

SMOKE-FREE IS LEGAL PROFITABLE EASY

A toolkit for property managers and owners to
make their multi-unit buildings smoke-free.



**RESPIRATORY
HEALTH
ASSOCIATION®**

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Courtesy of Live Smoke Free, the Association for Nonsmokers—Minnesota
www.mnsmokefreehousing.org

This guide is provided for educational purposes only and is not to be construed as legal opinion or a substitute for obtaining legal advice from an attorney. Readers with questions about the application of the law to specific facts are encouraged to consult legal counsel.

**SMOKE-FREE IS
LEGAL**

**SMOKE-FREE IS
PROFITABLE**

**SMOKE-FREE IS
EASY**

Everyone deserves to breathe clean air, especially at home.

In a multi-unit building, 35 to 65 percent of the air in any given unit is shared air from other units and common areas. No air ventilation system or air purifier can remove all of the toxins found in cigarette smoke, so residents are breathing in what their neighbors are breathing out.

Living in a building where smoking indoors is allowed increases the risk of heart attacks, stroke, lung cancer and early death. Babies who breathe secondhand smoke are more likely to die from SIDS (crib death), and children who are exposed to secondhand smoke have an increased risk of asthma attacks and infections caused by tobacco smoke, including bronchitis, pneumonia and ear infections.

Going smoke-free doesn't mean that you prohibit smokers from living in your building; it simply means that smoking is not permitted in any indoor units or common areas. Implementing a smoke-free policy is an important way to encourage healthy living and ensure a safer living environment for your residents.

The market for smoke-free housing is growing. Renters are becoming increasingly aware of the dangerous health effects of smoking and secondhand smoke. Health-conscious and eco-friendly renters want to live in smoke-free buildings. A Respiratory Health Association poll of Chicago renters found that 44 percent were willing to pay more to live in a smoke-free environment.

This toolkit provides the information you need to start transitioning your property to smoke-free. For more information, visit lungchicago.org or contact Matt Maloney at (312) 628-0233 or mmaloney@lungchicago.org.

Smoke-free housing is endorsed by the U.S. Department of Housing and Urban Development, the American Academy of Pediatrics, Sudden Infant Death Services of Illinois and Apartment People.

WHY GO SMOKE-FREE?

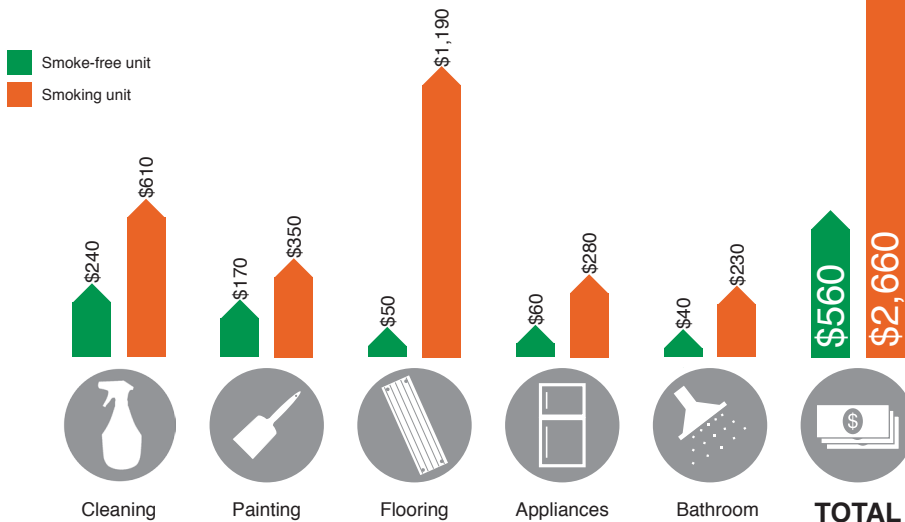
It's legal.

People who smoke are not a protected legal class, so there is no "right to smoke" under any U.S. law. In fact, the U.S. Department of Housing and Urban Development encourages both public and private housing providers to implement smoke-free policies.

Property managers and associations are empowered by federal and Illinois law to make smoke-free policies for their properties just as they can make rules regarding pets or noise: to create a better, safer living environment.

It's profitable.

Going smoke-free protects your investment and your residents. Smoking is a leading cause of residential fires, and allowing smoking increases turnover costs.



Data reflects surveys from housing authorities and subsidized housing facilities collected and reported by Smoke-Free Housing New England, 2009.

It's easy.

Smoke-free buildings are in demand in Chicago and across the U.S. Residents prefer smoke-free environments and many already don't allow smoking in their homes, so smoke-free policies are largely self-enforcing. Plus, a majority (59 percent) of Chicago renters say they would be more likely to rent in a smoke-free building.

BY THE NUMBERS

443,000

deaths are caused by smoking and exposure to secondhand smoke in the U.S. each year.

1 in 5

Chicagoland residents are estimated to be affected by lung diseases such as asthma, COPD and lung cancer.

70

percent of smokers say they want to quit.

44

percent higher asthma rates were recorded among children who lived with a smoker.

35 to 65

percent of air in any given unit is shared with air from other units and common areas.

44

percent of Chicago renters polled say they would be willing to pay more to live in a smoke-free building.

MAKING THE TRANSITION

1 MAKE A PLAN.

Create a policy and timeline that work for your property. Consider the measures and tools necessary to implement and communicate the policy, such as enforcement strategies and signage.

2 INFORM YOUR RESIDENTS.

Send a notification to your residents to let them know when the building will be going smoke-free and include information on the benefits of smoke-free housing and resources to help people quit smoking. Provide a feedback form so that anyone who currently smokes in the building can notify you – that way you can anticipate residents who may need extra time to transition. You can also hold a meeting with residents to address their questions.

3 AMEND ALL LEASES.

Update new leases or other governing documents to include the smoke-free policy and add it to existing agreements whenever possible. (You may have to delay implementation in certain units until lease renewal.)

4 PROMOTE YOUR STATUS.

Make it clear to current and prospective residents that the property is smoke-free. Keep signs or notices in community spaces such as bulletin boards, and note that the property is smoke-free in any marketing.

SAMPLE TIMELINE

Day 1

Review the policy and rollout documents with staff and managers.

Day 3

Order necessary signage, compile community resources for smoking cessation.

Day 10

Send out notification to residents that the building will go smoke-free on a set date, ask for information on renters who smoke in their units.

Day 20

Review responses to notification, log units where people smoke, send follow-up to residents who did not respond.

Day 25

Hold a meeting to address resident questions and further explain the policy.

Day 30

Send out a reminder that the building will be going smoke-free in 30 days, and post reminders in common areas.

Day 60

Begin enforcing the policy.

ENGAGE YOUR RESIDENTS

Giving residents an active and meaningful role in planning, operation and governance is a proven way to drive business. Engaging residents in the crafting of your smoke-free policy will help establish tobacco-free lifestyles as a social norm, will make your transition to smoke-free easier on residents and management alike, and will ultimately result in better health outcomes.

What is resident engagement?

Resident engagement is residents, owners and staff collaborating to improve both business and quality of life. It is exemplified by shared power, responsibility and a bidirectional flow of information. In other words, the resident becomes an active stake holder in planning, outreach and execution.

How to engage residents

Engaging residents will build support and prepare residents for the transition to smoke-free housing. It can mean partnering, including, informing, discussing, educating, gathering information and supporting residents.

Realize that there are different levels of engagement. It is possible that only a small percentage of residents will become involved; however, complete participation isn't necessary for resident engagement to be successful. Methods to involve residents include:

- **Surveying** residents to assess how many people smoke and how many favor a smoke-free policy. A survey can provide information that is helpful for implementation and is a useful first step. The majority of your residents may already favor a smoke-free policy!
- Forming a **resident advisory group** to assist with the process. The group could perform resident outreach, conduct surveys and provide peer-to-peer education about the policy change. The advisory group could also determine the best implementation methods.
- **Educating** residents on the rationale for the transition to smoke-free: what is happening, why it is happening, and how it will affect them. Remember, simple face-to-face contact pays dividends!
- Promoting **cessation services**. A smoke-free housing policy may give your residents who smoke a reason to quit, but you can help them along by promoting established, free cessation programs.

Ways to engage

- Social Media
- Flyers and newsletters
- Written or online surveys
- Presentations from health officials and/or community organizations
- Dialogue with current smoke-free properties
- Resident advisory boards
- Promoting cessation services

Best practices

- Create an atmosphere of positivity
- Stay accessible
- Let their voices be heard
- Communicate clearly
- Include and respect all peoples
- Be honest
- Follow up promptly

Share successes

Share successes of resident engagement with residents, staff, local organizations, and other housing networks. Publicizing your successes is a way to let residents know that they have made a difference. Empowered residents will stay engaged for future initiatives.

FREQUENTLY ASKED QUESTIONS

WHY IS THERE A GROWING CONCERN ABOUT SECOND-HAND SMOKE IN PLACES OF RESIDENCE?

The U.S. Centers for Disease Control and Prevention states that 50,000 deaths occur annually as a result second-hand smoke related illnesses, such as heart disease, lung cancer, asthma and other respiratory problems. Second-hand smoke is a carcinogen, a substance with no safe level for exposure. The only way to prevent these outcomes with certainty is to forbid smoking in workplaces, public spaces, and residences.

WHAT DO I HAVE TO GAIN FROM A SMOKE-FREE POLICY?

A smoke-free policy will help protect your property and residents from smoke damage and reduce risk of fires. You will save money on turnover expenses because apartments will cost less to clean, repair, and repaint. As more people have become aware of the health hazards of secondhand smoke, smoke-free has become an amenity that renters look for when searching apartments.

IS A SMOKE-FREE POLICY LEGAL?

Yes. It is legal to prohibit smoking at your properties, inside and out. It is your property and you have the right to set reasonable policies to protect it. It is not discrimination to prohibit smoking. Keep in mind, a smoke-free policy is not a no-smoker policy. Smoking is a behavior, not an inborn characteristic. It is not a disability and smokers are not a protected class. As when changing any policy, be sure to follow landlord-tenant law (give notice, have tenants sign their agreement with the policy change, apply it equally, etc.).

WILL I LOSE INTERESTED TENANTS IF I INSTITUTE A SMOKE-FREE POLICY?

The majority of renters want to live in a smoke-free residence. Recent surveys commissioned by Respiratory Health Association found that 88 percent of Chicago's renting population thinks exposure to secondhand smoke is a serious health hazard and a significant majority (62 percent) would be less likely to rent in a building or unit that smells like smoke. In addition, 44 percent of all renters would be willing to pay more to live in a smoke-free building.

WILL I LOSE MONEY IF I IMPLEMENT A SMOKE-FREE POLICY?

No, quite the opposite. Smoke-free policies save you money. A unit where smoking is allowed can cost you two to six times as much to turn over as a smoke-free unit would cost. This translates to anywhere between \$400 to \$3,000 more than the average cost per turnover due to increased labor, paint, carpeting, laminate and furniture replacement. A smoke-free policy may also help save money on property casualty insurance and will most certainly reduce your risk of fire. According to the U.S. Centers for Disease Control and Prevention and the National Fire Protection Association, smoking-related fires are the number one cause of home fire death and one of the top causes of residential property damage.

FREQUENTLY ASKED QUESTIONS

CAN I ADOPT A SMOKE-FREE POLICY IN HUD-ASSISTED HOUSING?

Yes. In 2009 and 2010, HUD issued notices (PIH-2009-21 and H-2010-21) strongly encouraging public housing authorities and owners and managers participating in Multifamily Housing rental assistance programs to implement smoke-free housing policies. You can adopt a smoke-free policy for new tenants at HUD-assisted housing, but you may have to “grandfather” existing tenants until their leases renew. If you want to change the model lease, you will have to get HUD approval, but changes can be made to “House Rules” without HUD approval. In addition, all new policies must comply with any local fair housing and civil rights laws.

MY TENANTS ARE COMPLAINING ABOUT SECONDHAND SMOKE. WHAT CAN I DO ABOUT IT UNTIL THE SMOKE-FREE POLICY GOES INTO EFFECT?

Ask tenants to smoke outside or away from the building. You could try to reduce the secondhand smoke drifting between your tenants’ units by sealing the units off or by improving the ventilation, but be aware that neither will eliminate the problem. The Fair Housing Act may require that residents with disabilities made worse by exposure to second-hand smoke be reasonably accommodated.

DO SMOKE-FREE POLICIES WORK ONLY IN HIGHER END PROPERTIES?

No. Many local housing managers are already enjoying success with smoke-free policies at all kinds of properties.

HOW CAN I ENFORCE A SMOKE-FREE POLICY IN MY BUILDING?

In most worksites and other public areas, little policing is needed to ensure that the policy is followed. The policy should be discussed with your Leasing and Housing Attorney, and it should be known that after instituting the policy you may be considered liable to keep the building smoke-free. The same policies you would use for eviction for other rules violations could be applicable, so long as you have outlined the smoke-free policy properly on the lease. This may involve giving a set number of warnings before threat of eviction. In general, if your tenants realize you are determined to keep your property smoke-free, most will follow the policy.

ADDITIONAL RESOURCES

Respiratory Health Association

www.lungchicago.org

Chicago Department of Public Health

www.cityofchicago.org/city/en/depts/cdph.html/

Campaign for Tobacco Free Kids

“The Toll of Tobacco in Illinois”

www.tobaccofreekids.org/facts_issues/toll_us/illinois

Live Smoke Free

www.mnsmokefreehousing.org

National Fire Prevention Association

www.nfpa.org

Tobacco Control Legal Consortium

“Smoke-Free Policies for Multi-Unit Rental Apartment Buildings in Illinois”

<http://bit.ly/SmokefreeApartmentsFactSheet>

United States Department of Health and Human Services

Be Tobacco Free

www.betobaccofree.gov

“Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General”

www.surgeongeneral.gov/library/reports/secondhandsmoke/report-index.html

United States Department of Housing and Urban Development

Notice: H-2010-21 – Optional Smoke-Free Housing Policy Implementation

<http://portal.hud.gov/hudportal/documents/huddoc?id=10-21hsgn.pdf>

Notice: PIH-2012-25 – Smoke-Free Policies in Public Housing

<http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-25.pdf>

Smoke-Free Housing Toolkits

<http://portal.hud.gov/hudportal/HUD?src=/smokefreetoolkits1>

United States Environmental Protection Agency

“Smoke-Free Homes”

www.epa.gov/smokefree

SIGNAGE

WELCOME
to our
**SMOKE-FREE
FACILITY**



Smoking is not permitted in any residential units or common areas.

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To download free smoke-free signage and other smoke-free housing materials, visit www.lungchicago.org

APPENDICES

Help your residents stop smoking

Give them tips to help them quit successfully.

- 1 Set a date.**
Quitting smoking is one of the most important health decisions a person can make, and setting a quit date is key to starting a smoke-free life.
- 2 Stay motivated.**
Make a list of reasons to quit and carry it with you. Focus on those reasons when you have the urge to smoke.
- 3 Change your routine.**
Cut out smoke breaks and remove temptations by changing your routine as much as possible. For example, take a new route to work or drink tea instead of coffee.
- 4 Reward yourself for not smoking.**
Set short- and long-term goals. Have a specific reward for each milestone you reach.
- 5 Don't be discouraged.**
If you give in to a craving, don't let it get you down. Examine what went wrong, learn from it and try again!

Your Help Matters.

- 70% of people who smoke say they want to quit.
- 443,000 people in the United States die each year from smoking-related illnesses.
- Counseling on smoking cessation increases successful quit rates.
- Quitting smoking reduces the risk of COPD, lung cancer, heart attack and stroke.

Cessation resources

**COURAGE
TO QUIT**SM

ex[®]

**ILLINOIS TOBACCO
QUITLINE**
ILLINOIS DEPARTMENT OF PUBLIC HEALTH
AMERICAN LUNG ASSOCIATION OF ILLINOIS
Where Quitters Always Win!

IN-PERSON SUPPORT

Courage to Quit classes include information, practice skills and support to help people reach their smoke-free goals. Free local group and individual classes are ongoing.

LUNGCHICAGO.ORG/CTQ

ONLINE SUPPORT

EX is a free online program that helps people re-learn life without cigarettes through personalized quit plans and support from smokers and ex-smokers.

BECOMEANEX.ORG

PHONE SUPPORT

The Illinois Tobacco Quitline's cessation counselors customize a quit smoking program for each individual, provide quit kits and information, and follow-up during the quit-smoking process.

[1-866-QUIT YES](tel:1-866-QUIT-YES)




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SMOKE-FREE FACILITY CHECKLIST

Date	Task	
	Internal review of lease, rules and regulations, other research regarding notice and implementation.	
	Review proposed change to smoke-free policy with staff and managers.	
	Contact representative state agency or local government agency regarding smoking cessation programs.	
	Review timeline for implementation.	
	Send program managers to smoking cessation training.	
	Review and identify designated smoke area(s) that comply with the smoke-free facility policy.	
	Order appropriate signage for smoking areas, building, etc.	
	Prepare lease addendum, resident letter, FAQs and building notices.	
	Advance notice to agency partners, alderman, state reps, other affected constituents.	
	Notice to existing residents regarding smoke-free initiative (letter, FAQs, etc.).	
	Issue press release.	
	Begin using new lease addendum forms for all new tenants.	
	All designated smoking areas established and shelters installed.	
	Second notice of implementation of smoke-free initiative (letter and copy of new policy).	
	Assemble Quit Smoking package for resident smokers (classes may be scheduled through Respiratory Health Association).	
	Offer free smoking cessation programs or links to smoking cessation.	
	Implementation of smoke-free facilities.	



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SMOKING QUESTIONNAIRE

_____ is working to create a healthy living environment for all residents. As part of this effort we are exploring a smoke-free building. We would like to learn your opinions on the issue. Please complete the survey below and return it to:

NAME: _____

UNIT #: _____

1.	Do any residents of your unit smoke cigars or cigarettes inside the unit?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
2.	In the past year, has tobacco smoke gotten into your unit from somewhere else in or around the building? (If NO, SKIP QUESTION 3)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
3.	If yes, does the tobacco smoke bother you or make you feel sick?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Sometimes
4.	Are you aware that secondhand smoke is bad for your health?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not sure
5.	Does anyone in your unit have a chronic illness such as asthma, chronic bronchitis, heart disease, diabetes, cancer or is a cancer survivor?	<input type="checkbox"/> NO individual has a chronic condition	<input type="checkbox"/> ONE individual has a chronic condition	<input type="checkbox"/> MORE THAN ONE individual has a chronic condition
6.	Would you prefer to live in a building that is completely smoke-free (i.e. does not allow smoking in any of the units, common areas or other indoor spaces)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not sure
7.	Would you attend a meeting to hear the results of this survey and learn more about this topic?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not sure

Comments: _____

Thank you. The results of this survey will help us decide how to best address this issue.



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Model Smoke-Free Lease Addendum



Attorney Douglas J. Carney, of Hanbery, Neumeyer & Carney, P.A., prepared the initial version of this Model Lease Addendum. He received ongoing advice, consultation, and recommendations from a legal advisory committee that included attorneys who regularly advise property owners and managers, who serve as tenant attorneys and advocates, or who advise public housing agencies. Representatives from Center for Energy and Environment and Association for Nonsmokers-Minnesota were also on the committee. The modification about where smoking is allowed (Section 3) was included by Initiative for Smoke-Free Apartments. The addition of language addressing electronic cigarettes was added by Warren Orland of the Public Health Law Center.

Tenant and all members of Tenant's family or household are parties to a written lease with Landlord (the Lease). This Addendum states the following additional terms, conditions and rules which are hereby incorporated into the Lease. A breach of this Lease Addendum shall give each party all the rights contained herein, as well as the rights in the Lease.

- 1. Purpose of No-Smoking Policy.** The parties desire to mitigate (i) the irritation and known health effects of secondhand smoke; (ii) the increased maintenance, cleaning, and redecorating costs from smoking; (iii) the increased risk of fire from smoking; and (iv) the higher costs of fire insurance for a non-smoke-free building;
- 2. Definitions:**
 - Smoking.** The term "smoking" means inhaling, exhaling, breathing, or carrying any lighted or heated cigar, cigarette, or other tobacco product or plant product in any manner or in any form. Smoking also includes use of an electronic cigarette.
 - Electronic Cigarette.** The term "electronic cigarette" means any electronic device that provides a vapor of liquid nicotine and/or other substances to the user as she or he simulates smoking. The term shall include such devices whether they are manufactured or referred to as e-cigarettes, e-cigars, e-pipes or under any product name.
- 3. Smoke-Free Complex.** Tenant agrees and acknowledges that the premises to be occupied by Tenant and members of Tenant's household have been designated as a smoke-free living environment. Tenant and members of Tenant's household shall not smoke anywhere in the unit rented by Tenant, or the building where the Tenant's dwelling is located or in any of the common areas or adjoining grounds of such building or other parts of the rental community, nor shall Tenant permit any guests or visitors under the control of Tenant to do so. *[If you provide an outdoor smoking area, specify where it is here.]*
- 4. Tenant to Promote No-Smoking Policy and to Alert Landlord of Violations.** Tenant shall inform Tenant's guests of the no-smoking policy. Further, Tenant shall promptly give Landlord a written statement of any incident where tobacco smoke is migrating into the Tenant's unit from sources outside of the Tenant's apartment unit.
- 5. Landlord to Promote No-Smoking Policy.** Landlord shall post no-smoking signs at entrances and exits, common areas, hallways, and in conspicuous places adjoining the grounds of the apartment complex.
- 6. Landlord Not a Guarantor of Smoke-Free Environment.** Tenant acknowledges that Landlord's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, do not make the Landlord or any of its managing agents the guarantor of Tenant's health or of the smoke-free condition of the Tenant's unit and the common areas. However, Landlord shall take reasonable steps to enforce the smoke-free terms of its leases and to make the complex smoke-free. Landlord is not required to take steps in response to smoking unless Landlord knows of said smoking or has been given written notice of said smoking.

- 7. Other Tenants are Third-Party Beneficiaries of Tenant's Agreement.** Tenant agrees that the other Tenants at the complex are the third-party beneficiaries of Tenant's smokefree addendum agreements with Landlord. (In layman's terms, this means that Tenant's commitments in this Addendum are made to the other Tenants as well as to Landlord.) A Tenant may sue another Tenant for an injunction to prohibit smoking or for damages, but does not have the right to evict another Tenant. Any suit between Tenants herein shall not create a presumption that the Landlord breached this Addendum.
- 8. Effect of Breach and Right to Terminate Lease.** A breach of this Lease Addendum shall give each party all the rights contained herein, as well as the rights in the Lease. A material breach of this Addendum shall be a material breach of the lease and grounds for immediate termination of the Lease by the Landlord.
- 9. Disclaimer by Landlord.** Tenant acknowledges that Landlord's adoption of a smokefree living environment and the efforts to designate the rental complex as smoke-free do not in any way change the standard of care that the Landlord or managing agent would have to a Tenant household to render buildings and premises designated as smokefree any safer, more habitable, or improved in terms of air quality standards than any other rental premises. Landlord specifically disclaims any implied or express warranties that the building, common areas, or Tenant's premises will have any higher or improved air quality standards than any other rental property. Landlord cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke. Tenant acknowledges that Landlord's ability to police, monitor, or enforce the agreements of this Addendum is dependent in significant part on voluntary compliance by Tenant and Tenant's guests. Tenants with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that Landlord does not assume any higher duty of care to enforce this Addendum than any other landlord obligation under the Lease.

LANDLORD

TENANT

Optional Paragraph for Existing Rental Communities that Adopt "No-smoking Policies"

- 10. Effects on Current Tenants.** Tenant acknowledges that current tenants residing in the complex under a prior lease will not be immediately subject to the No-smoking Policy. As current tenants move out, or enter into new leases, the smoke-free policy will become effective for their unit or new lease.