodate disabled tenants if they have a disability that is triggered or worsened by exposure to secondhand smoke coming from a neighbor's unit.

Still, there are steps landlords can and do take to make it easier for their residents to comply with a smokefree policy. Some strategies include: providing an extended period for tenants to prepare for the new policy, providing clear notices, connecting tenants to resources that can help them to quit or to manage their smoking, multi-step enforcement policies, and, in some cases, providing an outdoor designated smoking area where tenants may go to smoke, so long as smoke from the area doesn't enter nonsmoking areas of the property.

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- ¹ The suggested strategies are not legally required, but instead reflect voluntary actions by property owners to improve the efficacy of their smokefree policy.
- ² Mills AL, Messer K, Gilpin EA, et al. "The Effect of Smokefree Homes on Adult Smoking Behavior: A Review." *Nicotine & Tobacco Research*, 11 (10): 1131-1141, 2009. Available at: www.ncbi.nlm.nih.gov/pubmed/19633273
- ³ Hall JR. U.S. Smoking-Material Fire Problem. Quincy, MA: National Fire Protection Association, 2012, p. 1. Available at: www.nfpa.org/assets/files/PDF/OS.Smoking.pdf
- ⁴ See Fair Housing Act (FHA), 42 U.S.C. § 3601 et seq.; California Fair Employment and Housing Act (FEHA), Cal. Gov't Code § 12900 et seq. The Fair Housing Act provides protections for people with disabilities who live in rental housing (public or private). 42 U.S.C. §3604(f). People with disabilities who live in federally-funded housing have further protections. See Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq. and Title 2 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. The California Fair Employment and Housing Act provides protections for people with disabilities living in all types of housing accommodations except in a single family home where only one room is rented. Gov't Code § 12927(c)(2)(A). See also Unruh Civil Rights Act, Civil Code § 54.1(b)(1-2).
- ⁵ *Hubbard v. Samson Management Corp.*, 994 F. Supp. 187, 191-192 (S.D.N.Y. 1998).
- ⁶ *Brashear v. Simms*, 138 F. Supp.2d 693 (D. Md. 2001).
- ⁷ ChangeLab Solutions. There is No Constitutional Right To Smoke (CA Version). April 2005. Available at: www.changelabsolutions.org/publications/no-right-to-smoke-CA
- ⁸ *Sutton v. United Airlines*, 527 U.S. 471 (1999).
- ⁹ ChangeLab Solutions. *How Disability Laws Can Help Tenants Suffering from Drifting Tobacco Smoke*. June 2008 (revised August 2009). Available at: www.changelabsolutions.org/publications/disability-laws-tobacco-smoke
- ¹⁰ US Department of Health and Human Services, Centers For Disease Control and Prevention. Health Effects of Secondhand Smoke. 2012. Available at: www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/index.htm
- ¹¹ For more information on implementing a smokefree multi-unit housing policy, see: ChangeLab Solutions. *Smokefree Multi-Unit Housing (Roadmap & Brochure): Approaches to Protect Tenants from Secondhand Smoke*. Accessed on June 18, 2014. Available at: www.changelabsolutions.org/publications/SFMUH-roadmap; ChangeLab Solutions. *How to Make a Condo Complex Smokefree*. July 2008 (revised September 2011). Available at: www.changelabsolutions.org/publications/condo-complex-smokefree; ChangeLab Solutions. *A New Lease on Life: Landlords' Right to Make Properties Smokefree*. December 2013. Available at: www.changelabsolutions.org/publications/landlords-right-smokefree-properties. Additional resources available at: www.changelabsolutions.org/publications/landlords-right-smokefree-properties
- ¹² U.S. Department of Health and Human Services, *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General Executive Summary*. 2014, page 846, available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf
- ¹³ The webpage for California Smokers' Helpline is a helpful starting place for health and cessation resources in California. Available at: www.nobutts.org/ and for a list of local resources visit www.nobutts.org/CountyListings.aspx. In California, "Local Lead Agencies" (LLAs) coordinate tobacco prevention efforts in local cities and counties. To find your local LLA see: California Department of Public Health, California Tobacco Control Program. "Local Health Department Programs." Accessed on June 18, 2014. Available at: www.cdph.ca.gov/programs/tobacco/Pages/LocalHealthDepartmentPrograms.aspx. The American Lung Association's California office also offers helpful information on health and cessation resources, www.lung.org/associations/states/california/programs/
- ¹⁴ See the "Illinois Disability and Health Program" web page for more information about Illinois' health and disability programs. The link also lists program contacts if further information is needed. Accessed June 17, 2014. Available at: www.idph.state.il.us/idhp/index.htm
- ¹⁵ Michigan Department of Community Health. *Everyone Has the Right To Be Healthy: Information for People with Disabilities and Their Caregivers on How to Quit Tobacco*. Available at: www.midisabilityhealth.org/documents/Tobacco_brochure.pdf
- ¹⁶ Boston's five-step enforcement policy includes: (1) in-person policy reminder; (2) meeting and warning; (3) written notice; (4) reminder of policy; and (5) decision to pursue court.
- ¹⁷ Gail Livingston, Personal Communication, August 9, 2013.
- ¹⁸ Additional information on creating designated smoking areas available at (see especially section 2, pp.13-14): ChangeLab Solutions. *Smokefree Housing Ordinance: A Model California Ordinance Regulating Smoking in Multi-Unit Residences (with Annotations)*. April 2005 (revised December 2012). Available at: www.changelabsolutions.org/publications/model-ord-smokefree-housing

