Utah Secondhand Smoke Policy Implementation Guide

Multiple-Unit Housing

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The TRUTH

Utah! Tobacco Prevention & Control Program

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Introduction

Secondhand Smoke in Apartments and Condominiums

The smoking of neighbors poses a health threat to residents of apartments and condominium complexes. The thought of cancer-causing chemicals circulating throughout their apartments and condominiums can be quite unsettling. According to the 2006 Surgeon General's Report, "The Health Consequences of Involuntary Exposure to Tobacco Smoke", there is no risk-free level of exposure to secondhand smoke. [1]

Children exposed to secondhand smoke are at an increased risk for asthma and worsening of asthma symptoms, sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma.[2] Smoking by parents causes respiratory symptoms and slows lung grow in their children. These effects can last a lifetime.[3]

In Utah, 15,000 or 1.8 percent of children (ages 0 –17) live in households where someone smokes inside the home. Of the children who live in rented homes, 3.1% (4,900 children) are exposed to secondhand smoke. Since 2001, the overall percentage of children exposed to secondhand has decreased by 70%. The percentage of children exposed to secondhand smoke in rented homes decreased from 12.6% in 2001 to 3.1% in 2005. [4]

Ventilation systems in apartments and condominiums cannot filter and circulate air well enough to eliminate secondhand smoke. Blowing smoke away from children, going into another room to smoke, or opening a window may help reduce children's exposure, but will not protect them from the dangers of secondhand smoke. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the preeminent U.S. body on ventilation issues, has concluded that ventilation technology cannot be relied on to control health risks from secondhand smoke exposure. At present, the only means of effectively eliminating health risks associated with indoor exposure is to ban smoking activity. [5]

Benefits of Smoke Free Apartments and Condominiums

Here are some reasons to change the smoking policies in multiple dwelling units:

- Secondhand smoke (SHS) is hazardous to one's health.
- Secondhand smoke drifting from other units is a problem for many renters and owners.
- There is a market for smoke-free rental units in a wide spread of prices and for various types of renters or buyers.
- Landlords or condominium associations who ignore the issue of smoking face a growing likelihood of suits by victims of SHS exposure. Landlords or condominium owners who choose to offer no-smoking options or to limit smoking may reduce their risks of such suits without exposing themselves to civil rights claims by smokers.
- Residents are protected from the dangers of SHS exposure.
- Surroundings will smell better.
- Smoke-free apartment or condominium buildings may have an increased re-sale value.

- Pets will be healthier. (For example, dogs exposed to SHS have an increased risk of cancer.)

Making rental units smoke free can save money:

- Landlords and apartment managers can save money by reducing the damage that smoke causes (e.g., extra cleaning bills, paintings costs, and property damage such as cigarette burns on carpets).
- Smoke-free units reduce fire danger, which may also reduce insurance costs.
- Smoking materials (i.e., cigarettes, cigars, etc.) is the leading cause of home and total fire deaths in the United States. In 2006, there were an estimated 142,900 smoking material fires in the U.S. resulting in direct property damage at approximately $606 million. [6]

Creating a Smoke-Free Apartment or Condominium

A smoke-free apartment or condominium community can be accomplished in two ways: through a voluntary policy or through an ordinance.

Voluntary policy

A voluntary policy is a policy made by an owner, manager(s), or a property management company in which they voluntarily decide to prohibit smoking in an individual unit or in an entire building that may be rented, leased, or owned. A voluntary policy could also prohibit smoking in common areas, hallways, patios, balconies, or on the premises. A voluntary policy is also a resident that decides to prohibit smoking in his or her own unit by taking a smoke-free home pledge. For more information on a smoke-free home pledge, see the Homes Section of this guide.

Here are some tips to making your apartment or condominium community smoke free:

- Talk about it! Sit down with tenants living in your apartment or condo and discuss ways to make the complex smoke free.
- Don’t allow smoking in your apartment or condo. Politely ask people--even houseguests--to smoke outside.
- Make it clear that you are keeping your apartment or condo smoke free to protect others in the community complex, from the harmful effects of SHS, not as a punishment to someone who smokes.
- If you provide for smokers, make the smoking area as comfortable for them as possible.
- Do not allow babysitters or other people who work for you to smoke in the apartment or condo or around your children.
- Thank friends and family for helping to keep the apartment or condominium community smoke free.
- Amend the rental lease, or condominium association agreement to prohibit smoking in the units, patios, balconies, and common areas.

- Make signs available to tenants that indicate a smoke-free apartment or condominium community. For examples of signs, link to: http://www.tobaccofreeutah.org/aptcondoguide-signs.html
- Offer incentives to support a smoke-free policy. A landlord or apartment manager can offer non-smoking tenants an opportunity to move into vacated units that have been freshly painted or cleaned. This will help to create a smoke-free building.
- Promote resources to help smokers quit (e.g., Utah Quit Line at 1-888-567-TRUTH or Utah QuitNet at http://www.utahquitnet.com/

Ordinances

An ordinance is a law enacted by local city, county or state authorities. A local government entity may pass an ordinance to define and regulate conduct that is detrimental to the public health, safety, or welfare of its community. Enacting local laws for a smoke-free apartment or condominium community is usually more a realistic option than enacting state laws that prohibit smoking in these types of communities. Also, local laws are often easier to enforce than state laws.

The State of Utah did enact the Secondhand Smoke Amendments which established that smoking is a nuisance under the law, and gave condominium and apartment complexes the authority to prohibit smoking in units, common areas, or on the premises.

ACTION STEPS

Action Step 1: Gather Relevant Facts and Information
Action Step 2: Identify Your Audience and Assess Community Readiness
Action Step 3: Plan Your Campaign
Action Step 4: Select Your Materials
Action Step 5: Get the Word Out and Gain Support
Action Step 6: Implement the Policy
Action Step 7: Evaluate Your Efforts

Based on Taking Action Against Secondhand Smoke: An Online Toolkit – Employee and Employer Action Steps, Centers for Disease Control and Prevention (CDC)

Action Step 1: Gather Relevant Facts and Information

According to the Utah Census 2000, renter-occupied housing accounted for 28.5% or nearly one third of the population.[7] In addition, the number of condominiums is growing in Utah. Renters and condominium owners are vulnerable to secondhand smoke entering their apartments or condominiums from another apartment or condominium unit, from hallways or common areas, and from patios and balconies outside the building.

As the public's understanding of the damaging health effects of secondhand smoke has grown, so too has concern regarding unwanted exposure to secondhand smoke in apartment buildings and condominiums. More people are voicing concerns that the tobacco smoke produced by neighbors is seeping into their own homes, often causing annoyance, discomfort, and even illness. These

concerns are best resolved amicably through discussion and reconciliation between neighbors and building managers. When this is not possible, legal action may be warranted. Such actions have been brought across the United States, resulting in some out-of-court settlements, and some favorable verdicts.

The first step in starting a smoke-free apartment or condominium campaign is to become knowledgeable about secondhand smoke and the laws or regulations affecting it at the federal, state, and local level.

Secondhand Smoke Amendments

The Utah State Legislature passed the Secondhand Smoke Amendments (SHSA) in 1997. They specifically apply to tobacco smoke that drifts into any residential unit a person rents, leases, or owns from another residential or commercial unit.

The Secondhand Smoke Amendments:

- Give authority to condominium associations to restrict smoking in units, common areas, and yard space §57-8-16-7(a)(b).
- Give authority for apartment rental contracts to include prohibitions on smoking in units, on the premises, or both §57-22-5-1(h).
- Establish that any tobacco smoke that drifts into any residential unit a person rents, leases, or owns is a nuisance under the law. The smoke must drift in more than once in each of two or more consecutive seven-day periods §78B-6-1101(3).
- Provide that residents of condominiums, apartments, or private homes may seek injunctive relief and/or damages if exposed to nuisance tobacco smoke § 78B-6-1101(3).
- Exempt rental units, such as for vacations or available for only 30 days or less at a time, from the nuisance tobacco provisions §78-B-6-1101 (4)(a) and (5). These units are not exempt from restrictions placed by a condominium association §57-8-16-7(a)(b).
- Provide authority for an apartment renter to file a nuisance action under §78-B-6-1101(6) even if the renter has signed away his rights to file a nuisance.

For complete information on Utah's Secondhand Smoke Amendments, link to http://www.tobaccofreeutah.org/sechndsmokeam.html

Housing Laws

The right of nonsmokers to be free from exposure to secondhand smoke is protected by both legislation and judicial rulings. There are federal, state, and local laws protecting nonsmokers, but the strongest and best-enforced laws are generally at the local level. Many judicial rulings have applied general laws relating to the workplace, housing, and even prisons to protect nonsmokers. Although many of these court rulings will not provide a direct legal precedent for your situation, they may nevertheless provide some ideas for a legal strategy to pursue.[8]

It is legal for landlords and property management companies to make rental units smoke free:

- Smokers are not considered a protected group under anti-discrimination laws.
- Smoking is not considered a "constitutional right." Therefore, a landlord or building manager has the right to restrict or prohibit smoking in the building, just as he/she could choose not to allow pets.
- Asking prospective tenants to acknowledge on month-to-month rental contracts or longer lease agreements that they will not smoke or allow smoking in their units is legal.
- In federally subsidized housing, one cannot refuse to rent to a smoker, but can prohibit smoking in the unit. The policy is acceptable only if it targets the behavior, not the smoker. That is, smokers can rent, but they are not allowed to smoke in the units.

Federal Fair Housing Act (1988)

The federal Fair Housing Act (FHA) prohibits discrimination based on race, color, religion, sex, family status, national origin, or disability. The FHA prohibits discrimination against people with disabilities, including those with severe breathing problems. The FHA prohibits such discrimination by owners and operators of most housing, including apartments and Section 8 and other HUD assisted housing. For more information link to:
http://www.usdoj.gov/crt/housing/title8.htm

The following are rights of disable tenants:

- A nonsmoker with a serious breathing disability or smoke allergy, such as asthma or cardiac disease, has legal protection. The FHA requires that "reasonable accommodations" be made in rules, policies, practices, or services to ensure equal access to and enjoyment of a dwelling unit.[9]
- The Americans with Disabilities Act can be used by people with asthma and other smoke-sensitive breathing problems to require landlords to make public access areas of their buildings smoke free.[10]

HUD Housing

HUD's Office of Fair Housing and Equal Opportunity administers federal laws and establishes national policies to ensure that individuals have equal access to housing. Its mission is to create housing opportunities that prohibit discrimination in housing on the basis of race, color, religion, sex, national origin, age, disability, or familial status. For information on HUD housing in Utah, please contact:

Salt Lake City Field Office
Department of Housing & Urban Development
125 S State Street, Suite 3001
Salt Lake City, Utah 84138
(801) 524-6070
http://www.hud.gov/local/index.cfm?state=ut

In order to help landlords make more educated decisions about smoking policies in their buildings, the Smoke-Free Environments Law Project (in Michigan) requested information from the Housing & Urban Development (HUD) field office in Detroit about this issue. According to HUD, managers and owners can prohibit smoking and make common areas and units smoke

free. HUD's legal Counsel letter of July 2003 states that apartment owners are free under federal law to make their buildings totally smoke free, as long as they grandfather current residents who are smokers. For more information on the HUD Legal Counsel opinion, link on: http://www.mismokefreeapartment.org/hudletter.pdf

National Alliance of HUD Tenants

Established in 1991, the mission of the National Alliance of HUD Tenants (NAHT) is to preserve and improve affordable housing, protect tenants' rights, develop tenant empowerment, promote resident control and ownership, improve the quality of life in HUD-assisted housing and to make HUD accountable to its constituents, HUD tenants. For more information on NAHT link on: http://www.saveourhomes.org/

Ventilation Issues and Secondhand Smoke

Shared ventilation systems are a major concern for those living in apartment and condominiums.

Consider these facts:

- Commercial air filtering systems are designed to remove the odor, not the cancer-causing substances.
- Shared ventilation systems can cause tobacco smoke to blow from one room to another.
- Secondhand smoke can seep into and out of open windows and doorways.
- Secondhand smoke lingers in a room long after the smoking has stopped.

The U.S. Surgeon General's 2006 report concludes that eliminating smoking in indoor spaces fully protects nonsmoker's from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke. [11]

Additionally ASHRAE, the international standard setting body that sets the standard for indoor air quality has stated that the only means of effectively eliminating health risks associated with indoor exposure is to ban smoking activity. ASHRAE recommends the elimination of smoking in the indoor environment as the optimal way to minimize ETS exposure. For ASHRAE's complete position document, Environmental Tobacco Smoke, Positional Document, Approved by ASHRAE Board of Directors, June 30, 2005, link to: http://www.ashrae.org/content/ASHRAE/ASHRAE/ArticleAltFormat/20058211239_347.pdf

For additional information regarding ventilation issues, visit the Americans for Nonsmokers' Rights' website at http://www.no-smoke.org/getthefacts.php?dp=d20.

Legal Issues

Significant precedent exists for pursing remedies under the common law theory. Owners of apartment buildings and condominiums may choose to adopt a smoking policy, which requires all, or part of a building to be smoke free, including individuals units. Condominium owners may require no smoking when the condominium is being rented or leased to a tenant, under Utah law. For specific information on legal cases involving secondhand smoke, see ***Attachment A*** and ***Attachment B.***

Resources

For a list of excellent resources to provide more information on smoke-free apartments and condominiums, as well as more facts on secondhand smoke, see ***Attachment C.***

Once you are familiar with laws, regulations, and other issues concerning secondhand smoke in multiple dwelling units, it is important to learn about community characteristics, local housing units, and local laws and regulations.

Community Characteristics

The basic demographics of your community identify the unique qualities of the population. These qualities can impact the choice of your target audience and the development of a plan of action. Specific demographic information to collect includes the average education level of the population, the average household income, the major type of workforce (i.e., blue-collar or while-collar), and issues related to tobacco use prevalence. Then, using this community demographic information, you can determine high-risk and priority areas for your intervention.

The Utah Community Health Indicator Report is a report that examines the health status of communities at the smallest possible level of geography will allow and, depending on the measure, is reported for a small area, the local health district, or the state.[12] Childhood Exposure to SHS is found under the Environmental Quality Section. The ranking indicates which areas in Utah have a higher percentage of children being exposed to SHS. This report could be useful in identifying high-risk or priority areas that can later be used to target apartment complexes and HUD housing in those areas. The report can be accessed at http://health.utah.gov/opha/publications/CommunityHealth/CHI/CHI_Report.htm

For demographic information on your community, go to http://www.governor.utah.gov/dea/2000census_demoprofiles.html. Your city's website or city administrator's office may also have information on the demographics of the community you are targeting.

Existing Multiple Dwelling Units and Policies

What types of multiple dwelling units exist in your community? To determine types of multiple dwelling units, get information from property management companies or your city or county zoning office.

Are there existing apartment or condominium complexes with non-smoking policies in place? To learn about existing policies, contact the managers of some of the properties in your areas (e.g., public housing agencies, condominium associations, and property management companies). For an example of interview questions, see ***Research Tool 1: Apartment and Condominium Initial Interview Guide***. Ensure that you interview managers of complexes in high risk/priority areas as determined by your assessment of community characteristics. Ask about existing policies, number of people affected, and support for a policy change. Visit the Utah Smoke-free Apartment and Condominium Guide and Statewide Directory for apartment communities that already support smoke-free policies. The directory can be accessed at: http://www.tobaccofreeutah.org/aptcondoguide-dir.htm.

Is there a college or university that has a smoking policy for campus housing? Contact campus-housing offices to learn about existing smoking policies.

Are there existing local laws or policies that address the issues? To determine local laws and policies, get information from your local health department or your city or county attorney's office. They are usually located in the government section of your local telephone directory.

? Track Your Progress

- Are you familiar with the federal, state, and local laws regarding the rights of tenants, landlords, and disabled persons?
- Have you researched general community characteristics?
- Have you used your community profile to determine high risk/priority areas?
- Have you determined what types of multiple dwelling units exist in your community?
- Have you determined if smoke-free policies exist in some of the facilities you might want to target?
- Have you determined which facility's management would be supportive of a policy change?
- Have you chosen facilities for your tobacco policy intervention?

Action Step 2: Identify Your Audience and Assess Community Readiness

The purpose of the following assessments is to gain knowledge about an apartment or condominium complex. A detailed and accurate assessment is a very important tool to use in your smoke-free campaign and will help you:

- Determine the readiness of the target apartment or condominium complex for a smoke-free campaign.
- Determine whether or not a smoke-free policy campaign is right for your coalition.
- Assist in building a coalition's organizational capacity, and aid in the development of its strategies to achieve its mission and goals.
- Examine the key influences in your community's decision to become smoke free.

- Outline the steps necessary to change policies in a given multiple dwelling unit (contract changes, bylaw changes, etc.).

Resources

The following links are excellent resources to help with identifying your audience and assessing your community readiness:

APPEAL – The Community Stages of Readiness Model – This model is a resource tool that can be used to address a community's readiness with tobacco control.
http://www.appealforcommunities.org/pages/Stages_of_Readiness_Model26.php?project_id=26

The Community Tool Box – This is a resource tool that contains information about how to assess community needs and resources. http://ctb.ku.edu/tools/assesscommunity/outline.jsp

Assess Capacity Tobacco Control Partners

Assessing capacity involves collecting essential information about the political environment, social environment, and local smoke-free advocacy. The information gathered will be a guide for determining your apartment or condominium community's level of readiness for a smoke-free policy campaign and is the first step towards a smoke-free policy or ordinance.

Tobacco control advocates and local partners: To learn about potential partners for your project, consider the following questions:

- Is there an existing local tobacco coalition?
- Who are the members of the coalition?
- What is the coalition's history in secondhand smoke awareness efforts and other tobacco policy campaigns?
- What potential resources does the local coalition have available?
- Are there relationships in the community with the health organizations?

Leaders and Opinion-Shapers

Knowing what issues and activities the movers and shakers of the community spend their time on is an important piece of information for all community organizers. If you know which causes (e.g., church groups, schools, youth recreational centers/leagues, service clubs, etc.) the community leaders devote their time to, you can focus your energies on endorsing or collaborating with them on these issues. Remember, the same people who get things done in the school system or on their church's social justice committees are the same individuals that you need to secure the community's commitment to smoke-free policies. This information is best obtained through one-on-one interviews with individual community leaders.

- Who are the potential allies and/or opinion shapers in the community?
- What are the characteristics of the community's leaders?

- Who makes decisions regarding secondhand smoke policies, and how are these decisions made?
- Who is expected to be the strongest opposition?
- What are the positions of apartment managers, property management staff, and condominium associations on tobacco control issues?

Knowing your opposition before committing to a policy campaign can be very helpful in strategy development. Conduct individual interviews with supportive community and coalition leaders to get an idea of who is expected to be the strongest opposition to a smoke-free policy and their reasons for opposing the policy. Identifying the reason for opposition is just as important as identifying the individuals or organizations.

Media and Communications

Identify communication outlets and key media staff in your target community.

- Identify newspapers, radio, TV/cable, and websites that serve as information outlets for your community.
- Identify reporters, editors, and opinion columnists who cover health, local government, or tobacco-related issues.
- Identify newspaper editorial page support or lack thereof.
- Identify community organization updates, publications, and newsletters.
- Identify local apartment rental and real estate publications.

Community Support and Polling

Attitudes regarding tobacco smoke may encourage or discourage behaviors in the community. There are many levels of awareness. Some community members may have vast knowledge regarding secondhand smoke, while others have limited or no knowledge and require education. Determine whether the state health department or other tobacco prevention organizations have surveyed the community on tobacco control issues. If not, conduct a brief survey of community members to determine their level of awareness of secondhand smoke issues.

Conduct Key Informant Interviews with Targeted Multiple Dwelling Units

Having detailed knowledge of each complex's existing policy and process for changing policies is crucial in planning your project. Start by reviewing the results of your apartment and condominium initial interview guide, completed in Action Step 1 for general information about which areas allow smoking and which are smoke-free. Follow up by discussing current smoking policies in more detail with the complex manager or owner. Ask if current smoking policies are enforced by tenant contracts, written rules, signs, or by other methods. If written rules or contracts describe the policy, ask to review copies of those documents. Also, inquire about the degree of compliance among tenants to the current policy. Then discuss the process of changing policies in the complex. Who would need to approve a new policy? Would the policy need to be phased in over time in order to incorporate it into new tenants' contracts? Is there a resident council or committee that would need to be involved in the change?

Conduct a Tenant Survey at Targeted Locations

There are many levels of awareness about secondhand smoke issues. Some tenants may have knowledge regarding secondhand smoke, while others have limited or no knowledge and require education. Conduct a brief survey of residents to determine their level of awareness of secondhand smoke issues. Conduct a door-to-door survey at the apartment(s) or condominium(s) you are targeting to determine the attitudes and beliefs toward secondhand smoke and to help assess what kind of policy should be pursued.

Research Tool 2 is an example of a tenant survey that can be adapted to your particular project. You may want to offer some type of an incentive, such as a raffle ticket or gift card, to encourage residents to complete the survey. When preparing your survey, keep in mind that questions should cover the following subject matter:

- Tenants' attitudes about smoking.
- Smoking rules within each household.
- Tolerance to secondhand smoke and smoking.
- Preference or support for smoke-free buildings and establishing smoke-free policies within the buildings.

For examples of survey results, see ***Attachment D***.

? Track Your Progress

- Did you find out about existing tobacco prevention and control coalitions and potential partners?
- Did you conduct key informant interviews at each complex to find out about existing policies and processes used to change these policies?
- Did you assess potential support and opposition from community leaders, apartment management, and the condominium association?
- Did you research local media channels?
- Was a tenant survey conducted to determine readiness for a smoke-free policy in apartment or condominium complexes?
- Did you determine whether to seek voluntary policy change or ordinance change?

Action Step 3: Plan Your Campaign

The goal of your smoke-free campaign or project is to reduce exposure to secondhand smoke among the children and adults living in apartment and condominium complexes by increasing the number of smoke-free policies implemented in multiple dwelling units, whether thru a voluntary policy or ordinance change. Encouraging smoke-free policies reduces exposure to the harmful effects of secondhand smoke among tenants, including young children and adults with health conditions exacerbated by secondhand smoke.

Local health departments and community organizations should work with residents, managers, landlords/owners, property management companies and Homeowner Associations (HOAs) to

encourage the designation of smoke-free common areas, units and buildings for the health and enjoyment of their residents. Not only is it legal to designate all or part of the complex as smoke free, but also it is legal to refuse to rent or sell to individuals who smoke, just as it is legal to refuse to rent or sell to individuals who have pets.

Build or Maintain Coalitions or Workgroups

Building and maintaining a coalition or workgroup can be one of the most effective approaches in addressing your smoke-free campaign. This coalition or workgroup should consist of tobacco control advocates, the property owners/manager of a given complex, and residents who are concerned about drifting secondhand smoke within multiple dwelling units. A diverse coalition has a better chance of representing the community you are targeting and of gaining its support.

For more information on building and maintaining coalitions, link to:

The Tobacco Technical Assistance Consortium (TTAC) – TTAC is a resource tool to help you with building and maintaining your tobacco control coalitions.
http://learningcenter.ttac.org/learning/comp01/01_comp.asp#

The Community Tool Box
http://ctb.ku.edu/en/tablecontents/section_1057.htm
http://ctb.ku.edu/tools//sub_section_tools_1058.htm

For a checklist on building and maintaining your coalition, link to:
http://ctb.ku.edu/tools/coalitions/expand/maintainingcoalition.jsp

Plan Your Strategy

Before beginning your smoke-free apartment or condominium campaign, you need to consider your campaign goals, audiences, message and delivery, resources, first steps, and evaluation. The information and assessments completed in Action Steps 1 and 2, along with the following planning tool discussed below, will help you to develop your plan.

A Strategy Planning Tool for Advocacy Campaigns--Nine Questions

1. Goals: What do you want?
   What are the long and short-term goals and what are the short-term goals? What are the content goals (e.g., policy change) and what are the process goals (e.g., building community among participants)?

2. Audience: Who can give it to you?
   An effective advocacy effort requires you to have a clear understanding of your audiences. Who are the people and organizations that will help effect the change? (e.g., tenants, managers, landlords/owners, property management companies, HOAs)?

3. Message: What do they need to hear?
   Messages need to be tailored differently depending on what that audience needs to hear. Advocacy messages have two basic components: an appeal to what is right and an appeal to the audience's self-interest.

4. Messengers:
   Who are the most credible people to bring your smoke-free message to your different audiences?

5. Delivery: How can you get your audience to hear your message?
   There are many ways to deliver a message, depending on the situation. Evaluate your message and apply it appropriately to your audience.

6. Resources: What resources do you have?
   What are the advocacy resources that are already there to build on?

7. Gaps: What do you need to develop?
   Identify resources you need that are not currently available. Identify alliances that need to be built.

8. First Steps: How do you begin?
   What are some short-term goals or projects that would bring the right people together?

9. Evaluation: How do you tell if your smoke-free policy campaign is working? Your strategy needs to be evaluated, revisiting each question addressed above.

Adapted from the Centers for Disease Control's "A Strategy Planning Tool for Advocacy Campaigns - Nine Questions" [13]

Develop a Timeline

Develop a timeline for your smoke-free policy campaign to keep you on track and moving forward. Be flexible. You may encounter unforeseen events that could affect your original plan. Changing policies and attitudes in an apartment or condominium environment takes time and may be hard work. To be successful, your coalition will need to dedicate time to the effort. For an example of a smoke-free campaign timeline, see ***Attachment E.***

? Track Your Progress

- Have you built a coalition or workgroup to support your smoke-free campaign?
- Has the coalition addressed the nine questions from the Strategy Planning Tool?
- Has the coalition used the data collected in Action Steps 1 and 2 to develop a plan?
- Has the coalition developed a strategy and timeline to carry out the plan?

Action Step 4: Select Your Materials

When beginning an initiative or project, serious consideration should be given to the types of educational materials needed. The way your message is framed and delivered plays a major role in reaching your goal, whether it is a behavioral/attitude change, a policy change, or increased awareness of your issue. The purpose of selecting materials is to help inform tenants, managers, owners/landlords, property management companies and HOAs of the dangers of secondhand smoke within apartment and condominium communities and to help them make informed decisions about the benefits of creating smoke-free environments.

If you are planning to use existing materials or adapt portions of existing materials, be aware that you need to address copyright issues before using the materials. You need to seek and obtain permission to use someone else's material or information.

Before developing your materials:

- Get to know your audience.
- Define a clear educational objective.
- Specify a limited number of key points.
- Check budget and deadlines.
- List potential local resources.

Cultural sensitivity is understanding and appreciating the cultural differences and similarities within, between, and among groups. Input is necessary from people of the same ethnic and racial groups as the intended audience. Avoid stereotypes and biases while ensuring that values, norms, symbols, and ways of living that are consistent with those of the intended audience are reflected in the materials.

The Utah Department of Health/Environmental Sanitation Program has developed educational materials for residents, landlords/owners and managers. For examples of these educational materials, see the following attachments:

Attachment F: Secondhand Smoke in Apartments and Condominiums: A Guide for Residents.
Attachment G: Secondhand Smoke in Apartments and Condominiums: A Guide for Owners/Managers.
Attachment H **:** Secondhand Smoke Guidance for Apartments and Condominiums, April 2005.
Attachment I**:** Smoke-free Housing in Utah, April 2006.
Attachment J*:* Why Smoke-free Apartments?
Attachment K: Secondhand Smoke - Protect Your Family (available in Spanish)
Attachment L**:** Helping Nonsmokers Deal with Problems of Smoking in Condominiums and Apartment Buildings.

? Track Your Progress

- What is the educational objective of the materials to be used?

- Did you develop materials or use existing materials? Did you follow the TPCP media protocol to approve new materials or use of existing materials, if applicable?
- Did you ensure that your materials were appropriate for your target audience (e.g., tenants or property management companies)?
- Are your materials culturally sensitive?

Action Step 5: Get the Word Out and Gain Support

In order to pursue a smoke-fee apartment or condominium campaign, you need to educate your community on the issues and information you have gathered regarding secondhand smoke in apartments and condominiums. The extent of your community education outreach will be determined by the results of your community assessment. The way your message is framed and delivered plays a significant role in reaching your goal, whether it is a behavioral/attitude change, increased knowledge, or raised awareness. All target audiences need to be considered, including the media and the general public. However, the ultimate focus should always be on the decision makers who have the power to enact the desired policy.

Getting the Word Out

Consider these ways of getting the word out about your campaign or policy change:

- Post flyers in mailboxes.
- Post flyers in common areas (e.g. laundry room, fitness center).
- Go door to door and post flyers on individual doors throughout the apartment or condominium complex.
- If there is resident newsletter, post information to notify residents, etc.
- Hold a meeting to inform residents of your campaign and solicit support. For an example letter to hold a meeting, see ***Attachment M***.
- Advertise your apartment or condominium community as going smoke free and send a press release to get free publicity about your campaign or policy change.

Working With the Media

Publicity through media relations is a powerful tool. Media coverage of your efforts, whether you are seeking voluntary policy or ordinance change, can build awareness and influence public opinion, creating a positive climate for smoke-free apartments and condominiums. The tips in this section are designed to familiarize you with the communications tools that are available to inform the media and the public about the dangers of secondhand smoke.

Goal and Key Messages

Start by knowing what you want to say. The goal is to protect people's health by reducing exposure to the dangerous and deadly effects of secondhand smoke. You can achieve this by educating tenants, managers, landlords, condominium owners, and property management companies about secondhand smoke. Inform them that secondhand smoke causes cancer, heart disease, sudden infant death syndrome, and other life-threatening diseases.

The key messages are simple:

- Secondhand smoke is deadly - it kills about 50,000 nonsmokers each year.
- Scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.
- Everyone has the right to breathe clean indoor air.
- Ventilation engineers confirm that even the most modern ventilation systems cannot remove the cancer-causing chemicals in secondhand smoke.

Connecting with local media

Contact the list of editors and reporters (print) and assignment editors and news directors (television and radio), local newspapers, radio stations, and television stations that were identified in Action Step 2 to promote the success of your campaign efforts and the new policy(s) that were implemented.

When you contact the media:

Never call a reporter late in the day. Everyone in the newsroom is on deadline and will not have time to talk. Make your calls in the morning.

Before calling, practice two to three sentences that summarize why you are calling and why your story is important. Focus on two or three points you want to emphasize. Realize that reporters are busy and receive many calls from people with story ideas.

When you call, get to the point quickly. If you leave a message, be sure to leave a phone number.

Tips on Dealing with the Media:

Designate a key media spokesperson. Limiting who will speak to the media will allow one person to become polished in this area and the message you want to convey is more likely to get across in the news story.

- Never go "off the record." Consider everything you say "on the record."
- Never lie. If you make a mistake, correct yourself. If you don't know the answer to a question, admit it and if appropriate, say you will check and call back.
- Don't let the media hurry you. It's important to be timely but you don't have to answer on the spot. If a reporter calls, ask for their deadline. Tell them you are busy at the moment but will call back by a certain time. Take time to gather information, then get back to them by the time you stated.
- Anticipate questions: Formulate succinct and concrete answers to questions like: Why is this issue important? What is the solution to the problem?
- Be prepared to respond to breaking news. Breaking news stories set the news agenda.
- Prepare a contact sheet and fact sheet for reporters. The contact sheet should include phone numbers for your spokesperson as well as names of local doctors who can talk about the dangers of secondhand smoke and victims of secondhand smoke, such as

people with asthma or parents with children who have chronic breathing problems. The fact sheet should lay out the facts about the health effects and economic benefit of smoke-free policies.

Media Interviews

Interviews are opportunities for you to convey your message. By helping reporters with their stories, you can establish yourself and your coalition as a reliable and credible source for information. Before an interview:

- Practice the messages you want to convey.
- Try to humanize your messages such as a personal story that can illustrate the dangers of secondhand smoke.
- Have someone ask you sample questions.
- Practice answering the tough questions.
- Practice giving clear and succinct answers.
- Be ready to support what you say with examples and facts.
- Don't use technical language, such as "ETS" or "environmental tobacco smoke." The general public is not familiar with those terms.

Adapted from: Minnesota Smoke-Free Coalition.[14]

? Track Your Progress

1. What media are available in your community? Did you determine which media are most appropriate for your audience? What and how many media messages were placed? Who was reached?
2. How many flyers/pamphlets/posters/other materials were distributed to tenants, landlords/owners, and property management? What were their reactions? As a result of the information they received, are tenants supportive of your efforts?

Action Step 6: Implement the Policy

When your apartment or condominium community decides to develop a policy to prohibit or restrict smoking, it is time to develop a plan to help with implementation of the policy. Below are suggestions to implement a smoke-free policy in new and existing building(s).

For New Buildings

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

1. Register your apartment or condominium complex on Utah's Smoke-free Apartment and Condominium Guide and Statewide Directory at http://www.tobaccofreeutah.org/aptcondoapp.pdf. This will help persons looking for smoke-free apartments find you.

2. Advertise your property as smoke free in the newspaper and real estate magazine ads. This will set you apart from other multiple dwelling units 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. Include smoke-free provisions in your lease/rental agreements, or in the case of condominiums, in the declaration. Placing smoke-free language in your lease or declaration makes it enforceable. You should consult your legal advisor about the terms and language of rental agreements or declarations. For examples of model policies, see ***Attachment N, Attachment O, and Attachment P.***

4. Advertise your condo as smoke free. Contact your local media and submit a news article or a press release, to get free publicity for your community. You may want to develop a waiting list for individuals who are interested in smoke-free housing. See ***Attachment Q***, for an example of news article.

5. 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. For sample signs visit: www.tobaccofreeutah.org/aptcondoguide-signs.html

6. Educate employees on how to answer questions regarding the smoke-free policy. The more knowledgeable your employees are about the law and policy, the easier it will be to deal with any problems that may arise.

Adapted from the Smoke-free Housing TOOLKIT developed by the Tobacco Public Policy Center http://www.law.capital.edu/tobacco/documents/owners_toolkit.pdf [15]

For Existing Buildings

If you would like to implement a new smoke-free policy in an existing building, consider these helpful tips:

1. Make a plan. There are several types of smoke-free policies:

   - Phase in

   While it is not recommended from a health viewpoint, some policies phase in smoke-free units. When a smoker vacates, the unit becomes smoke-free. This will decrease opposition to the policy; however, it delays implementation indefinitely until all smokers' leave or die.

- Designate specific areas as smoke free

Separate sections, patios or hallways can be designated smoke free. Select the area with the fewest number of smokers to become the non-smoking section. If there is more than one building, possibly one building could be designated as smoke free.

- Prohibit smoking in common use areas

Designate common use areas such as lobbies, hallways, balconies, laundry facilities, playgrounds, clubhouses, swimming pool, and spa areas, as smoke free.

2. 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. For examples of signs visit: www.tobaccofreeutah.org/aptcondoguide-signs.html.

3. Remove ashtrays and place receptacles for smoking materials at least 25 feet away from entrances together with signs, indicating smoking is allowed. This will encourage residents and guests to smoke away from common areas.

4. Discuss decisions to implement a smoke-free policy with residents to secure their support. Hold a meeting that is open to all residents. It is natural to have some resistance, but emphasize the known dangers of secondhand smoke and the fact that secondhand smoke drifts from unit to unit. You may want to survey your tenants to find out what buildings can be most easily made smoke-free, and then seek to relocate non-smoking residents to those buildings. Offer an incentive, such as a free month of rent, to encourage residents to relocate.

5. Announce the change to all residents in the form of a letter. See ***Attachment R*** for an example of a letter to residents. Require residents to sign a copy stating their intent to comply with the new policy. Leases should be updated with the new smoke-free lease language, which becomes effective upon renewal. Placing smoke-free language in your lease makes it enforceable. You should consult your legal advisor about the terms and language of rental agreements.

6. Post flyers in mailboxes and in common areas. If there is a resident newsletter, post information about the new policy change to notify residents. Promote resources to help smokers quit (e.g., Utah Quit Line at 1-888-567-TRUTH or Utah QuitNet at http://www.utahquitnet.com/

7. Educate employees on how to answer questions regarding the smoke-free policy. The more knowledgeable your employees are about the law and policy, the easier it will be to deal with any problems that may arise.

8. If smoking is allowed in some portion of the building, provide your maintenance staff with proper equipment such as door sweeps and caulking materials to deal with drifting

smoke. However, be aware that sealing treatments provide only marginal benefits in reducing secondhand smoke exposure.

9. Promote your smoke-free community. Advertise your property as smoke free in the newspaper and real estate magazine ads. Send a press release to get free publicity and develop a waiting list for individuals interested in your community. See ***Attachment S*** for an example of a press release. This will set you apart from other apartment or condominium communities that allow smoking. Register your apartment or condominium complex on Utah's Smoke-free Apartment and Condominium Guide and Statewide Directory at http://www.tobaccofreeutah.org/aptcondoguide.html#smoke/. This will help individuals looking for smoke-free apartments find you.

Adapted from the Smoke-free Housing TOOLKIT developed by the Tobacco Public Policy Center http://www.law.capital.edu/tobacco/documents/owners_toolkit.pdf [16]

The key elements of a smoke-free lease or declaration are as follows:

- The unit should be defined as a smoke-free residence.
- The resident's responsibility is to inform guests of the no smoking policy and to prohibit smoking by household members or guests while on the premises. Smoking by the residents, household members, or guests is a violation of the lease.
- The landlord, property manager, or condominium association's responsibility is to post "smoke-free" or "no smoking" signs.

? Track Your Progress

1. What type of policy is being implemented?
2. Was a tenant survey conducted to determine if relocating residents to a smoke-free building necessary?
3. Did you develop and send out a letter to residents announcing the policy change?
4. Did you amend the lease agreement, the HOAs rules and regulations or the declaration to reflect the smoke-free policy?
5. Did you post signs in designated areas?

Action Step 7: Evaluate Your Efforts

The tools provided in this section are intended to help you document the process and the initial outcomes of your tobacco policy project. This documentation will be crucial in planning future projects and sharing project outcomes with tobacco prevention and control partners. Following are two forms designed to help you evaluate your efforts: the Process Evaluation Worksheet and the Outcomes and Recommendations Table.

1. Process Evaluation Worksheet: Fill out sections of this worksheet as you work on your project, ideally after you complete each Action Step. Use the progress tracking questions (? Track Your Progress) and the Research Tools suggested in the Action Steps, where

applicable. Some questions may not apply to your project. In that case, mark the question as not applicable (N/A) and briefly explain why it is not applicable.

2. Outcomes and Recommendations Table: Use your notes from the Process Evaluation Worksheet and any other pertinent information to complete this table.

You are not required to submit either of these forms, but they are designed to assist you in reporting your progress to TPCP.

Process Evaluation Worksheet

Action Step 1: Gather Relevant Facts and Information

- Are you familiar with federal, state, and local laws regarding rights of tenants, landlords, and disabled persons? Yes No

- List high risk/priority areas as determined by your community profiles:
  _____
  _____
  _____

- List multiple dwelling units that exist in your community (locations, types):
  _____
  _____
  _____

- Data source(s):

  List the complex you interviewed for initial policy assessments and check whether each complex is smoke free, supportive of a change in its tobacco policy, and whether you will target a unit for further intervention:

Name/Type of Complex:	Number of Units:	Smoke-free?	Supportive of Change?	Project Partner?	Comments:

Action Step 2: Identify Your Audience/Assess Community Readiness (If you will be working with more than two or three complexes, you may want to make multiple copies of the next documentation sections to ensure that there is enough space to record detailed information for each complex.)

- List existing tobacco prevention and control coalitions and potential partners.
  _____
  _____
  _____

- List community leaders who support or oppose your policy initiative.
  Support: _____
  Oppose: _____
  List local media. _____
  _____
  _____

- Did you conduct an Apartment and Condominium Initial Interview at each complex to learn about existing policies and processes used to change these policies? Yes No
  If yes, list important findings: _____
  _____
  _____
  _____

- Was a tenant survey conducted to determine readiness for a smoke-free policy in apartment or condominium complexes? Yes No
  If yes, list important findings: _____
  _____
  _____

- Will you seek voluntary policy change or ordinance change?_____
  Why?_____
  _____
  _____

Action Step 3: Plan Your Campaign

- Have you formed a coalition or workgroup to support your smoke-free campaign?
  Yes No

  If yes, who is represented on the coalition? _____
  _____
  _____

- Has the coalition addressed the nine questions from the Strategy Planning Tool?
  Yes No

- Has the coalition used the data collected in Action Steps 1 and 2 to develop a plan?
  Yes No

  If yes, briefly describe major components of the plan and your timeline:

Component	Expected Completion Date	Completion Date

Action Step 4: Select Your Materials

- List the educational objective(s) of your materials:_____
  _____
  _____
  _____

- Did you develop materials or use existing materials? Developed new materials
  Used existing materials (Source: _____)

- Did you follow the TPCP media protocol to approve new materials or use of existing materials, if applicable? Yes No

  How did you ensure that your materials were appropriate for your target audience and that they were culturally sensitive? _____
  _____
  _____
  _____

Action Step 5: Get the Word Out/Gain Support

- List the media used to promote the tobacco policy project (newspapers, etc.), the target audience for each media source, and the number of people reached:

Media	Target Audience	Number Reached

- List the materials provided to tenants and property management:

Type of Material	Target Audience	Number Distributed

- Did you assess how your messages were received? Yes No
  If yes, how did you make the assessments? Please describe your findings: _____
  _____
  _____

- As a result of the information provided, are tenants supportive of your efforts?
  Yes No Data source: _____

Action Step 6: Implement the Policy

- What type of policy was implemented? How was it determined what type of policy would be implemented?
  _____
  _____
  _____

- Was a tenant survey conducted to determine readiness for a smoke-free policy in the apartment or condominium? Yes No
  If yes, list important findings: _____
  _____
  _____

- How many letters were sent to current residents? _____
- Attach a copy of each policy implemented or revised as a result of your efforts.

Evaluation Outcomes and Recommendations Table

Outcomes
List the number of complexes you worked with and how many of those adopted a policy change. Please describe any policy changes or attach a copy of new or revised policies.
Describe any new or improved community partnerships resulting from this effort:
Lessons Learned
What factors contributed to success?
What barriers limited or threatened success?
How were barriers addressed?
What were the relative costs (including staff time) and results of different aspects of your efforts? Did some activities appear to work as well as others but cost less?
Recommendations
What are the next steps to support implementation and enforcement of the new policy (if passed) or future passage (if not)?
What will you do differently the next time you attempt to change a smoking policy?

Which activities and strategies should be continued the next time you attempt to change a secondhand smoke policy with multiple dwelling units?

Action Step 8: Ensuring Policy Sustainability

Post Signage.

The most important way to publicize your smoke-free policy is by posting signs. Long after a smoke-free policy has been adopted, updating and reposting signs reinforces residents, guests, and prospective tenants that the apartment or condominium complex is smoke free. If you have not done so already, contact the Utah Department of Health, Tobacco Prevention and Control Program for signage template examples.

Before you purchase and post signage keep the following items in mind:

- Where are you prohibiting smoking?
- How many signs do you need?
- Do your signs need to include information regarding the UICAA?
- What type of material should your sign be on (i.e., wood, metal, plastic)?
- Does the property management logo need to be included on the sign?
- Does the signage need to be approved by the property management?
- Does the signage need to be in a different language?
- What is the timeline?

The following locations are suggested places for posting your signs:

- Common areas such as walkways, hallways, etc
- Play areas
- Pool area
- Parking garages
- Patios and Balconies
- Clubhouse
- Picnic areas

Celebrate!

Celebrate all of your hard work and success! Invite those who made the policy change possible to celebrate with an event such as a luncheon, to thank the community for making the apartment or condominium complex a healthier place to live, work and play. This could be the start “kick off” to educating the community about the new policy.

Educate the community about the new policy.

Educating the residents, guests, and prospective tenants about the new policy will be a big part of ensuring that the policy creates change. This is especially important for enforcement reasons.

Depending on the policy language, management or community members may be the ones enforcing the policy. This self-enforcement will only happen if the community is made aware of the changes. This could include media outreach, community events, newsletters, etc. Most likely, this education phase will happen jointly with the *Action Step 5: Get the Word Out and Gain Support* activities.

Education Checklist:

- Educate management and maintenance employees on how to answer questions regarding the smoke-free policy.
- Revise your lease/rental agreements to include the smoke-free provisions.
- Announce the change to residents in a form of a letter, or a newsletter. This is a great opportunity to educate residents about Utah's cessation resources. Post announcements reflecting the new policy.

Evaluation.

Now that the policy is in place, how is it working? Consider developing a plan to monitor how your policy is being implemented and evaluate the results. With this information, you can strengthen your policy and increase its effectiveness and impact over time. A good monitoring plan can also provide proof of success to board members and other communities.

Evaluation Checklist:

- Have management and maintenance employees been informed about the new policy and been instructed about how to enforce the smoke-free policy?
- How were residents, management and owners notified of the new policy change?
- Were there conflicts anticipated and handled appropriately? Document dates of conflicts.
- Are signs displayed in appropriate places? How many? Take picture of signage for reference.
- Are resources available in the sales/rental office for those who want to quit using tobacco products?

Share progress.

Throughout the process make sure you take the time to share your progress with other property management companies, HOAs and the Utah Apartment Association. It is important that those who were involved in passing the policy see continued success. Share results with city and county officials, state agencies, law enforcement, and other organizations that are trying to pass similar policies.

Apartment and Condominium Initial Interview Guide

Interviewer Name: _____ Interview Date: _____
Respondent Name: _____ Phone: _____
Respondent's Position: ❑ Owner ❑ Manager ❑ Other _____
Company or Complex: _____

Hello, my name is _____ and I am calling from _____. I am conducting a survey of property owners and managers about smoking policies in their buildings. This survey should take about 10 minutes. Are you available to complete this survey now?
(If not) Could I call you another time? When would be a good time to call?

1. What types of multiple dwelling units do you own/manage?
   Check on below

   ❑ Apartments ❑ Condo/Town homes ❑ Dormitories ❑ Other _____

   Check one below

   ❑ Rentals ❑ Owner-Occupied ❑ Combination ❑ Other _____

2. How many complexes do you manage in this County? _____

3. How many buildings in total do you manage? _____

4. How many residential units in total do you manage? _____

5. Is smoking prohibited anywhere on your properties? __Yes __No *(Skip to 7)*

6. Where is smoking prohibited on your properties?

   _____Everywhere, both indoor and outdoors
   _____Everywhere, both indoors and outdoors, except for a designated smoking area
   _____All residential units _____Certain residential units
   _____Lobby/Clubhouse _____Hallways _____Laundry rooms
   _____Patios/Balconies _____Stairwells _____Playgrounds _____Pool
   _____Lawn/Gardens _____Parking lots _____Other_____
   (Ask only if smoking is not currently banned in units)

7. Would you support implementing any (or any additional) smoking restrictions on the property? ____Yes ___No (If no skip to question 11)

The following three questions ask more specifics about what kind of restrictions you would support.

8. Would you support implementing a smoking ban, so that smoking would not be allowed in:
    a. All residential units
    b. Some residential units or
    c. Not in any of the residential units

(Ask only if smoking is not currently banned in indoor common areas)

9. Would you support implementing a smoking ban, so that smoking would not be allowed in:
    a. All indoor common areas
    b. Some indoor common areas or
    c. Not in any of the indoor common areas

(Ask only if smoking is not currently banned in outdoor areas)

10. Would you support implementing a smoking ban in
    a. All outdoor areas
    b. Some outdoor areas or
    c. Not in any of the outdoor areas.

11. Would you like information about the health and economic benefits of smoke-free housing?
    ___Yes ___No

12. This is the end of the interview, is there anything you would like to add?
Thank you for your time.

(If the interview was positive you could add: "You will hear more about this project soon, and we are looking forward to working with you.")

Tenant Survey

1. What is your age? _____

2. What is your gender? ☐ female ☐ male

3. Are you a .... ☐ Current tobacco user ☐ Former tobacco user ☐ Non- tobacco user

→Do you currently use ☐ Cigarettes ☐ Chewing tobacco ☐ Cigars or pipes

4. Does the smoke from other people's cigarettes bother you?
☐ A lot ☐ Somewhat ☐ A little ☐ Not at all

5. Do you think that breathing smoke from other people's cigarettes is...
☐ Very harmful to one's health
☐ Somewhat harmful to one's health
☐ Not very harmful to one's health
☐ Not harmful at all to one's health

6. Does anyone who lives with you now smoke? ☐ Yes ☐ No

7. Which statement best describes the rules about smoking inside your apartment? (CHECK ONE)
☐ Smoking is not allowed anywhere inside your apartment
☐ Smoking is allowed in some places or at some times
☐ Smoking is allowed everywhere inside your apartment
☐ There are no rules about smoking inside your apartment

8. Please indicate what kind of tobacco policies you would support at your apartment/condominium complex: (CHECK ONLY ONE ANSWER FOR EACH LOCATION)

INDOOR COMMON AREAS	OUTDOOR COMMON AREAS	RESIDENTIAL UNITS
☐ Ban smoking	☐ Ban smoking	☐ Ban smoking in all units
☐ Limit smoking to a designated area	☐ Limit smoking to a designated area	☐ Ban smoking in certain buildings
☐ Have no restrictions on smoking	☐ Have no restrictions on smoking	☐ have no restrictions on smoking
☐ Other _____	☐ Other _____	☐ Other _____

Comments:

Legal Cases on Secondhand Smoke For Property Management

The following information summarizes actual lawsuits filed by residents in various apartment dwellings throughout the country. The data presented can provide property management companies, managers, and interested individuals with support for making a safe living environment.

See Utah Laws 1997, chapter 230; Utah Code Annotated, 1953, sec. 78-38-.5; Groskind, N., "Q&A: Smoke Distresses Condo Owner," Boston Globe, April 26, 1998, F4; White, E., "Today, Where There's Smoke, There's a Neighbor's Lawsuit," Wall Street Journal, July 13, 1998, B1, B6; Hansen, M., "Smoke Gets in Your High-Rise," American Bar Association Journal, November 1998, 24; Tansey, B., "In Pursuit of Smoke-Free Living Space; Apartment Dwellers Fear Health Risk from Neighbors' Cigarettes," San Francisco Chronicle, June 28, 1999, A1; Walsh, J., "Breath of Fresh Air," Multifamily Executive, January 2000, 26, 86; Kline, R., "Smoke Knows No Boundaries: Legal Strategies for Environmental Tobacco Smoke Incursions Into the Home Within Multi-Unit Dwellings," Tobacco Control, June 2000, 201-205; Silverman, F.,

"A Kick in the Butts: Why Condos, Rentals May Not Let You Light 'Em Up Even in Your Unit," Hartford Courant, September 7, 2003, J5; and Martin, A., "On Tobacco Road, It's a Harder Sell," New York Times, February 8, 2004.

Lipsman v. McPherson, 6.2 TPLR 2.345, 19 M.L.W. 1605 No. 90-1918, (Middlesex, MA, Superior Court 1991). A nonsmoking tenant sued a smoking tenant of an apartment in the same building, alleging nuisance and negligence because the smoke from the defendant's apartment regularly seeps into plaintiff's apartment, causing him annoyance, discomfort and increasing his risk of physical harm due to exposure to secondhand tobacco smoke and of fire. Defendant filed a motion to dismiss; on September 11, 1990, the motion was allowed as to negligence and risk of fire but denied as to private nuisance (Botsford, J.). A jury-waived trial took place from March 11 through 13, 1991. The court (Lauriat, J.) entered judgment for the defendant, ruling that the "annoyance" of smoke from 3 to 6 cigarettes per day "is not substantial and would not affect an ordinary person" and that the "plaintiff may be particularly sensitive to smoke, but an injury to one who has specially sensitive characteristics does not constitute a nuisance." See "He May Have Lost Out This Time, But She Better Not Burn the Toast," Wall Street Journal, June 14, 1991, B1. Shortly after this decision, the Defendant moved out.

Donath v. Dadah, et al., No. 91-CV179 (Worcester Cty., MA, Housing Court Dept. 1991). On April 23, 1991, a woman sued her landlord for nuisance, breach of warranty of habitability, breach of the covenant of quiet enjoyment, negligence, battery and intentional infliction of emotional distress due to exposure to secondhand tobacco smoke in her home coming from the second floor (where the defendants live) of the building in which she lives. Plaintiff alleges that she has suffered asthma attacks, labored breathing, wheezing, prolonged coughing bouts, clogged sinuses and frequent vomiting due to the exposure to secondhand smoke in her home. Plaintiff moved out of the apartment shortly after filing the lawsuit. The case was settled for an undisclosed sum of money in December 1992.

Fox Point Apt. v. Kippes, No. 92-6924, (Lackamas County (OR) Dist. Ct. 1992). A landlord moved a known smoker into the apartment below a nonsmoking tenant who began to suffer nausea, swollen membranes and respiratory problems as the cigarette smoke entered her apartment. The tenant sued, alleging that the landlord had breached its statutory duty to keep the premises habitable and the covenant of peaceful enjoyment which the common law implies in every rental agreement. The six-person jury

unanimously found a breach of habitability, reduced rent by 50% and awarded the tenant an amount of money to cover her doctor's bill. The landlord moved for the judge to enter a judgment notwithstanding the verdict, claiming that protection from cigarette smoke is outside the intended scope of the law.

Contract Management Services, Inc., et al. v. Kuykendahl Joint, Inc. and Kamen Management, Inc., Dist. Ct. Harris County (TX), 61st Jud. Dist., No. 93-006228 (1993). Defendants, companies that lease and manage office space, were sued by a company (known as CMSI) and the manager of CMSI's Harris County office, Kathleen Thomas, for breaching a lease in that it did not prevent smoking by other tenants. The smoke produced by those tenants "was continually coming into CMSI's space and making ill Kathleen Thomas and other employees of CMSI." The plaintiffs allege that they have expended about $3000 in an attempt to prevent the smoke from affecting their offices and have "suffered damages including for lost profits from lost contracts, lost profits from continuing contracts, lost profits from contracts Kathleen Thomas would have obtained from CMSI, for lost employee working time, and for expenses of moving the office in September 1994." The case was scheduled for trial on April 24, 1995.

Dworkin v. Paley, 638 N.E.2d 636, 93 Ohio App. 3d 383, (Ohio App. 8 Dist. 1994). A nonsmoking tenant, Dworkin, entered into a one-year lease with the Paley to reside in a two-family dwelling; the lease was later renewed for an additional one-year term. During the second year, the Paley, a smoker, moved into the dwelling unit below Dworkin's. Two weeks later, Dworkin wrote to Paley that her smoking was annoying him and causing physical discomfort, noting that the smoke came through the common heating and cooling systems shared by the two units. Within one month, Dworkin vacated the premises; eight months later, he brought an action to terminate the lease and recover his security deposit from Paley. The suit, which alleged that Paley had breached the covenant of quiet enjoyment and the statutory duties imposed on landlords (including doing "whatever is reasonably necessary to put and keep the premises in a fit and habitable condition") was dismissed on a motion for summary judgment. The Court of Appeals, Cuyahoga County, reversed the dismissal, concluding that a review of the affidavits "reveals the existence of general issues of material fact concerning the amount of smoke or noxious odors being transmitted into appellant's rental unit." The case was thus remanded for further proceedings.

Pentony v. Conrad et al., NJ Super. Ct. (1994). The plaintiffs sought to enjoin their downstairs neighbors from smoking between 4:00 P.M. and 9:00 A.M. (when the Pentonys would be home from work) in their apartment because the secondhand smoke seeped throughout the Pentony's apartment. After a two-hour hearing on April 28, 1994, a judge ordered the apartment complex directors to try to resolve the dispute out of court. See "2 Smokers Are Sued by Neighbors in Apartment Above Them," New York Times, April 28, 1994, B6; "US Couple Sue Downstairs Neighbours for Smoking, The Times, April 29, 1994; Gold, J., "Judge Rejects Bid to Stop Neighbors Smoking," The Record (Bergen County, NJ) S06; Hanley, R., "Judge Turns Down Couple in Quest of Anti-Smoking Order Against Their Neighbors," New York Times, April 29, 1994, B5; "Couple Whose Neighbors Smoke Sent to Co-op Board," Orlando Sentinel, April 30, 1994, A18; "Judge: Neighbors' Smoking Dispute Must be Resolved by Board," The Legal Intelligencer, May 2, 1994, 8; "Complex Orders Repairs in Fight Over Smoking," The Record (Bergen County, NJ), May 13, 1994, A27; "Truce Is Reached in a Co-op Clash Over Smoking," May 13, 1994, B4; Boronson, W., "Love Thy Neighbor: Different Ways to Cope with the Nuisance Next Door," The Record (Bergen County, NJ), May 15, 1994, R1; and "Upstairs, Up in Smoke," National Law Journal, May 23, 1994, A23. The neighbors settled their dispute in 1995; the terms of the settlement remain confidential. See "Neighbors Settle Smoking Dispute," The Record (Bergen County, NJ), March 2, 1995, C12.

Snow v. Gilbert, Middlesex Cty. (MA) Superior Ct., Docket No. MICV94-07373 (1994). A woman suffering from pulmonary fibrosis and CREST, a form of scleroderma, won a temporary injunction against her landlord to prevent him from renting the units below hers to smokers, at least until she succeeds in her efforts to find another apartment elsewhere. Despite an earlier agreement not to rent the

units to smokers, the landlord, who was about to sell the building, informed his tenants that they could smoke in their apartments. The smoke from those units seeped into the plaintiff's apartment, causing a severe reaction, since she suffers from multiple chemical sensitivity.

Rathbun v. Will County Public Building Commission, No. 95 MR 02782 (Cir. Ct., 12th Jud. Cir., Will County, IL 1995). An attorney filed suit alleging that smoking in a cafeteria/coffee shop located within the county courthouse is a public nuisance. The shop has been designated as the only smoking area in the four-story building. See Merrifield, B., and Presecky, W., "Lawyer Aims to Clear Courthouse Air," Chicago Tribune, June 1, 1995, sec. Metro Southwest, p. 2.

Platt v. Stella Landi, et al., No. BC 152452, Calif. Super. Ct., Los Angeles County, (1996). A nonsmoking owner of a condominium unit sued his downstairs neighbor and the condo association because of the cigarette smoke that drifts through his open windows from the unit below. He sought to prohibit his neighbors from smoking anywhere in the development or from smoking in their condominium, except with the windows closed and under certain conditions. Platt also wanted the landlords to refrain from renting the neighboring condominiums to smokers. See Liss, R., "Non-Smoker Sues Neighbors," Los Angeles Daily Journal, June 28, 1996; and Simon, S., "Smoke and Ire: Man's Suit Over Neighbors' Cigarettes Could Open New Front in War on Tobacco," Los Angeles Times, July 5, 1996, B2.

The trial court dismissed Platt's causes of action at the pleading stage. Platt appealed. Platt has sold his unit and no longer lives in the building. The Court of Appeal, Second Appellate District, Division One ruled on August 17, 1999, that since both Platt and the Landis have moved from the building, the case is moot. Also, the court did not overturn the trial court's ruling awarding attorneys' fees to the defendants, pursuant to language in the Declarations of Covenants, Conditions and Restrictions.

Layon et al. v. Jolley, et al., Case No. NS004483, Superior Ct. of Calif., Los Angeles County, (1996). Plaintiffs' brought an action seeking an injunction prohibiting harassment. According to the complaint, plaintiffs' condominium sits above a garage where the defendants have been smoking marijuana, cigarettes and cigars. The exposure to ETS has forced the plaintiffs "to evacuate our own home for hours every time the defendant goes in his garage to smoke." The court issued a restraining order, specifying, "Defendant must stay away from his garage while smoking." See Russell, K., "Court Clears the Air," Press-Telegram, April 26, 1996.

In re: U.S. Department of Housing and Urban Development (HUD) and Kirk and Guilford Management Corp. and Park Towers Apartments, HUD Case No. 05-97-0010-8, 504 Case No. 05-97-11-0005-370 (1998). Two complaints were filed in September 1996 by Nancy V. Kirk under Section 504 of the Rehabilitation Act of 1973, as amended, and the Fair Housing Act of 1968, as amended against Guilford Management Corp. and Park Tower Apartments which are located in Loves Park, Illinois. Ms. Kirk has a respiratory condition aggravated by her neighbors' secondhand tobacco smoke entering her apartment at Park Tower, which is a HUD-subsidized high-rise for the elderly and the disabled. A conciliation agreement was entered into by the parties in late 1997 and approved by HUD in January 1998. The terms of the agreement provide that Park Tower will go smoke-free, beginning with new tenants moving in on or after March 15, 1998. [The no-smoking policy will not affect current tenants.] Park Tower will not preclude smokers from moving in as long as they agree to comply with the no-smoking policy. Violators of the no-smoking policy will receive written warnings; after the issuance of three warning letters to a violator within a one-month period, eviction proceedings shall begin. Since the transition to a smoke-free building will take many years, Park Tower agrees to inquire of several tenants currently residing in an area of the building having fewer smokers as to their willingness to be relocated to another apartment, thereby vacating an apartment to allow Kirk to move into a less smoke-filled area.

50-58 Gainsborough St. Realty Trust v. Haile, et al., 13.4 TPLR 2.302, No. 98-02279, Boston Housing Court (1998). A nonsmoker who lives with her husband in an apartment directly above a smoky bar was sued by her landlord for failure to pay rent. The tenant had withheld the rent, alleging that the amounts of smoke seeping into her apartment deprived her of the quiet enjoyment of that apartment. A Housing Court judge (Daher, J.) ruled that the amount of smoke from the bar below had made the apartment "unfit for smokers and nonsmokers alike." The judge further ruled that "the evidence does demonstrate to the Court the tenants' right to quiet enjoyment was interfered with because of the second-hand smoke that was emanating from the nightclub below." See Estes, A., "Tenant Wins Suit over Smoky Home," Boston Herald, June 10, 1998, 1, 4; and "Judge: Landlord Must Stop Secondhand Smoke," The Recorder (Greenfield, MA), June 11, 1998, 9.

Weil, Gotshal & Manges LLP v. Longstreet Associates, L.P., et al., 13.4 TPLR 3.188, Supreme Court of the State of New York (1998). A law firm in a large New York office building filed suit against the landlord and a tenant located one floor below its offices. The law firm alleges that the secondhand smoke emanating from the floor below has caused some of the firm's partners, associates and employees "illness, discomfort, irritation and endangerment to their health and safety" and prevented some of their personnel from being able to use or occupy their offices. The firm alleges that the landlord breached its contract and constructively evicted the plaintiff and further alleges that both defendants permitted a nuisance, engaged in trespass and were negligent. See Gregorian, D., "Law Firm Smokin' Mad at Neighbors," New York Post, June 23, 1998 22; and Arena, S., "Lawsuit Raises Stink Over Cigar Smoking," Daily News (New York), June 23, 1998, 17. The law firm later dropped the suit because the owner and the tenant agreed to remedy the smoke problem. See "Law Firms Drops Smoking Lawsuit," Crain's New York Business, September 14, 1998, 1.

Gottlieb, et al., v. Marquardt, et al., 99-CV-100, Waukesha (WI) County Circuit Court (1999). A nonsmoking couple sued their former landlord, alleging that large amounts of cigarette smoke poured into their condo unit for many months. They also allege that faulty construction of their condo was a contributing factor to the smoke seepage. See "Pair Sues Over Condo Smoke; Defendants Deny Their Allegations," Capital Times (Madison, WI), January 21, 1999, 7A.

Babbitt v. DiPuzo, et al., Superior Court of California, County of Riverside Desert Judicial District, Indio Branch, No. 029645. According to Dipuzo's cross-complaint, Babbitt "routinely and regularly smokes cigars on the exterior of the patio" of his condo and that "cigar smoke is allowed to waft into the windows of the DiPuzo Condo." In May 2002, Babbitt claimed that DiPuzo had assaulted him. A temporary restraining order against DiPuzo was dissolved by the court after a hearing. DiPuzo claims that he has suffered a diminution of value of his condo in excess of $50,000 as a result of the presence of the cigar smoke. See Carmony, D., "Home Smoker Facing Lawsuit, "Press-Enterprise (Riverside, CA), February 19, 2003; and Mahr, C., "Cigar Smoke Suit Moves Toward Trial," The Desert Sun (Palm Springs, CA), March 3, 2003.

McCormick v. Moran, 182 Misc. 2d 568, 699N.Y.S. 2d 273, 1999 N.Y. Misc. LEXIS 505, Small Claims #5176, City Court of New York, Watertown (1999). Plaintiff tenant entered into a written lease with the defendant landlord. Upon the end of the lease, the plaintiff vacated the premises and sued for a refund of the security deposit. The defendant filed a counterclaim, seeking costs in connection with extensive cleaning due to the smoke residue left by McCormick's heavy smoking. The Court found that "the plaintiff's conduct of excessive smoking while in the house caused the tobacco smoke residue to collect on various surfaces of the house creating an offensive odor and a potential health risk that may arise to others who may use the premises. "The defendant was awarded $455.64 for the cost to clean the house of tobacco smoke residue, with the plaintiff entitled to an offset for the $375 security deposit.

Donnelly v. Cohasset Housing Authority, Norfolk County (MA) Civil Action No. 01-00933, 16 Mass. L. Rptr. 318, 2003 WL 21246199 (2003). A nonsmoking tenant filed suit, claiming that the defendant housing authority committed negligence and breach of the covenant of quiet enjoyment by not responding to her complaints regarding infiltration of her apartment of tobacco smoke from a downstairs apartment. A Superior Court judge awarded the defendant summary judgment on the basis of the plaintiff's failure to prove the presence of smoke in her apartment and any defect for which the defendant should be held liable. "The evidence of smoke in the plaintiff's apartment is, in essence, that the plaintiff and others smelled smoke there, and that she experienced symptoms that she attributed to smoke. Notably absent from the record is any evidence that anyone has ever tested the air in the plaintiff's apartment for the presence of cigarette smoke. Evidence is similarly lacking of the existence of any defect, of which the Housing Authority had notice, resulting in smoke infiltration," the Court ruled.

On October 1, 2004, the Appeals Court of Massachusetts, at 62 Mass. App. Ct. 1104, 815 N.E.2d 1103, 2004 Mass. App. LEXIS 1114, reversed summary judgment on counts I, II and III of the complaint and affirmed summary judgment of Count IV.

Heck v. Whitehurst Co., 200 Ohio 4366; 2004 Ohio App. LEXIS 3972. A tenant claimed that excessive cigarette smoke had been entering his apartment and that the landlord had not made the repairs necessary to keep the apartment in a fir and habitable condition. Based on a magistrate's recommendation, the trial court ordered the landlord to correct the problem within 21 days, granted the tenant a 50 percent rent abatement and ordered the landlord to pay the tenant $639. The landlord appealed. The Court of Appeals of Ohio, Sixth Appellate District, affirmed the trial court's judgment, noting that "the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections."

Zangrando v. Kuder, (Summit County (OH) Court of Common Pleas, 2004). Plaintiff and his wife owned a condominium that is part of a 28-unit condo association. In May 2002, the defendant and her husband rented the unit next to the plaintiff's unit. Several times per day, the defendant smoked on a small, shared front porch that joins her unit with the plaintiff's unit. The plaintiff often asked the defendant to move about 30 feet away to smoke; the defendant refused. The plaintiff then wrote letters to the condo Association's trustees to try to resolve the problem; the officials refused. In April 2003, the plaintiff hired an attorney to try to negotiate a resolution to the problem. After that effort failed, the plaintiff filed a lawsuit in January 2004, seeking $25,000 in compensatory damages and $100,000 in punitive damages and an order that the defendant not be allowed to smoke on the porch.. In July 2004, the defendant and her family moved to another residence. In September 2004, a jury rendered a verdict for the defendant. See Farkas, K., "Man Sues Smoker in Next Condo; She Will Puff in Back Yard Till Trial," Plain Dealer (Cleveland, OH), January 29, 2004, A1, Farkas, K., "Assault-by-Smoke Trial Fires Up Today," Plain Dealer (Cleveland, OH), June 28, 2004, Farkas, K., "Secondhand-Smoke Suit Fumes in Court," Plain Dealer (Cleveland, OH), September 20, 2004, Chancellor, C., "Smoking Dispute Goes Before Jury," Beacon Journal (Akron, OH), September 21, 2004, Miller, M., "Smoker Defends Actions," Beacon Journal (Akron, OH), September 22, 2004, Trexler, P., "Smoking Opponent Criticized As Whiner," Beacon Journal (Akron, OH), September 23, 2004, Trexler, P., "Neighbor Kept Track of Smoking Incidents," Beacon Journal (Akron, OH), September 24, 2004, Trexler, P., "Man Illustrates Case against Ex-Neighbor," Beacon Journal (Akron, OH), September 25, 2004, Farkas, K., "Nonsmoking Jury Sides with Smoker in Lawsuit," Plain Dealer (Cleveland, OH), September 28, 2004, Trexler, P., "Smoker Cleared in Civil Lawsuit," Beacon Journal (Akron, OH), September 28, 2004, A-1, Schunk, A., Stow (OH) Sentry, October 3, 2004, 1.

The Court of Appeals of Ohio, Ninth Appellate District, Summit County, at 2006 Ohio 1549, 2006 Ohio App. LEXIS 1442, affirmed the judgment, ruling that plaintiff had received a fair trial and that the trial court's jury instructions were not in error.

Paul, CPA, PC, v. 370 Lex, L.L.C., et al, 794 N.Y.S. 2d 869, 2005 N.Y. Misc. LEXIS 477 (Sup. Ct. NY, NY Cty. 2005). The Plaintiff, a professional corporation having an office at 370 Lexington Avenue, sued pursuant to a lease. Plaintiff is seeking damages for breach of the covenant of quiet enjoyment, violation of the New York City Smoke-Free Air act, and nuisance. Plaintiff alleges that smoke from an adjoining suite seeped into its office, make its employees suffer from the ill effects of secondhand smoke and making certain rooms in the plaintiff's suite totally unusable. After receiving complaints about the smoke, defendant Murray Hill, which is the managing agent for the building, assured Mr. Paul that the problem would be resolved. Defendant Anderson continued to smoke in his office. Plaintiff eventually moved to another building and is seeking damages for its moving costs and for its inability to use the rooms in plaintiff's suite. Defendants moved for summary judgment on all claims. The Supreme Court of New York, New York County, ruled that "plaintiff has demonstrated that there are issues of fact for trial on the cause of action for breach of the covenant of quiet enjoyment," and that the New York City Smoke-Free Act does not provide for an individual cause of action. The Court also ruled that the plaintiff has a nuisance cause of action against the smoker, Anderson, but not against the owner (370 Lex, L.L.C.) or the managing agent. See Lin, A., "Lawyer's Lawsuit Against Smoking Neighbor Proceeds," New York Law Journal, March 7, 2005.

Harwood Capital Corp. v. Carey, (Boston Housing Court Docket No.05-SP-00187, 2005). A landlord sought to evict two tenants after receiving complaints from abutting residents about the strong smell of smoke emanating from their apartment. The tenants' lease did not mention smoking. The tenants worked out of the unit; they combined to smoke about 40 to 60 cigarettes per day. After a three-day trial, a jury returned a verdict that the Carey had breached his lease under a clause in the standard Greater Boston Real Estate Board lease prohibiting tenants from creating a nuisance or engaging in activity that substantially interfered in the rights of other building occupants. The jury also ruled that, therefore, the landlord was entitled to possession of the unit. See Scally, J., "Jury Finds Tenants Can Be Evicted for Smoking in Unit," Massachusetts Lawyers Weekly, June 13, 2005, 1, 31, Ranalli, R. and Saltzman, J., "Jury Finds Heavy Smoking To Be Grounds for Eviction," Boston Globe, June 16, 2005, B1, B11, Blumberg, D., "Even Home Isn't Haven for Smokers," Christian Science Monitor, June 22, 2005, 17, Shaffer, S., "Lighting Up in Your Condo? Think Again," National Law Journal, July 4, 2005, 6 and White, N., "Tenants Evicted for Smoking," Lawyers Weekly USA, July 4, 2005, 1.

Merrill v. Bosser, (County Court of the 17th Judicial Circuit, Broward County, FL 2005). The Plaintiff and her family purchased a condominium. The defendant, who smokes about one pack of cigarettes per day, was living in a unit one floor up and one unit over from the Plaintiff. The smoke from that unit was not a problem for the Plaintiff and her family until the Defendant acquired a tenant who smoked heavily. After that tenant moved in, the health of the Plaintiff and her family deteriorated; on one occasion, the Plaintiff's smoke detector went off while on several other occasions, they had to move out. After numerous complaints, the association advised the defendant that the tenant had to move out. After the tenant left, the smoke problem stopped. The Plaintiff sued seeking damages under the theories of trespass, common law nuisance and breach of covenant. The court found the Defendant liable, ruling that the "unique facts" of this case indicate that the amount of smoke gave rise to a "disturbance of possession." The facts of this case "demonstrate an interference with property on numerous occasions that goes beyond mere inconvenience or customary conduct. The court, which awarded the Plaintiff $1000 in damages and $275 in costs, concluded that the case is not about secondhand smoke but, rather, "about excessive secondhand smoke."

Duntley v. Barr, 2005 N.Y. Misc. LEXIS 2041, 20.6 TPLR 2.873, No. 2005/00131 SC, N.Y. Sup., Syracuse Co.). A nonsmoking apartment resident sought to recover $5000 in damages for harm to his apartment allegedly caused by Barr's smoking. The court ruled that the Legislature specifically exempted private residences from the Public Health Law that regulates smoking in certain public areas.

Birke v. Oakwood Worldwide, et al., (Calif. Superior Court, Los Angeles County, Northwest District, Docket No. LC075094, 2006). A father sued on behalf of his 5-year-old asthmatic daughter, alleging in a "Complaint for Public Nuisance," that "Defendants have allowed, encouraged and approved a toxic, noxious, hazardous, offensive - and in fact carcinogenic – condition to be present in all of the outdoor common areas of the [apartment] complex, including enclosed areas." See "Asthmatic's Father Sues Over Secondhand Smoke, Los Angeles Times, June 30, 2006, B4. On December 5, 2006, a judge dismissed the lawsuit, ruling that the girl did not have the legal standing needed for the lawsuit to proceed. The judge also gave Sohigian two months to file an amended complaint or appeal the ruling.

Poyck v. Bryant, et al., 2006 N.Y. Misc. LEXIS 2278, 2006 N.Y. Slip Op. 26343. The Bryants had lived in condominium unit 5-D for three years when new neighbors moved in next door. The new neighbors constantly smoked in their unit 5-C and in the common fifth floor hallway. The smoke penetrated the Bryants' unit. The Bryants complained to Poyck, who was the owner and lessor of the condominium. The landlord took no action to curtail the neighbors' smoking. The Bryants decided to vacate the premises due to the incessant secondhand smoke entering their unit. The landlord then sued the tenants for unpaid rent; the Bryants counterclaimed for constructive eviction due to the secondhand smoke. The landlord moved to strike the Bryants' affirmative defenses and counterclaims. The Civil Court of the City of New York denied the lanldord's motion to strike and/or dismiss, ruling that "in the context of implied habitability, secondhand smoke is just as insidious and invasive as the more common conditions such as noxious odors, smoke odors, chemical fumes, excessive noise and water leaks and extreme dust penetration." See Romano, J., "New Impetus to Ban Secondhand Smoke," New York Times, October 1, 2006.

Christiansen, et al., v. Heritage Hills #1 Condominium Association, No. 06CV1256 , Jefferson County (CO) District Court. The Plaintiffs, who are smokers, brought an action seeking declaratory and injunctive relief, specifically that the court find invalid an amendment of the Association's declaration banning smoking within the boundaries of the Project. The property is an older building subdivided into four multilevel condominium units with split entries. The Association's Declaration of Covenants, Conditions and Restriction states that "[n]o nuisance shall be allowed on the Property, nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its resident."

Ms. Christensen received complaints about her smoking in her unit and did not agree with a proposed compromise of her having to smoke outside the building. A nonsmoking neighbor spent thousands of dollars trying to seal her unit to keep the smoke out of her unit. After a heated meeting of the Association, three of four owners passed an amendment to ban smoking. After a two-day trial, the Court found for the Defendant, ruling that the "smoking ban was reasonably investigated, drafted and passed by three out of four owners after years of trying to address the problem by other means. There can be no finding that the passage was arbitrary or capricious or done in bad faith." See Schrader, A., "Couple's Smoking at Home Snuffed," Denver Post, November 16, 2006.

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Regulating Tobacco Smoke in Apartments - Summary of Legal Options

S.A.F.E Smokefree Air For Everyone

Protecting People From Secondhand Smoke through Information and Advocacy

10722 White Oak Avenue, #5, Granada Hills, CA 91344 • Phone: 818-363-4220 • FAX: 818-363-2260
Website: www.smokefreeapartments.org Email: smokefreeapartments@pacificnet.net
S.A.F.E. is a project of Community Partners

Regulating Tobacco Smoke in Apartments – Summary of Legal Opinions

Highlights from the Opinion of the Legislative Counsel of California on Smoking Bans: Residential Rental Property - #21547 (September 23, 1999)

"A local ordinance that authorizes residential rental agreements to include a prohibition on, or the allowance of smoking tobacco products within the rental unit would not be prohibited by state law."

"Discrimination against smokers by landlords serves legitimate business interests by potentially reducing the risk of fire damage, and, in turn, reducing insurance and maintenance costs. Based on these factors, we think that a court would find that smokers are not a protected class under the California Fair Employment and Housing Act."

"We have found no cases where the smoking addiction itself, has been found to be a 'disability' for purposes of any law. Illegal drug addiction and alcoholism are protected disabilities under the Americans with Disabilities Act."

"Section 6404.5 of the California Labor Code applies to the Common areas of an apartment or condominium complex if those are enclosed and are places of employment."

Opinion of Seth Merewitz, Special Counsel, Thousand Oaks Redevelopment Agency

"We have not identified specific laws, regulations or precedents that would prohibit a restriction on smoking within a publicly-assisted rental residential project. In fact, to the contrary, there is limited state statutory authority that authorizes local government agencies to regulate smoking." (June 17, 2003)

"Smoking has not been identified as a fundamental liberty interest or as affording a 'right to privacy' by the Supreme Court. Smokers have not been considered a 'suspect class' under equal protection law, such that they would receive constitutional protection against discrimination. Smokers are also not identified as a protected class under any federal or California civil rights or anti-discrimination law." (February 5, 2004)

HUD Regulations re Smoking

"Currently there is no HUD policy, by statute, regulation, handbook or otherwise that restricts landlords from adopting a prohibition of smoking in common areas or in individual units. (Letter from Sheila Y. Walker, Chief Counsel, HUD, Detroit, Michigan, July 18, 2003.)

"At this time there are no statutory provisions or regulations addressing the question of smoking in HUD-assisted units." (Letter from Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, U.S. Department of Housing & Urban Development, Washington, D.C., July 23, 2003)

(This material was made possible by funds from the Proposition 99 tobacco tax initiative from the Los Angeles County Department of Health Services.) [18]

S.A.F.E. Advisory Board: Albert J. Benson, Steven Gallegos, Gerardo Guzman, Paul Montanchez, M.P.H., C.H.E.S.,
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Resources for Addressing Secondhand Smoke in Apartments and Condominiums

Any of the links listed below are excellent resources for more information on smoke-free apartments and condominiums, as well as more facts on secondhand smoke:

Action on Smoking and Health (**ASH**) takes legal action on behalf of the nonsmoking community, bringing or joining in legal actions concerning smoking. It also serves as an advocate of nonsmokers' rights movement. http://www.ash.org

Americans for Nonsmokers' Rights provides excellent advocacy information on such topics as smoke-free apartments, clean indoor air ordinances, and tobacco industry activity. http://www.no-smoke.org

Association for Non-smokers-Minnesota collaborated with the Center for Energy and Environment (CEE--an independent nonprofit agency) and other organizations in conducting surveys with owners, managers, and tenants on their opinions on smoke-free rental housing. For complete information on these surveys and additional information about smoke-free multi-unit housing in Minnesota, link on http://www.ansrmn.org

GASP (Group To Alleviate Smoking Pollution) provides tenants and landlords with helpful tips on how to resolve problems and implement no-smoking policies. www.mysmokefreehousing.org

Go Smoke Free Canada- "Make Your Home and Car Smoke-free: A Guide to Protecting Your Family From Secondhand Smoke" can be ordered or downloaded by visiting www.gosmokefree.ca and clicking on "Reports and Publications".

MISmoke-Free Apartment is a website that encourages helps landlords to go smoke free and provides landlords and tenants with smoke-free information and support. http://www.mismokefreeapartment.org

Smoke-Free Apartment Registry has policy suggestions for solving the problem of secondhand smoke in apartments and condos, and provides sample smoke-free lease and condominium agreements information and referrals to individuals in crisis because of secondhand smoke. http://www.smokefreeapartments.org

Smoke Free Environment Law Project (SFELP) is a website that is a compilation of extensive materials on secondhand smoke in apartments and condominiums for all parties involved: tenants, owners, and managers. http://www.tcsg.org/sfelp/home.htm. The website includes separate sections for apartments and condominiums.

Smoke-free Housing – Maine provides tenants and landlords with helpful tips on how to resolve problems and implement no-smoking policies. http://www.smokefreeforme.org/

Tobacco Control Legal Consortium (TCLC) - TCLC is a national network supporting tobacco control policy change by giving advocates better access to legal expertise. TCLC has developed summaries of various issues regarding secondhand smoke in multiple dwellings. Individuals with questions regarding application of the law to specific facts should consult a qualified legal advisor familiar with laws in Utah.

- There is No Constitutional Right to Smoke. A synopsis explaining why smoking is not a constitutionally protected right. http://www.wmitchell.edu/tobaccolaw/resources/No+Constitutional+Right+to+Smoke.pdf

- Secondhand Smoke and the Family Courts: The Role of Smoke Exposure in Custody and Ventilation Decisions. An overview of when and how family courts have considered a child's exposure to secondhand smoke when making custody and visitation decisionshttp://www.wmitchell.edu/tobaccolaw/resources/family%20law.pdf

- The Americans with Disabilities Act: Effective Legal Protections Against Secondhand Smoke Exposure. A synopsis of the law describing when exposure to secondhand smoke qualifies as a disability under the ADA, the scope and constitutionality of Titles I and II of the ADA, as well as remedies under the ADA for smoking-related discrimination. http://www.wmitchell.edu/tobaccolaw/resources/Douglas.pdf

- Infiltration of Secondhand Smoke into Condominiums, Apartments and Other Multi-Unit Dwellings. A synopsis summarizing the legal remedies for landlords, condominium associations and tenants of multi-unit dwellings concerned about secondhand smoke infiltration. http://www.wmitchell.edu/tobaccolaw/resources/SchoenmarklinWeb.pdf

- Legal Options for Condominium Owners Exposed to Secondhand Smoke. A synopsis of legal options for condominiums. http://tclconline.org/documents/lawsynopsis_schoenmarklin.pdf

Technical Assistance Legal Center (TALC)- TALC is funded by the California Department of Health Services. The center provides California communities with free technical assistance on tobacco control policy issues and can be linked at: http://talc.phi.org/

- "How Landlords Can Prohibit Smoking in Rental Housing," answers common questions about how landlords can make both common areas and individual units in a building nonsmoking. The document can be linked at: http://talc.phlaw.org/pdf_files/0076.pdf

The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General – June 27, 2006. This report updates the 1986 report The Health Consequences of Involuntary Smoking, and provides a detailed review of the epidemiological evidence of the health effects of involuntary exposure to tobacco smoke. http://www.surgeongeneral.gov/library/secondhandsmoke/

The Utah Department of Health's Tobacco Prevention and Control (TPCP) website provides valuable information pertaining to SHS in the home and in the workplace, Utah laws, and other resource links. http://www.tobaccofreeutah.org/ets.html

Utah Smoke-Free Apartment and Condominium Guide, which is designed to promote smoke-free housing for Utah residents. The Guide contains information for apartment and condominium owners and managers as well as those seeking housing that is smoke free. http://www.tobaccofreeutah.org/aptcondoguide.html

Utah Smoke-Free Apartment and Condominium Statewide Directory, a listing of rental properties that provide smoke-free housing. This listing is provided as a free service to managers, owners and renters. http://www.tobaccofreeutah.org/aptcondoguide-dir.htm

Smoke-free Housing Surveys

Utah – Black Hawk Condominiums

The thought of having a smoke-free environment at Black Hawk Condos is very appealing indeed, at least for the majority of the residents. This desire became evident when a survey was administered to all residents. The survey, for all intents and purposes, was quite successful. The Black Hawk HOA Board mailed surveys to 500 residents of which 200 surveys were returned. Seventy-nine percent of respondents own their condo. The survey found that:

- 63 percent of respondents said that smoke from other people's cigarettes bothered them
- 80 percent believed that breathing secondhand smoke from other people's cigarettes is very harmful to one's health
- 94 percent said that smoking is not allowed anywhere inside the condo
- 61 percent were in support of a smoking ban inside the residential units at Black Hawk, 18 percent supported limited smoking in a designated area, and 42 percent supported no restrictions on smoking
- 33 percent were in support of a smoking ban in outside common areas (including patios and porches), 87 percent supported a designated outdoor smoking area, and 19 percent supported no restrictions

Black Hawk Condominiums, Logan Utah

Minnesota

The Association for Nonsmokers Minnesota surveyed 600 rental households in 2001 by phone and by mail. The results of the survey showed that:

- Seventy-one percent of rental households in multi-family buildings in the survey areas had no smokers.
- Forty-eight percent of the respondents reported that at times tobacco smoke odors get into their apartment from somewhere else. Ten percent reported that this occurs "most of the time" or "often." Sixty percent of renters reported having a problem with drifting secondhand smoke in a current or previous apartment.
- Five percent of those experiencing secondhand smoke transfer said it was so bad that they were thinking of moving and 32% said it bothered them a lot.
- Sixty-three percent of the households with no smokers expressed interest in living in a building where smoking is not allowed anywhere. The interest was consistent across income levels, rent levels, age groups, and whether a family had children or not.
- Thirty-four percent of renters said they would be willing to pay more to live in a smoke-free building, with a majority being willing to pay up to $50 a month more.

For more information on this survey, link to the "Survey of Minnesota Renters Regarding Secondhand Smoke Movement in Apartment Buildings and Interest in Smoke-Free Buildings"[19] http://www.ansrmn.org.

The Smoke-free Environment Law Project has a section on Public Opinion surveys regarding apartments and smoking. For more information link to: http://www.tcsg.org/sfelp/home.htm.

Example of a Smoke-Free Campaign

Overview of a Smoke-Free Campaign

Below is a sample outline of a secondhand smoke-free campaign. It has been roughly organized in a nine-month timeline, but the time needed to build a coalition and mount a smoke-free campaign will vary from community to community. Still, the basic activities are laid out below. This overview is meant to help your local coalition or work group to develop its own plan of action and is not set in stone.

Month One

- Hold first meeting of core team
- Talk to key organizations (tenants, landlord/owners, managers, property management companies, HOAs) to gauge/gather support
- Identify and secure local staff for campaign effort
- Identify and secure funding; finalize budget
- Establish strategy, set timeline
- Profile property manager and/or condominium association board members
- Read the declaration, bylaws and rules of the condominium association and the rules and regulations of the apartment complex
- Determine coalition structure, including leadership and spokesperson

Month Two

- Develop campaign theme and messages
- Produce brief fact sheet on smoke-free apartments and condominiums
- Assemble information packet
- Establish database and collect lists from coalition or workgroup members
- Create list of community events to educate and build support
- Create media list
- Develop presentation and recruit speakers
- Create list of potentially supportive organizations & contacts
- Begin attending community events (e.g., apartment tenant meetings, condominium associations meetings, community events) for petitions & supporters

Month Three

- Continue collecting signatures, identify supporters
- Meet with more tenants, landlord/owners, managers, and property management companies to solicit support
- Begin voter/supporter ID phone bank
- Develop and mail newspaper postcard insert
- Begin volunteer recruitment

Month Four

- Meet with more tenants, owners/landlords, managers, and property management companies to solicit support
- Continue collecting signatures, identify supporters
- Continue voter/supporter ID phone bank
- Finish campaign website, email newsletter
- Meet with 2-3 likely supportive board members or managers
- Continue volunteer recruitment

Month Five-Six

- Continue volunteer recruitment
- Continue voter/supporter phone bank
- Obtain new petition signatures or supporters
- Press conference announcing campaign and strong public support (if applicable)
- Send information packet to all members
- Arrange editorial board visits
- Place ads in the local or city newspaper
- Letters to the editor
- Arrange constituent meetings with all members

Month Seven: Leading up to Final Push

- Phone bank and petition lists entered into database
- Local phone bank to supporters encouraging lobbying & attendance at hearings by tenants, etc.
- Guarantee support

- Generate calls and letters to tenants, landlords/owners, managers, property management companies, and others who support smoke-free multiple dwellings
- Press conference on final ordinance and authors

Month Eight: Final Push

- Prepare testimony and public support for council meetings, tenant meetings, and condominium association meetings
- Place newspaper ads focusing on community support and endorsements
- Arrange constituent meetings
- Send information packets to council members, tenants, and condominium association members

Month Nine: Post Ordinance

- Educate your community on the provisions of the smoke-free ordinance
- Watch for repeal efforts, such as referendum and legal challenge, and counter any attempt as it arises
- Ensure Enforcement and Compliance with managers, tenants, landlords/owners, and property management companies

Adapted from the Minnesota Smoke-Free Coalition.[20]

Secondhand Smoke in Apartments and Condominiums: A Guide for Residents

Promoting Smoke-free Policies

You can work with other residents and your manager to get smoke-free polices in your complex. Smoke-free areas may include:

- Laundry rooms
- Balconies/patios
- Common areas
- Leisure areas
- Pools
- Hallways and stairwells
- Individual units
- Entire buildings

Creating policies works best when all residents are involved. This includes both smokers and non-smokers. Working together, you can create polices that work best for the needs of your community.

- Know the facts about the dangers of SHS.
- Survey other residents to find out if they would support a smoke-free policy.
- Raise awareness of the problem of drifting smoke in units.
- Develop a policy about smoking.
- Present the policy to the manager or landlord.

Resources to Help Tenants to Quit

Utah Tobacco Quit Line: 1-888-567-TRUTH
Spanish Line: 1-877-629-1585
Utah QuitNet: www.utahquitnet.com

References

1. www.cdc.gov/tobacco
2. Glantz, S.A. & Parmley, W., "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Bioechemistry, "Circulation, 1991: 83(1): 1-12.
3. http://cancercontrol.cancer.gov/tcrb/nci_monograph/MONO10MON10.HTM.
4. Laboratory Centre for Disease Control, Health and Welfare Canada

Utah Department of Health

Utah Department of Health
Environmental Sanitation Program
P.O. Box 142104
Salt Lake City, Utah 84114-2104

For more information, contact:

Phone: (801) 538-6754 or
(801) 538-6260
www.tobaccofreeutah.org

Secondhand Smoke in Apartments and Condominiums

A Guide for Residents

The TRUTH

What is Secondhand Smoke?

The smoke of neighbors can bother residents living in apartment complexes and condominiums. Those most affected by SHS (secondhand smoke) are children.

Did you know?

- SHS has over 4,000 chemicals, 43 of which are known to cause cancer.[1]
- SHS kills 53,000 people every year nationally.[2]
- SHS exposure increases health concerns in children such as coughing, upper respiratory (lung) infections and asthma.
- SHS can affect nonsmokers by causing eye irritation, headaches, nausea, and dizziness.[3,4]

- Ventilation systems alone will not protect you from SHS exposure. The only solution is to make your apartment or condo smoke-free.

Did you know that SHS may drift into your apartment or condo from other units?

How to Reduce Secondhand Smoke

There may be some things you can do to help reduce your exposure to SHS. You may be able to do some repairs yourself; others may require approval from your manager. Refer to your rental agreement to determine what is allowed.

The following changes can help to reduce SHS, but they will not make your unit 100% smoke-free.

- Fill openings in floors and walls.
- Install fans and open windows. This will help to remove smoke or bring in fresh air.
- Weatherproof doors and windows. Smoke from hallways and windows can enter through poorly sealed areas. You can use weather stripping on doors and windows to help SHS from getting in.
- Kindly ask smokers not to smoke. You can ask them not to smoke near openings of windows or doors. Some smokers may honor your request, others may not.
- Post "No Smoking" signs on your door and ask your manager or landlord to post signs in areas where smoking is not allowed.

Post No Smoking Signs

Smoke-free Community

How to Handle Drifting Smoke?

You can protect yourself from being exposed to SHS and live in a smoke-free environment. Below are some suggestions of how to begin:

- Seek smoke-free housing.
- Ask if there is a smoke-free policy for all tenants.
- Try to find out where the smoke is coming from.
- Keep track of days and times SHS drifts into your unit.
- If you feel comfortable, talk to your neighbors about the problem.
- Notify the manager in writing about the drift of smoke and ask them to talk to your neighbors.
- If you are unable to solve the problem alone, you may wish to consult with your legal advisor regarding the drift of SHS in your unit.

Secondhand Smoke in Apartments and Condominiums: A Guide for Managers

Prohibit smoking in common areas.

- Implement and enforce a "no smoking" policy in all common areas such as hallways, balconies, doorways, exercise rooms, swimming pool areas, playgrounds, and laundry areas.
- Amend the rental lease or condominium association agreement to reflect the policy change.

Designate specific areas as smoke-free.

- Separate sections, patios, hallways or playgrounds can be designated as "smoking" or "non-smoking".
- Use signs to clearly mark the areas.

Include an additional security deposit.

- Require an additional security deposit to help offset cleaning expenses caused by smoke damage.

Resources:
Help your Tenants to Quit

Utah Tobacco Quit Line:
1-888-567-TRUTH(8788)
Spanish Line: 1-877-629-1585
Utah QuitNet: www.utahquitnet.com

References

1. http://www.cdc.gov/tobacco
2. Glantz, S.A. & Parmley, W., "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry", *Circulation*, 1991: 83(1): 1-12.
3. http://www.tcsg.org/sfelp/home.htm
4. http://www.nfpa.org

Utah Department of Health

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http://www.tobaccofreeutah.org

Secondhand Smoke in Apartments and Condominiums

A Guide for Managers and Owners

The TRUTH

A Guide for Managers and Owners

Fifty-three thousand people die each year as a result of SHS exposure. [1] Additionally, hundreds of thousands of people exposed to SHS suffer various other illnesses, such as asthma, and bronchitis.

SHS from one housing unit may seep through cracks, or travel by a shared ventilation system and enter into the living space of another. Ventilation systems in apartments and condos usually do not filter and move air well enough to stop SHS.

Secondhand smoke contains 4,000 chemicals, 43 of which are cancer causing. [2]

Blowing smoke away from other people, going into another room to smoke or opening a window may help to reduce exposure, but will not protect residents from the dangers of SHS.

Here are some reasons to change the smoking policies in your apartments or condominiums:

- SHS drifting between units is a problem for many residents.
- There is a market for smoke-free apartment units and buildings. [3]
- Landlords who ignore the issue of smoking face a growing likelihood of lawsuits by tenants suffering from SHS exposure.

Benefits of a Smoke-Free Apartment or Condominium

The greatest benefit of a smoke-free apartment or condo complex is the elimination of the health risks associated with secondhand smoke. In addition, smoke-free units may:

• Save money by reducing the damage that smoke causes (e.g. costs associated with cleaning carpets, walls, and repairing property from burns).

• Reduce fire risk, which may also reduce insurance costs. Smoking materials (e.g. cigarettes, cigars, lighters, matches, etc.) are the leading cause of home and total fire deaths in the United States. In 2001, there were 31,200 smoking-material structural fires. These fires resulted in 830 deaths, 1,770 injuries and $386 million in direct property damage. [4]

Smoke-free Community

Creating a Smoke-Free Environment

In 1997, the State of Utah enacted the SHS Amendments which established smoking is a nuisance under the law, and gave condominium and apartment complexes the authority to ban smoking in units, common areas, or on the premises.

Implementing Smoke-free Policies

The following are suggestions to establish smoke-free policies:

Phase In: Consider phasing in smoke-free units in all or part of the building(s).

- Talk about going smoke-free. Discuss with your tenants ways to make the building smoke-free.
- Don't allow smoking in unit. Politely ask people-even house guests– to smoke outside, away from entrances and air intakes.
- Make it clear that you are keeping your apartment or condo smoke-free to protect yourself and others in the building from harmful SHS.

Post No Smoking Signs

Secondhand Smoke: Guidance for Apartments and Condominiums

For more info call: 1-877-220-3466

Utah Department of Health

April 2005

SECONDHAND SMOKE GUIDANCE FOR APARTMENTS AND CONDOMINIUMS

SHS (Secondhand Smoke)

There are 53,000 people who die each year as a result of SHS exposure. [2] Additionally, hundreds of thousands more suffer various other illnesses, such as asthma, or bronchitis.

SHS from one housing unit may seep through cracks, or travel by a shared ventilation system and enter into the living space of another. This drifting smoke can make a home uncomfortable and an unhealthy place to live.

Smoke-free apartments or condominiums are not only a good health policy, but make sense legally.

The law allows owners and managers to prohibit smoking in any unit(s) or building(s).

Managers and owners who ignore the issue of smoke, face a growing likelihood of lawsuits by tenants suffering from the effects of SHS exposure.

SHS can make a home uncomfortable and an unhealthy place to live

Benefits of a Smoke-free Apartment or Condominium

The greatest benefit of a smoke-free facility is the elimination of the health risks associated with SHS. In addition:

* Making rental units smoke-free can save money by reducing the damage that smoke causes e.g. extra cleaning costs, painting costs, and property damage such as cigarette burns on carpets.
* Smoke-free units reduce fire damage, which may also reduce insurance costs.
* Adopting a smoke-free policy attracts tenants because there is a market for smoke-free housing.[3]

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Steps for Promoting Smoke-free Policies	3
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Secondhand Smoke Facts

- Environmental Tobacco Smoke has been classified as cancer causing and is considered a "nuisance" under Utah state law.
- More than 4, 000 chemicals are found in a single puff of smoke. [1]
- Secondhand smoke kills 53,000 Americans every year. [2]

Creating a Smoke-free Apartment or Condominium

A smoke-free apartment or condominium can be accomplished in two ways: a voluntary policy or through an ordinance.

Voluntary Policy

A voluntary policy is a policy made by an owner, manager(s) or property management company in which they vountariliy decide to prohibit smoking in an indiviudal unit, or in an entire building that may be leased, owned or rented. A voluntary policy could also prohibit smoking in common areas, patios, and balconies.

Ordinances

An ordinance is a law that is enacted by state and local city or county authorities. A local entity may pass an ordinance to define and regulate conduct that is detrimental to the public health safety and well being of its community.

In 1997, the State of Utah enacted the Secondhand Smoke Amendments which established that smoking is a nuisance under the law, and gave apartments and condominiums the authority to prohibit smoking in units common areas, or on the premises.

Voluntary Policy

* Talk about going smoke-free. As a manager or owner you can discuss with your tenants ways to make their environment smoke-free.
* Don't allow smoking in your apartment or condominium. Politely ask individuals to smoke outside, away from entrances and air intakes.
* Amend the rental lease, or condominium association agreement. Include language so tenants are aware of the smoking policy and their obligations not to smoke or allow others to smoke in the unit.
* If you allow smoking, specify in the lease where smoking is allowed.
* Make signs available that indicate a smoke-free environment. Remember you are targeting a behavior that annoys other tenants and causes health problems. If there is more than one building in a complex, designate buildings as "smoking" and "non-smoking."
* Offer incentives to support a smoke-free policy. For example, moving into a freshly painted unit helps to create a smoke-free building.

Implementing A Voluntary Policy

There are numerous ways to implement a voluntary policy in your unit or complex.

Phase In: Consider phasing in smoke-free units in all or part of the building(s). When a smoker vacates, simply rent as a "smoke-free" unit. Smoke-free policies can also be grandfathered in.

Designate specific areas as smoke-free: Separate levels, patios, areas where children play or hallways can be designated for smokers and non-smokers. Select the area with the smallest number of smokers to become the non-smoking area.

Prohibit smoking in common areas: Common use areas such as hallways, balconies, doorways, playgrounds, swimming pool areas etc., can be designated smoke-free.

Include an additional security deposit: Require an additional security or cleaning deposit for smokers. This will cover additional cleaning expenses caused by smoke damage.

Secondhand Smoke Amendments

The secondhand smoke amendments were passed by the Utah State Legislature in 1997. These amendments apply specifically to tobacco smoke that drifts into any residential unit a person rents, leases, or owns from another residential or commercial unit.

The amendments:

* Give authority to condominium associations to restrict smoking in units, common areas, and yard space §57-8-16-7(a)(b).
* Give authority for apartment rental contracts to include prohibitions on smoking in units, on the premises, or both §57-22-5-1(h).
* Establish that any tobacco smoke that drifts into any residential unit a person rents, leases, or owns is a nuisance under the law §78B-6-1101(3).
* Provide that residents of condominiums, apartments, or private homes may seek injunctive relief and/or damages if exposed to nuisance tobacco smoke §78B-6-1101(3).
* Exempt rental units, such as for vacation or available for only 30 days or less at a time, from the nuisance tobacco provisions §78B-6-1101(4)(a)(5)
* Provide authority for an apartment renter to file a nuisance action under §78B-6-1101-(6) even if the renter has signed away his rights to file a nuisance.

Steps for Promoting Smoke-free Policies

* Know the facts about the dangers and health effects of secondhand smoke.
* Talk to residents and building owners. Find out their overall attitudes about smoking and if they support smoke-free areas. Consider a door-to-door survey.
* Raise awareness about the problem of SHS in apartments and condos.
* Include tenants in developing a plan to eliminate SHS. Present survey results and facts on the harmful effects of secondhand smoke.
* Notify tenants of the plan. Send each unit a written notice of the new policy.
* Implement the new policy. Post the policy in common areas and include the smoke-free requirements in rental and/or lease agreements.
* Post "No Smoking" signs in appropriate areas.

Talk to residents to determine overall attitudes about smoking

How to Reduce Secondhand Smoke

As an owner or manager, there are repairs and changes that may reduce your tenants exposure to SHS. These changes will help to reduce the health risks associated with SHS exposure, but **will not** eliminate the drift of smoke **100%**.

* Post "No Smoking" signs in areas where smoking is not allowed.
* Weatherproof doors and windows to help stop smoke from getting in or out.
* Install pads and seals around outlets and switches.
* Fill openings in floors and walls: Foam is good for filling and sealing cracks and gaps around openings.
* Ask smokers to restrict smoking by not smoking near openings or windows.

Post "No Smoking" signs in areas where smoking is not allowed

Utah Department of Health

Utah Department of Health
Environmental Sanitation Program
P.O. Box 142104
Salt Lake City, Utah 84114-2104

For more information:
Phone: (801) 538-6754

http://www.tobaccofreeutah.org

RETURN SERVICE REQUESTED

The TRUTH

Frequently asked questions about Smoke-Free Housing

1. Why are smoke-free apartments legal? The rights of non-smokers to be free from exposure to SHS is protected by both legislation and laws. There are federal and state laws protecting non-smokers. Advertising "smoke-free" or "no-smoking" is also legal.

2. Would a smoke-free policy legally and unfairly discriminate against smokers? No. The privilege to smoke or not to smoke is not a right that is protected under the Civil Rights Act because smokers are not a protected class under federal law.

3. Would I lose money if I implement a smoke-free policy? You could actually save money with a smoke-free policy. Smoking is the cause of a variety of expensive property damages, ranging from extra cleaning costs to fire-related repairs. It can cost up to twice as much to prepare or repair a unit to rent that a smoker has lived in.

4. Would a smoke-free policy instigate a lawsuit from an angry smoker? You will more likely face a lawsuit from a frustrated non-smoker than from a smoker. Legal cases involving various apartment dwellings throughout the U.S. have been filed and won by tenants.

Smoke-free housing is legal under the law

5. Would enforcement of a smoking ban be difficult?

Once you implement a policy, smoking would be so noticeable that others would report it. You would use the same policy you use for other violations of the rules.

References:

1. www.CDC.gov/tobacco
2. Glantz, S.A. & Parmley, W., "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry," *Circulation*, 1991; 83(1): 1-12.
3. http://www.tcsg.org/sfelp/home.htm

Smoke-free Housing in Utah

UTAH DEPARTMENT OF HEALTH

April 2006

Volume 1, Issue 1

Smoke-free Housing in Utah

Inside this issue:

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Did You Know?

The Utah Department of Health has a resource guide available for those interested in implementing secondhand smoke policies in multiple- dwelling units. The Utah Secondhand Smoke Policy and Implementation Guide can be viewed at

http://www.tobaccofreeutah.org/shsguide.html

Utah's Smoke-free Apartment and Condominium Guide

Apartment and condominium residents, managers, and owners can now breathe easier. The Utah Smoke-Free Apartment and Condominium Guide, an online resource, promotes smoke-free housing in Utah. Nationally, 50,000 people die each year as a result of secondhand smoke (SHS) exposure. Additionally, hundreds of thousands of people exposed to it suffer various other illnesses, such as asthma and bronchitis. While many Utahns appear to be taking steps to avoid SHS, recent UDOH data show more than 25,000 children still live in homes where they are exposed. "Smoke-free policies not only protect tenants' health, but they are also a sound business practice," says Cassandra Fairclough, Health Program Specialist, UDOH. "Adopting smoke-free policies is simple and inexpensive. These policies can reduce fire hazards, cleaning and maintenance costs, and time spent addressing tenant complaints about smoke drifting from unit to unit. Insurance costs may also go down for those housing units that are smoke-free." The Utah Smoke-Free Apartment and Condominium Guide includes useful tools for managers and owners to help create smoke-free environments. The advantages of smoke-free units/buildings; how to eliminate drifting smoke; and types of smoke-free policies are just a few of the resources available to managers. The Web site also provides tenants with information about the health effects of SHS, ways to reduce exposure to SHS, tips on what one should know before renting, and how to resolve problems.

Smoke-free Apartment and Condominium Statewide Directory

The Smoke-free Apartment and Condominium Statewide Directory is a list of properties that provide smoke-free environments. The listing is provided as a free service to managers, owners, and renters. There are two types of listings in the directory:

- All buildings and units of the complex are smoke-free.
- One or more of the buildings of a complex are smoke-free.

If you are interested in listing your smoke-free property in the directory, visit http://www.tobaccofreeutah.org/aptcondoguide-lom.htm#housing for an online application. A Spanish version is also available.

Surveys: Tenants Support Smoke-free Housing

As a manager or owner considering implementing smoke-free policies, you may be concerned about how your residents feel toward smoke-free policies. Numerous surveys over the past few years indicate that there is a market for smoke-free apartments and condominiums. For example, the American Lung Association of California's Center for Tobacco Policy and Organizing surveyed 602 residents throughout California. The survey found that:

69% of Californian tenants surveyed support non-smoking policies.

- 46 percent of respondents had experienced secondhand smoke drifting in their apartment
- 59 percent said they believe that secondhand smoke can drift from one apartment to another
- 72 percent said they believe that secondhand smoke can drift in an apartment from the outside
- 69 percent of respondents favored regulations requiring all apartment buildings to offer non-smoking sections where all apartments, patios, and balconies are non-smoking.

For additional survey results, see Smoke-free Law Project at http://www.tcsg.org/sfelp/public.htm.

What Should Your Lease Say?

To implement a smoking ban in your complex, you'll need to put the ban into your lease agreement, says James H. Dean, a Utah attorney. You can put a clause in your new leases and add one to the leases of renewing residents, depending on the type of smoke-free policy you are implementing. For example, if the entire community is going smoke-free or only certain areas, you will need to adjust your clause accordingly.

Your clause should do three things:

1. **Prohibit smoking in or near the building**. The lease might say "that residents can't smoke in the building or within 25 feet of it." This wording will help to solve the problem of people gathering right outside their doors or leaning out their windows.
2. **Make residents responsible.** Just as you hold residents responsible for the misbehavior of family and friends, hold residents responsible for their smoking as well.
3. **Grandfather current smokers.** Inform new residents that you do have a no-smoking policy, but that current residents who do smoke will be able to continue smoking until their current lease expires. You should state in the lease that smoke may drift and you are not responsible to enforcing until the lease expires.

"Residents can't smoke in the building or within 25 feet of it"

Sample Model Policy

Due to the increased risk of fire and the known health effects from secondhand smoke exposure, smoking is prohibited in your apartment building or within 25 feet of the building. Residents are responsible for ensuring all guests comply with this rule. Residents acknowledge all new leases are smoke-free and that some residents may continue to smoke until their lease expires.

Post "No Smoking" Signs

Signs available by calling

1-888-220-3466

Utah Secondhand Smoke Amendments

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* Provide that residents of condominiums, apartments, or private homes may seek injunctive relief and/or damages if exposed to nuisance tobacco smoke §78B-6-1101(3).
* Exempt rental units, such as for vacation or available for only 30 days or less at a time, from the nuisance tobacco provisions §78B-6-1101(4)(a)(5).
* Provide authority for an apartment renter to file a nuisance action under §78B-6-1101(6) even if the renter has signed away his or her rights to file a nuisance.

Going Smoke-free—Black Hawk Condominiums

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- 61 percent were in support of a smoking ban inside the residential units at Black Hawk, 18 percent supported limited smoking in a designated area, and 42 percent supported no restrictions on smoking
- 33 percent were in support of a smoking ban in outside common areas (including patios and porches), 87 percent supported a designated outdoor smoking area, and 19 percent supported no restrictions

It's possible that the first major factor that led the HOA to this course of action was when a young couple presented their 'case' to the board. The couple's one-year old son had developed breathing problems believed to be caused by secondhand smoke drifting in as a result of their neighbor's smoking. The board discovered that 80 percent of the smoking complaints in Cache Valley, as reported to Bear River Health Department, came from Black Hawk Condos.

"The couple's one-year old son had developed breathing problems.."

As the nuisance of smoking was contemplated in-depth, such factors as cleanliness/litter, resale value, fire hazard, smoke in common and limited common areas, and smoke drifting from unit to unit were all uncovered and/or discussed.

The issue is being actively pursued as we continue to work with the State of Utah, our attorney, and the residents in the community in the exploration of options to become a smoke-free community.

--The Black Hawk HOA Board

Black Hawk Condominiums
Logan, Utah

Utah Department of Health

Utah Department of Health
Environmental Sanitation Program
P.O. Box 142104
Salt Lake City, Utah 84114-2104

For more information:
Phone: (801) 538-6754

Http://www.tobaccofreeutah.org

RETURN SERVICE REQUESTED

The TRUTH

Utah Department of Health

The mission of the Utah Department of Health is to protect the public's health through preventing avoidable illness, injury, disability and premature death; assuring access to affordable, quality health care; and promoting healthy lifestyles.

Frequently Asked Questions About Smoke-free Housing

1. Why are smoke-free apartments legal? The rights of non-smokers to be free from exposure to SHS is protected by both legislation and laws. There are federal and state laws protecting non-smokers. Advertising "smoke-free" or "no-smoking" is also legal.

2. Would a smoke-free policy legally or unfairly discriminate against smokers? No. The privilege to smoke is not a right that is protected under the Civil Rights Act because smokers are not a protected class under federal law.

3. Would I lose money if I implement a smoke-free policy? You could actually save money with a smoke-free policy. Smoking is the cause of a variety of expensive property damages, ranging from extra cleaning costs to fire-related repairs. It can cost up to twice as much to prepare or repair a unit to rent that a smoker has lived in. Additionally, more individuals are requesting smoke-free housing in multiple-dwelling units.

4. Would a smoke-free policy instigate a lawsuit from an angry smoker? You will more likely face a lawsuit from a frustrated non-smoker than from a smoker. Legal cases involving various apartment dwellings throughout the U.S. have been filed and won by tenants.

5. Would enforcement of a smoking ban be difficult?

Once you implement a policy, smoking would be so noticeable that others would report it. You would use the same policy you use for other violations of the rules.

Smoke-free housing is legal under the law

Why Smoke-free Apartments?

Tenants want smoke-free apartments.

- Surveys indicate there is a demand for smoke-free housing in multiple-dwelling units. [1]

It is cost effective.

- Smoking poses a fire hazard. Prohibiting smoking may reduce insurance costs.
- Maintenance costs are higher because of cigarette burn damage on carpets, counters, etc.
- Smoke leaves residue on walls and curtains that need to be cleaned or replaced often.

You can avoid complaints.

- Complaints to state and local health departments about secondhand smoke drifting in apartments and condominiums continue to increase. They receive more complaints about drifting smoke than about smoking in businesses.
- Secondhand smoke cannot be controlled by ventilation or air cleaning. [2]

A smoke-free environment is completely legal.[3]

- Secondhand smoke is a nuisance under Utah law. [4]

You can reduce health risks.

- Secondhand smoke is a health risk known to cause cancer in humans. There is no safe level of exposure to secondhand smoke.
- Secondhand smoke in apartments affects millions of people.

1. Public Opinion On Smoke-free Environments, Smoke-free Environments Law Project, The Center for Social Gerontology, 24 March 2006, http://www.tcsg.org/sfelp/public/htm.
2. Utah Administrative Code §78-38-1(3)
3. Environmental Tobacco Smoke-American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc Position Document, June 30, 2005.
4. Utah Administrative Code §57-22-5-1(h)

Utah Department of Health

Utah Department of Health
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The TRUTH

Secondhand Smoke

PROTECT YOUR FAMILY

Secondhand Smoke is Dangerous

- Secondhand smoke is the smoke that comes from a lighted cigarette.
- There is **no risk-free** level of secondhand smoke exposure. Even brief exposure can be dangerous.
- More than **4,000 chemicals** are found in a single puff of smoke, including more than 50 cancer causing agents.
- Secondhand smoke causes ear problems, acute respiratory infections, and wheeze illnesses in children. It also slows lung growth and makes asthma more severe.
- Secondhand smoke can cause lung cancer and increases the risk of heart disease in non-smoking adults.
- Secondhand smoke is linked to Sudden Infant Death Syndrome (SIDS).

Protect Your Family

- Make a rule that smoking is not allowed in your home.
- **Smoke outside-**at least 25 feet from the house.
- **Do not smoke in the car** with children or other passengers.
- Ask your doctor for ways to help you stop smoking.

Make Your Home Smoke-free

Utah Department of Health

The TRUTH

Environmental Sanitation Program
P.O. Box 142104
Salt Lake City, Utah 84114-2104

For more information, contact:
Phone: (801) 538-6754

Helping Nonsmokers Deal with Problems of Smoking in Condominiums and Apartment Buildings

The Utah Department of Health and local health departments continue to receive an increasing number of phone calls from people complaining about secondhand smoke from neighbors--smoke that is seeping into their apartment or condominium causing frustration, irritation, and sometimes even illness.

Although we cannot provide legal advice (and the law varies from jurisdiction to jurisdiction), a national legal antismoking organization--Action on Smoking and Health (ASH)--provides some general suggestions for dealing with this problem. The following information has been adapted from the ASH website at http://www.ash.org, and it offers suggestions to help nonsmokers deal with secondhand smoke in an apartment or condominium.

1) EXAMINE YOUR LEASE OR CONDOMINIUM AGREEMENT

Most such documents contain covenants, conditions, or terms prohibiting persons living in a building from engaging in activities -- even within their own apartment -- which unreasonably interfere with another tenant or owner's enjoyment of his or her apartment. Playing music too loudly, having late-night parties, or cooking foods which generate very unpleasant odors are common examples of such activities.

Smoking may be another such prohibited activity, particularly where it can be shown that the smoke is being carried by the ventilating system, or by other means, into the apartment of another person who finds it objectionable. In such situations the matter should be brought to the attention of the landlord or condominium management as what lawyers call a "breach of the covenant of quiet enjoyment."

2) KNOW, AND TELL OTHERS, ABOUT THE HEALTH DANGERS

People who might not otherwise be concerned about tobacco smoke may view it quite differently if you can demonstrate to them that it causes lung cancer, heart disease and other illnesses in nonsmokers, and that it causes thousands of deaths among nonsmokers each year. If you do not already have this information, download some of it from ASH’s web site, or write to ASH.

Once you have such information, you can provide copies to neighbors, post copies on bulletin boards, slip it under apartment doors or in mail boxes (to the extent permitted), and perhaps even have it printed in a condo or apartment newsletter or flyer.

3) OBTAIN MEDICAL DOCUMENTATION IF POSSIBLE

If you, (or someone in your apartment) has asthma, emphysema, sinusitis, hay fever, allergies, pulmonary or cardiac disease, or other conditions which make you unusually sensitive to tobacco smoke, you can make your case stronger by obtaining a letter to that effect from a physician. A copy of the physician's letter can then be sent by CERTIFIED MAIL, RECEIPT REQUESTED

to the landlord or condominium management -- and possibly to the persons who are smoking -- to put them on legal notice of your condition.

Even if you do not have a recognized medical condition like emphysema, you may still be able to obtain such a letter by demonstrating to a physician that you suffer specific problems (such as headache or sore throat) after exposure to tobacco smoke.

4) SEEK OUT OTHER NONSMOKERS FOR SUPPORT

"United we stand, divided we fall" goes the saying, and it is true in this situation as well. It is possible that you are not the only nonsmoker who is being inconvenienced, and a common complaint coming from many people in a building is more likely to be taken seriously than a complaint from only one person.

Try to contact other nonsmokers, not only on a one-to-one basis, but also by speaking out at tenant meetings, writing an article for an apartment newsletter, and posting notices in elevators and on apartment bulletin boards. Even those who do not suffer from the problem may nevertheless be sympathetic and lend valuable support, particularly once they know that exposure to secondhand tobacco smoke can trigger heart attacks as well as cancer in nonsmokers.

5) SEEK HELP FROM LOCAL ANTI-SMOKING ORGANIZATIONS

Local anti-smoking groups are often in the best position to advise you concerning local laws, to help you find doctors and other witnesses who can assist you, to help obtain publicity about your plight, to put pressure on the management, and if necessary to help you find a cooperating attorney.

You should contact the local or state chapters of the American Cancer Society, American Heart Association, American Lung Association, and other local antismoking groups for help. You can also use the ASH web site to find other nonsmokers' rights groups.

6) REASSURE MANAGEMENT THAT THERE IS NO SUCH THING AS A RIGHT TO SMOKE

The landlord or condominium management may assume there is nothing they can do about smoking in individual apartments, but that is certainly not the law. Many activities which occur in one apartment, but which cause annoyance, irritation, or health problems in another, can be regulated or prohibited outright. Common examples are the playing of loud music, the storage of paint or other flammable materials, playing ball or other activities that cause excessive vibrations, etc. The law is clear that there is no constitutional or other legal right to smoke, even in one's own dwelling.

7) CONSIDER AND PROPOSE DIFFERENT REMEDIES

While it may be possible to order a person not to smoke in an apartment, or to smoke only in certain rooms or with a window open, there may be other steps which can also be taken, and which should be suggested to the landlord or condominium management. These include installing a continuous ventilation system, adding more fresh air into the intake; changing, cleaning, or installing better filters; and increasing ventilation in the smoke's unit and preferably in the non-smoker's unit as well.

8) CONSIDER ADVISING MANAGEMENT OF THEIR POTENTIAL LEGAL LIABILITY

It is unfortunately true in our society that people often refuse to act unless legal consequences are suggested. Therefore, if all else fails, you may wish to advise the landlord, condominium management, or even the individual members of the condominium board of possible legal liability for failing to take reasonable steps to protect your health, especially once the problem has been formally brought to their attention. Such notification can best be made politely but firmly in a CERTIFIED MAIL RECEIPT REQUESTED letter sent by you, a local antismoking group, or an attorney.

9) DETERMINE IF STATE AND LOCAL BUILDING CODES ARE BEING OBSERVED

One tenant's investigation revealed that the presence of a defective party wall caused his apartment to fill with tobacco smoke from the adjoining apartment. When the wall was properly reconstructed, the problem ceased.

10) SUGGEST LANDLORDS ESTABLISH SMOKE-FREE BUILDINGS

Some landlords with several buildings have arranged for smoke-free and smoking buildings.

11) IF ALL ELSE FAILS, CONSIDER LEGAL ACTION

As a last resort, you may wish to seek the advice of an attorney to represent you concerning this matter, and to consider the feasibility of bringing legal action against the offending tenant, the landlord or condominium, or both, under theories of breach of the covenant of quiet enjoyment, negligence, nuisance, etc.

For legal reasons, neither ash nor its attorneys can serve as your attorney or provide individual legal advice. ASH may, however, be able to assist to an attorney -- but only to an attorney -- contacting us on your behalf.

The information in this attachment has been adapted from ASH: Action on Smoking and Health. http://www.ash.org [21]

Example of a Letter to Hold a Resident Meeting

Date: April 7, 2003

TO: All Residents

FROM: Darrell

RE: Town Hall Meetings April 14, 2003 and April 23rd

PURPOSE: Discuss the Possibility of Via Pacifica Gardens becoming a Smoke Free Facility.

There will be two town hall meetings held on **Monday April 14th and Wednesday April 23rd at 4:30 p.m.** This is to give everyone the opportunity to express his or her feelings about this important decision in a controlled non-threatening environment on whichever day best meets your schedule.

Everyone has an opinion concerning the possibility of Via Pacifica Gardens becoming a smoke free facility, and we want to honor everyone's right to express those opinions/feelings in an environment that respects each resident. A format will be used, and explained at the beginning of the two meetings, that will allow everyone who wishes to speak without interruption for a four minute period, while you may not agree with the speakers position no disrespect or verbal abuse of any person will be allowed, and no one will be allowed to speak twice before everyone has a chance to speak once. **It is very important that you be at one of the meetings (or both if you choose) to hear what your friends here at Via Pacifica Gardens have to say, and to also express your feelings about this issue as well.**

It is important for everyone here to be aware that should VPG become a Smoke Free facility that **those who currently are residents that smoke will be allowed to continue to smoke in their apartments or at the designated smoking area.** It should also be noted that if they have guests they would also be allowed to smoke in the resident's apartment or the designated smoking area. However, guests of a non-smoking resident will not be allowed to smoke anywhere on the property.

Should this become a reality every resident will be required to sign a lease attachment acknowledging that we are now a Smoke Free Facility, and all applicants on the Waiting List would need to sign an acknowledgement of that position and agree to not smoke anywhere on the property, and all new residents would also sign a lease attachment stating that they would not smoke anywhere on the property.

Shortly after the two Town Hall Meetings a ballot will be distributed to every resident giving them an opportunity to vote on this issue. A simple majority of those voting will then determine the direction that we will take on this important issue.

Source: Via Pacifica Gardens: Seascape Housing Board

Model Policy for a Smoke-Free Condominium or Apartment

The following language can be used to implement a smoke-free policy in a multiunit dwelling. In apartment complexes, the provisions can be added to the lease. This is most easily done gradually, as new individuals apply to become tenants. For condominiums, the language can be added to declaration and implemented immediately or at a specified future date.

Include in the "Definitions" section of the lease or CC&Rs, or other governing documents.

SMOKING: The term "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, or other tobacco product in any manner or in any form.

Include in the restrictions section of the lease or CC&Rs, or other governing documents.

SMOKING: Due to the increased risk of fire, and the known adverse health effects of secondhand smoke, smoking is prohibited in any area of the property, both private and common, whether enclosed or outdoors. This policy applies to all owners, tenants, guests, employees, and servicepersons.

Adapted from the American Nonsmokers' Rights Foundation [22]

Example of a No Smoking Policy

VIA PACIFICA GARDENS
NO SMOKING POLICY

The ultimate objective of this policy is to eventually have a smoke free facility, while at the same time respecting the rights of current residents who are smokers.

Out of concern for the effects that second hand smoke has on those with respiratory, or other health related conditions, the Seascape Senior Housing Board of Directors have approved the following policy.

A. REGULATIONS OF SMOKING INDOORS:

1. Smoking shall be prohibited in all enclosed areas of Via Pacifica Gardens. This includes, but is not limited to, the Community Building, all common areas, individual apartments, hallways, stairs, elevators, restrooms, motor vehicles owned or leased by Via Pacifica Gardens, and any other enclosed areas.

2. If there are current residents of Via Pacifica Gardens who are both a) residents of Via Pacifica Gardens and b) current smokers prior to the adoption date of this smoking regulation, these residents shall be designated as "Grand fathered residents."

3. Notwithstanding any other provision of this regulation to the contrary, smoking shall be prohibited in all enclosed areas of Via Pacifica Gardens except that "Grand fathered residents" shall be allowed to smoke only in their individual apartments and the designated smoking area. Smoking by "Grand fathered residents" shall be prohibited in all areas as noted above in Item #1 including all non-Grand fathered residents apartments.

B. REGULATION OF SMOKING OUTDOORS:

1. Notwithstanding the above prohibition on smoking in enclosed areas, Via Pacifica Gardens shall also prohibit smoking in all outdoor areas, including individual apartment decks and patios, except that a designated smoking area will be provided in the Green Belt area behind Building #2. This is an area that is physically accessible to all residents, and located a reasonable distance from any apartment to ensure that tobacco smoke does not enter the enclosed areas of Building #2.

2. Residents and guests are allowed to use the outdoor designated smoking area at any time, but must not infringe on any resident's right to the quiet enjoyment of their apartment.

C. COMMUNICATION OF NO SMOKING POLICY

1. The no smoking policy of Via Pacifica Gardens shall be communicated by the Administrator to all current employees, residents, and applicants at least 60 days prior to its effective date, and at the time of employment for all employees, and prior to admission and/or prior to the signing of a lease for any new resident.

2. The effective date of this no smoking policy will be 60 days following the approval by the Seascape Senior Housing Board of Directors.

Approved by the Seascape Senior Housing Board: July 9, 2003
Date

NO SMOKING POLICY AGREEMENT

I understand that Via Pacifica Gardens has a No Smoking Policy that prohibits smoking in any of the common areas, within any enclosed areas of the complex including individual apartments, and individual decks and patios of the complex. I also understand that there is a designated smoking area behind Building #2 that residents and guests who smoke may use.

I have received and read a copy of the Via Pacifica Gardens No Smoking Policy, and agree to abide by its provisions.

_____ _____
Resident/Applicant Signature Date

_____ _____
Administrator Date

Source: Via Pacifica Gardens: Seascape Housing Board

Sample Petition for Smoke Free Condominiums

Inasmuch as there are great health, safety and property resale benefits to a 100% smoke free condominium complex, we, the undersigned members of the _____ _____ Condominium Association, hereby petition the association of directors to amend the bylaws to designate that all condominium buildings become 100% smoke free as of (date), and to prohibit smoking within 25 feet* of a condominium building.

This 100% smoke free policy shall be extended to all public enclosed spaces owned by the Condominium Association.

Current condominiums can be exempted from this requirement, but in the event any condominium property under the jurisdiction of the association is to be sold, rented or leased to another person, the current condominium owner shall be required to notify the new owner/tenant of the 100% smoke free policy. (Wisconsin Initiative on Smoking and Health, Smoke Free Condominiums)

*The UICAA requires that smoking must be at least 25 feet from any entrance-way, exit, open window, or air intake of a building where smoking in prohibited. Although, this rule applies to places of public access, this requirement may be used as a guideline when establishing smoking policies within an apartment or condominium complex.

Adapted from the Wisconsin Initiative on Smoking and Health.[23]

Example of a News Article

Condo complex bans all smoking

By Emilie H. Wheeler, Herald Journal staff writer, Logan, Utah. [24]

Residents of the Blackhawk Condominium complex will no longer be able to light up — inside or out — after its homeowner's association board voted to approve a resolution banning tobacco use in the community.

Citing smoking related complaints from residents inside the southern Logan community, fire hazards, litter, health liabilities and resale values, the Blackhawk Homeowner's Association sent copies of a resolution to owners notifying them of the change this week

Association President Jeremy Jones said health issues are the No. 1 concern for the board. Several complaints have come in within the past couple of years, including one that threatened a lawsuit, because of Blackhawk residents' smoking habits, he said.

Jones also cited a community-wide survey conducted earlier this year asking residents about smoking.

"The response was positive of becoming a smoke-free community," he said.

The new policy goes into effect on Oct. 1, but those under lease contracts can continue to smoke until their lease runs out. Residents are also invited to the monthly board meeting on Sept. 19 to learn more about the new policy.

This is a first for Cache Valley, Jones said, and something the board is aware of. Some cities have banned tobacco use in public places, including Smithfield most recently, but this is the first housing development to make the ban. Jones said they are expecting some backlash but believe the long-term effects will be good.

Attorney John Richards, who represents the Blackhawk Homeowners Association Board, said he has seen association boards in Utah County make the same move.

"Anytime you have condominium units in close proximity to each other," Richards said, "often time, that smoke transfers to an adjoining or neighboring unit."

Richards, of the Richards Law Office in Salt Lake City, said he has heard that some in the community are "starting to raise some eyebrows" about the new policy, but he defends its legalities.

There is a covenant, or restriction on use, in Utah condominium law that states residents can't do anything that causes them to be a nuisance to their neighbors, Richards said. Secondhand smoke qualifies as a nuisance, he said, allowing the provision to be placed in Blackhawk's policies.

Because of secondhand smoke effects, there's always the threat of a lawsuit, Richards said.

“They’re in a tough situation,” he said, adding that while health issues are a concern there will also be people who raise property rights debates.

Jones said because of the amounts of smoking-related complaints the Bear River Health Department receives about Blackhawk, representatives were invited to a meeting earlier this year when a state health department representative attended.

The actual policy was approved Aug. 15, but the six-member board has been discussing it since as early as December 2005, working with the Utah Department of Health as well as its attorney. In the letter sent out this week, the association said 80 percent of the Bear River Health Department’s complaints come from Blackhawk.

That was true two years ago, Bear River Health Department spokesperson Mike Weibel said, but the percentage has dropped to about 50 percent in 2005 and 20 percent this year.

Example of Policy Notification

NO-SMOKING POLICY
VIA PACIFICA GARDENS

PLEASE NOTE:

On July 9, 2003 the Seascape Senior Housing Board of Directors approved a No-Smoking Policy for Via Pacifica Gardens that will become effective on **September 9, 2003**. Smoking will no longer be allowed in individual apartments. Smoking will only be allowed in a special designated smoking area on the property or off the property.

Enclosed with this notice you will find a copy of the No-Smoking Policy. This policy will now be an attachment to our lease, and you will need to be willing to abide by this policy should you choose to live here.

Source: Via Pacifica Gardens: Seascape Housing Board

Example Press Release

Utah Department of Health

News Release

For immediate release

Contact:
Your name,
phone numbers
e-mail

Sierra Apartment Complex Adopts No Smoking Policy

The Helper Smoke-free Coalition Urges More Owners to Follow Suit

HELPER, Utah, March. 5, 2006 – George Saperstein, owner of the Sierra Apartments, 795 South 300 East in Helper, has adopted a smoke-free policy for his 100-unit apartment complex. The policy will take effect on June 30, 2006, giving smoking tenants nearly four months to either quit smoking or move out. Saperstein will provide a $100 rent rebate to all tenants who quit smoking before the deadline.

The Helper Smoke-free Coalition has been working with Saperstein to adopt the policy, providing guidelines for the measure and offering free smoking cessation classes for tenants who want to quit.

“Going smoke free is just the right thing to do,” said Saperstein. “Not only is smoking an irritant for non-smoking tenants, but secondhand smoke can cause lung cancer, heart disease, and illness in children. I couldn’t in good conscience allow smoking in my property any longer.”

Glenda Foreman, chairperson of the Helper Smoke-free Coalition said, “We are so pleased that George was willing to let us present the idea to him last fall. He has been working with us ever since to develop a new tenant policy and action plan to allow time for his smoking tenants to quit or move. This was not an easy thing to do, but he has adopted a policy that will benefit people for many years to come.”

The Helper Smoke-free Coalition is encouraging other apartment owners to adopt similar policies and will provide free advice and an outline of procedures that apartment owners can follow. The coalition will also provide smoking cessation classes for tenants. For more information call 987-2576.

In Utah, 25,800 Utah children age 17 and under live in a home where somebody smokes inside the home. Secondhand smoke causes thousands of new childhood asthma cases annually and is linked to 10,000 cases of low birth weight every year in the US. More than 50,000 Americans die from secondhand smoke every year. Of that, 3,000 American non-smokers die from lung cancer caused by secondhand smoke, and 35,000 non-smokers die from heart disease related to secondhand smoke. The Environmental Protection Agency classifies secondhand smoke as a Class A carcinogen, the most dangerous category of cancer-causing agents. A 2004 study by The British Medical Journal found that exposure to secondhand smoke is more dangerous than previously thought and increases the risk of heart disease among non-smokers by as much as 60 percent.

# # #

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