

FOR PROPERTY
MANAGERS AND OWNERS

Smoke-Free Housing **TOOLKIT**

Your guide to creating a healthy,
smoke-free living environment for your residents.



www.ohiosmokefreehousing.com

Developed by the Tobacco Public Policy Center at Capital University Law School



WELCOME

to the Tobacco Public Policy Center's Smoke-Free Housing Toolkit.

And congratulations on making the decision to go smoke-free!

Inside you'll find valuable tips and tools you can use to make your property smoke-free. Whether you are opening a new property or implementing a new policy at an existing complex, going smoke-free is the healthy thing to do—for your residents, and your bottom line.

THIS TOOLKIT INCLUDES

- Implementation tips.
 - Strategies and advice for going smoke-free in new and existing buildings.
- Letter to residents.
 - A sample letter to existing residents explaining the reasons for going smoke-free and how the policy will work. You can ask residents to sign and return the letter to show acknowledgement of the new policy.
- Lease addendum.
 - A sample smoke-free lease addendum that can be added to your lease agreement.
- Enforcement tips.
 - Suggestions on how to enforce your new policy and handle violations.
- Sample signs.
 - Hang the smoke-free area signs in common spaces such as laundry rooms, lounges, hallways, and fitness centers. The other signs can be displayed in your main office or lobby to advertise your smoke-free units.

Please feel free to adapt any of these tools to work with your specific policy or to meet the needs of your residents.

If you need additional assistance or have questions about going smoke-free, please contact the Tobacco Public Policy Center at **(614) 236-7315**. And don't forget to register your property on the Smoke-Free Housing Registry at **www.ohiosmokefreehousing.com**. It's easy, it's free, and it's a great way to get the word out about your new healthy living environment.

Thank you for your commitment to making Ohio a healthier place to live!

Tips for Creating a Smoke-Free Property

FOR NEW BUILDINGS Implementing a smoke-free policy should be relatively easy in a new building, as your residents will have no pre-existing expectations. Simply follow these steps to create a healthy and safe policy for your new property:

- 1. Register** your building(s) on the Smoke-Free Housing Registry at www.ohiosmokefreehousing.com. This will help future residents looking for smoke-free apartments find you.
- 2. Advertise** your units as smoke-free in newspaper and real estate magazine ads. This will set you apart from other apartments that allow smoking. It will also make it easier for you to deal with questions regarding the policy since potential residents will know what to expect.

- 3. Revise** your lease/rental agreements to include smoke-free provisions, such as the Tobacco Public Policy Center (TPPC) Smoke-Free Lease Addendum included in this toolkit. Placing the smoke-free language in your lease makes it possible for you to enforce it.

The TPPC Smoke-Free Lease Addendum is a model and is provided without any representation or warranty whatsoever. Making this information available is not intended to create, and the receipt of it does not constitute, a lawyer-client relationship. You should consult your own

attorney about the terms and language of rental agreements.

- 4. Post** “Smoke-Free Area” or “No Smoking” signage in designated areas. This will make enforcement of the smoke-free policy in common areas a lot easier. Some sample signs are included in this kit.
- 5. Educate** employees on how to field questions regarding the building’s smoke-free policy. The more knowledgeable your employees are about the law and the policy, the easier it will be to deal with problems if and when they arise.

FOR EXISTING BUILDINGS If you would like to implement a new smoke-free policy in an existing building with current residents, these tips will help you phase-in the policy without negatively impacting your current residents. By following these tips, through attrition you will eventually create an entirely smoke-free building.

- 1. Make a plan.** Will you go totally smoke-free, or will only certain buildings or certain blocks of apartments be smoke-free? Start by designating all public or community areas smoke-free (including laundry rooms, lobbies, recreational facilities, playgrounds, etc.).
- 2. Post** “Smoke-Free Area” or “No Smoking” signage in common areas. This will make enforcement of the smoke-free policy in the common areas a lot easier. Some sample signs are included in this kit.
- 3. Remove** ashtrays and place receptacles for smoking materials a reasonable distance from facility entrances together with applicable signs. This will encourage people to smoke away from common areas.
- 4. Discuss** your decision to implement a smoke-free policy with residents and be sure to get their support. Hold a meeting that is open to all residents. Expect resistance from some, but emphasize the known dangers of secondhand smoke and the fact that secondhand smoke drifts from unit to unit. Also explain that although tobacco is a legal product for adults, there is no legally-protected right to smoke in

one’s apartment unit, especially if secondhand smoke is harming others.

If necessary, survey your residents to find out which buildings can be most easily made smoke-free. If you are planning to relocate residents to create smoke-free buildings or smoke-free blocks of housing, determine a budget for incentives (such as a free month of rent).

- 5. Announce** the change to all residents in the form of a letter. Require residents to sign a copy stating their intent to comply with the new policy. For existing residents, application of the policy to their individual units will begin upon renewal of their leases, which should be updated with the new smoke-free lease language. The Tobacco Public Policy Center (TPPC) Smoke-Free Lease Addendum is included in this toolkit.

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- 6. Educate** employees on how to field questions regarding the building’s smoke-free policy. The more knowledgeable your employees are about the law and the policy, the easier it will be to deal with problems if and when they arise.

- 7. Equip** your maintenance staff with proper equipment such as door sweeps and caulking materials to deal with migrating smoke until the phase-in of the policy is complete or if only a portion of the building is going smoke-free. This will decrease the amount of secondhand smoke transferring from one residence to another, decreasing complaints until all the residences are smoke-free.

- 8. Promote** your status. Begin advertising your smoke-free status to gain new residents who appreciate a smoke-free environment. Register your smoke-free apartments with the Smoke-Free Housing Registry at www.ohiosmokefreehousing.com.

Letter to Residents

Dear Resident:

<<Property name>> has decided to go smoke-free in order to provide a healthier environment for its residents. The harmful effects of secondhand smoke and the fire danger caused by indoor smoking are simply too great to ignore. Effective immediately, smoking is prohibited in all (indoor) common areas (such as entrances, hallways, exercise areas, and laundry rooms). A smoke-free policy for individual units will be phased in as leases are renewed.

Secondhand smoke is a serious health hazard. It is the third leading cause of preventable death in the United States, causing approximately 53,000 deaths each year. The 2006 Report of the U.S. Surgeon General states that there is no safe level of exposure to secondhand smoke.

Secondhand smoke is particularly dangerous to children and has been linked to Sudden Infant Death Syndrome (SIDS). In addition, approximately 900 people in the U.S. die each year from fires caused by smoldering cigarettes.

This is an issue for the entire complex because cigarette smoke travels from unit to unit. Secondhand smoke can seep through outlets in walls, and spread through air conditioning and heating systems. The remodeling required to prevent secondhand smoke from transferring to another residence can be costly and ineffective. The only effective method to stop the spread of secondhand smoke is a smoke-free policy.

Smoking will not be prohibited in individual units until leases come up from renewal. However, all leases from this point forward will include a smoke-free addendum. (In addition, existing lease terms may prohibit smoking in individual units if the resulting secondhand smoke is causing irritation to neighbors.)

Please consider this letter as notice about the changes that will be taking place upon your next lease renewal. We hope this new policy will help everyone breathe a bit easier.

Please sign this letter and return to management within one week. If you have any questions or concerns please contact management.

Regards,

Property Manager/ Owner

I understand and agree to abide by the policies contained in this letter.

Name: _____

Signature: _____

Date: _____

Smoke-Free Lease Addendum**

** You may adjust the portions of this addendum that have been included in parentheses depending upon the scope of your smoke-free policy.

Resident and all members of resident's family or household are parties to a written lease with Property Owner/Manager (the Lease). This addendum states the following additional terms, conditions, and rules that are incorporated into the Lease. A breach of this Lease Addendum shall give each party all the rights contained herein, as well as the rights provided for in the Lease.

- 1. Purpose of Smoke-Free Housing:** The parties desire to mitigate (i) the irritation and known health effects caused by secondhand smoke; (ii) the increased maintenance, cleaning, and redecorating costs from smoking; (iii) the increased risk of fire from smoking; and (iv) the high cost of fire insurance for a nonsmoke-free building.
- 2. Definition of Smoking:** "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant.
- 3. Smoke-Free Complex:** Resident agrees and acknowledges that the premises to be occupied by Resident and members of Resident's household have been designated as a smoke-free living environment. Resident and members of Resident's household shall not smoke anywhere in the unit rented by Resident, in the building where the Resident'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 Resident permit any guests or visitors under the control of Resident to do so.
- 4. Resident to Promote No Smoking Policy and to Alert Landlord of Violations:** Resident shall inform Resident's guests of the smoke-free policy. Further, Resident shall promptly give Property Manager/Owner a written statement of any incident where secondhand smoke is migrating into the Resident's unit from sources outside of the Resident's apartment unit.
- 5. Property Manager/Owner to Promote No Smoking Policy:** Property Manager/Owner shall post no smoking signs at entrances and exits, common areas, and hallways (and in conspicuous places on the grounds adjoining the apartment complex).
- 6. Property Manager/Owner Not a Guarantor of Smoke Free Environment:** Resident acknowledges that Property Manager/Owner's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, do not make the Property Manager/Owner or any of its managing agents the guarantor of Resident's health or of the smoke-free condition of the Resident's unit and the common areas. However, Property Manager/Owner shall take reasonable steps to enforce the smoke-free terms of its leases and to make the (designated areas of the) complex smoke-free. Property Manager/Owner is not required to take steps in response to smoking unless Property Manager/Owner knows of said smoking or has been given written notice of said smoking.
- 7. Other Residents are Third-Party Beneficiaries of Resident's Agreement:** Resident agrees that the other Residents at the complex are the third-party beneficiaries of Resident's smoke-free addendum agreement with Property Manager/Owner. A Resident may sue another Resident for an injunction to prohibit smoking or for damages, but does not have the right to evict another Resident. Any suit between Residents herein shall not create a presumption that the Property Manager/Owner 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 provided for in the Lease. A material breach of this Addendum by the Resident shall be a material breach of the Lease and grounds for immediate termination of the Lease by the Property Manager/Owner.

Smoke-Free Lease Addendum** (continued)

Property Manager/Owner acknowledges that in declaring this building (or portion of the building) to be smoke-free, the failure to respond by Property Manager/Owner to a complaint filed by the Resident shall be treated as equivalent to failure to respond to a request for maintenance. Ohio law governing repair and deduct, the implied warranty of habitability, and the covenant of quiet enjoyment shall be understood to include the right to be smoke-free contingent upon cooperation of both Resident and Property Manager/Owner. These provisions shall also be construed to result in a constructive eviction if Property Manager/Owner fails to timely respond to Resident's complaints regarding secondhand smoke.

9. Disclaimer by Property Manager/Owner: Resident acknowledges that Property Manager/Owner's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, does not in any way change the standard of care that the Property Manager/Owner would have to a Resident household to render buildings and premises designated as smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental premises. Property Manager/Owner specifically disclaims any implied or express warranties that the building, common areas, or Resident's premises will have any higher or improved air quality standards than any other rental property. Property Manager/Owner cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke. Resident acknowledges that Property Manager/Owner's ability to police, monitor, or enforce the agreements of the Addendum is dependent in significant part on voluntary compliance by Resident and Resident's guests. Residents with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that Property Manager/Owner does not assume any higher duty of care to enforce this Addendum than any other Property Manager/Owner obligation under the Lease.

Optional Paragraph for Existing Rental Communities that Adopt Smoke-Free Policies:

10. Effect on Current Residents: Resident acknowledges that current residents residing in the complex under a prior Lease will not be immediately subject to the smoke-free policies. As current residents move out, or enter into new Leases, the smoke-free policy will become effective for their new unit or new Lease.

Resident

Date

Property Manager/Owner

Date

Tips on Enforcement

FOR NEW BUILDINGS

1. Smoke-free residence policies are generally self-enforcing, as long as all residents are clearly informed of the policies. A recent survey of smoke-free apartment complexes in Minnesota found that smoke-free policies have not required management to spend any additional time on building management. However, if you receive a complaint, you should act promptly, as you would if one of your residents had requested maintenance. The smoke-free addendum assigns this as an obligation of the Property Manager or Owner. If you fail to address concerns, other residents might start violating the smoke-free policies as well.
2. Address the concerns of your residents in a timely manner. Resolution of problems in a timely manner will stop others from arising. If you take the obligation to enforce your policies seriously, residents are less likely to test the policies.
3. Try to resolve all disputes amicably. If the policy is violated, issue three written warnings before proceeding with eviction procedures. Have the resident sign these warnings and return them to you in order to create a written record of your attempts to resolve the issue.
4. Uniformly and promptly enforce your policies. Some courts have held that an unwillingness to enforce a policy (such as a pet policy) may constitute a waiver of that policy and bar subsequent enforcement.
5. Include a provision in your lease stating that waivers can only be made in writing. This will further support you in the event one of your residents argues that the smoke-free policy has been waived due to a lack of prior enforcement.

FOR EXISTING BUILDINGS

1. Smoke-free residence policies are generally self-enforcing, as long as all residents are clearly informed of the policies. A recent survey of smoke-free apartment complexes in Minnesota found that smoke-free policies have not required management to spend any additional time on building management. However, if you receive a complaint, you should act promptly, as you would if one of your residents had requested maintenance. The smoke-free addendum assigns this as an obligation of the Property Manager or Owner. If you fail to address concerns, other residents might start violating the smoke-free policies as well.
2. If a problem arises involving a resident whose lease does not yet contain the smoke-free clause, kindly ask the resident to smoke outside or ventilate the residence while smoking indoors. You can also take measures to insulate the smoking and nonsmoking residents' units in order to restrict transfer of secondhand smoke from one unit to another.
3. If necessary, attempt to relocate residents who smoke in their unit to a separate part of the building in order to prevent secondhand smoke transfer. You may have to offer incentives in order to get agreement to move. You can also let residents who are concerned about secondhand smoke know that you're working on a smoke-free policy that will help address their concerns. In the meantime, you can refer residents to the Tobacco Public Policy Center's smoke-free housing site at www.ohiosmokefreehousing.com for tips on how to keep secondhand smoke from entering their apartments.
4. Address the concerns of your residents in a timely manner. Resolution of problems in a timely manner will stop others from arising. If you take the obligation to enforce your policies seriously, residents are less likely to test the policies.
5. Try to resolve all disputes amicably. If the policy is violated, issue three written warnings before proceeding with eviction procedures. Have the resident sign these warnings and return them to you in order to create a written record of your attempts to resolve the issue.
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Proper Eviction Procedure

The Ohio Revised Code (ORC) defines the relationship between property managers and owners (landlords) and their residents (tenants). The state law specifically denies the landlord the ability to use self-help such as making threats or terminating utilities, and even holds the landlord liable in a civil action for damages and attorney fees.ⁱ The ORC also imposes rights and obligations on both the resident and the Property Manager or Owner.ⁱⁱ

- In order to evict a resident, the Property Manager or Owner may start a “forcible entry and detainer action”—a quick and simple legal proceeding to regain possession of real property—for a violation of the duties placed on him by the ORC or the lease contract. Such an action may be brought by the owner, lessor, or the agent landlord authorized to manage the premises.ⁱⁱⁱ
- If the resident fails to fulfill any obligations imposed upon him by the ORC or the lease agreement, then the Property Manager or Owner may deliver a written notice to the resident specifying that the rental agreement will terminate upon a date specified in the notice. This date must be in not less than 30 days after the receipt of the notice.^{iv}
- The Property Manager or Owner must notify the resident three or more days before beginning an eviction by certified mail, return receipt requested, by handing a written copy of the notice to the defendant in person, or by leaving it at the premises.^v The notice must contain the following language in a conspicuous manner: “You are being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance.”^{vi}
 1. After the Property Manager or Owner files a complaint in writing with the court, the court may issue a summons to be served by the clerk of the court through ordinary mail.^{vii}
 2. The resident can challenge the eviction in court, but if the resident does not appear, the court can proceed to hear the case without the resident present.^{viii} When the judgment is entered by a court, it must be enforced within 10 days by the sheriff to restore possession to the Property Manager or Owner.^{ix}

ⁱ Ohio Rev. Code Ann. § 5321.15 (LexisNexis 2006).

ⁱⁱ Id. at §5321.04-.05.

ⁱⁱⁱ Id. at § 1923.01.

^{iv} Id. at §5321.11.

^v Id. at §1923.04.

^{vi} Id.

^{vii} Id.

^{viii} Id. at §1923.07.

^{ix} Id. at 1923.13-.14.