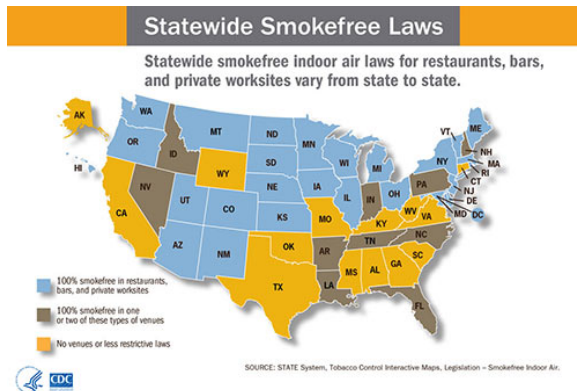

*Landlord's Toolkit for a Smoke-Free
Multi-Unit Housing Policy*

There is growing awareness that smoke-free multi-unit housing is in the best interest of both tenants and landlords. These policies serve to protect the health and well-being of residents while improving the profitability of the residence. Advocates can learn more about implementing these policies in this toolkit.

It is well known that smoking is the leading cause of preventable death and studies have shown smoke-free laws that prohibit smoking in public places improve the health of the population.



North Dakota's smoke-free law protects individuals by prohibiting smoking in all enclosed public places and places of employment. Smoking is also prohibited within twenty feet of entrances, exits, operable windows, air intakes and ventilation systems of enclosed areas in which smoking is prohibited.

Unfortunately, the state law does not apply to the individual units in a multi-unit housing complex, only the enclosed common areas. Adopting a smoke-free multi-unit housing policy is legal and provides the best solution to cover these excluded areas.

Why implement a smoke-free policy?

- *Eliminate the risk of Secondhand Smoke:* Secondhand smoke contains dangerous elements and harmful chemical compounds. Exposure to secondhand smoke has been proven to cause numerous health problems. There is no safe level of exposure to secondhand smoke. Implementing comprehensive smoke-free policies is effective at eliminating tobacco-related air pollution and saving lives.
- *Improve Safety:* Smoking related fires are the leading cause of fire deaths.
- *Encourage Healthy Behaviors in Residents and Employees:* Smoke-free policies create healthy environments that encourage people to quit smoking



This toolkit contains resources to assist landlords/property owners in adopting a smoke-free policy:

Frequently Asked Questions
Smoke-free Policy Implementation
Sample Secondhand Smoke Survey and Tenant Letter
Sample Notice to Tenants
Enforcement Tips
Secondhand Smoke Communication Record
Sample Notice of Smoking Incident

Frequently Asked Questions from Landlords about Smoke-Free Policies

Smoke-free apartments and condominiums are the future of multi-unit housing. There is a lot of information available for people who are interested in adopting non-smoking policies for their buildings. The National Apartment Association has voiced their support for smoke-free apartment policies.

"Smoke-free apartment communities not only promote a healthy resident population, but also a healthy bottom line for owners and investors."
-Dave Watkins, Chairman of the Board of the National Apartment Association

The US Department of Housing and Urban Development (HUD) adopted a smoke-free rule that went into effect in February 2017. The rule requires Public Housing Agencies to implement policies that prohibit smoking in all public housing properties by **July 31, 2018**.

Q. Is secondhand smoke really that dangerous?

A. Yes. Secondhand smoke poses a serious health danger to nonsmokers and is a toxic air contaminant. Secondhand smoke contains over 4,000 chemical compounds – more than 50 of which are known to cause cancer in humans or animals. In 1992, the U.S. Environmental Protection Agency classified secondhand smoke as a Class A known carcinogen. There is no safe level of exposure to secondhand smoke. Secondhand smoke causes asthma, upper respiratory infections, ear infections, sudden infant death syndrome (SIDS), heart disease, heart attacks, lung cancer, and many other illnesses.

The U.S. Surgeon General concluded in a 2006 report, "There is no risk-free level of exposure to secondhand smoke".

In addition to secondhand smoke, there is also a danger from thirdhand smoke. This is a relatively new term used to describe the residual contamination from tobacco smoke that lingers long after the smoking stops. It contains sticky, toxic particles that cling to surfaces. In addition to the carcinogens in tobacco smoke, the nicotine reacts with normal chemicals in indoor air to form new carcinogens. Over time this residue may lead to cancer and breathing problems, like asthma. Thirdhand smoke builds up over time. It cannot be eliminated with normal household cleaning, by airing out rooms, opening windows or using air conditioners or fans. Smoke and its residue will travel out of designated smoking areas, through apartment buildings and back inside after a smoke break.

Q. Doesn't the ventilation system take care of any smoke drifting between units?

A. Secondhand smoke can seep from one unit into another through walls, plumbing, wiring, under doors, etc. Research has shown that ventilation and other air filtration technologies cannot remove the toxins and eliminate the health risks caused by secondhand smoke exposure. The international standard-setting body for indoor air quality, the American Society of Heating, Refrigerating, and Air Conditioning Engineers, unanimously agree that ventilation and other air filtration technologies cannot eliminate all the health risks caused by secondhand smoke exposure. Smoke-free policies are the only way to prevent exposure to secondhand smoke in multi-family units.

Q. Why should I consider adopting a smoke-free policy for my buildings, balconies, patios and grounds?

A. A smoke-free policy is a great way to protect your property from damage, fires and excessive wear and tear. You will save money on turnover costs because apartments will cost less to clean, repair and repaint. You will also gain a market advantage. As more people become aware of the health hazards of secondhand smoke, smoke-free policies are an amenity that most tenants want. By including all outdoor grounds, patios and balconies in the policy, you can avoid the nuisance of smoke drifting into the building as well as allowing residents to enjoy the outdoor spaces with risks of secondhand smoke exposure.

Q. What are the differences between a smoke-free and a tobacco-free policy?

A. Smoke-free means that smoke from lighted or heated cigarettes, cigars, hookah, pipes and electronic smoking devices are prohibited. The North Dakota smoke-free state law (NDCC 23-12-10) prohibits smoking in public places, places of employment and 20 feet from entrances, exits, operable windows, air intakes and ventilation systems of enclosed areas in which smoking is prohibited. This policy would extend beyond those areas and designate smoke-free areas in potentially all indoor and outdoor areas of the housing unit property.

Tobacco-free means that all tobacco products (cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, snus and electronic smoking devices) are prohibited in indoor and outdoor areas of the housing unit property.

Q. Why should you include electronic smoking devices, vape pens, etc.?

A. Electronic smoking devices or e-cigarettes are already prohibited by North Dakota law in public places. Electronic smoking devices emit an aerosol of fine particles which looks like tobacco smoke and can create confusion with enforcement. There are similar risks of secondhand smoke exposure with these devices as the aerosol particles can lodge in the lungs of non-smokers and cause lung irritation and disease. Electronic smoking devices use lithium ion batteries which are capable of explosion and could become a fire hazard.

Q. Isn't it discriminatory against smokers to have a smoke-free building?

A. No. Smoke-free policies are not discriminatory. It is legal to adopt a smoke-free policy for your buildings. There is no constitutional "right to smoke" and people who smoke are not a protected class. Smoking is a behavior, not an inborn characteristic, like race or sex, so prohibiting smoking does not target any particular group. Also, a smoke-free rule doesn't mean you can't rent to smokers; they just have to smoke outside, which many smokers already choose to do. It is important for all residents and their guests to refrain from smoking indoors or in other areas specified in the policy, such as on balconies and patios. You can adopt a smoke-free policy in the same manner that you adopt other lease requirements that regulate activities that present a risk to the building or impact other residents, such as rules to address pets or loud music. It is your property and you have the right to set reasonable rules that protect your property and its occupants.

Q. Is smoking a disability?

A. Smoking is an addiction that causes death and disease, but it is not a disability under the Americans with Disabilities Act (ADA). No federal or state courts ever ruled that smoking is a "disability" under the meaning of the ADA. Smoking is a behavior that is remedial, in other words, a smoker can quit.

Q. Can a smoker request a Reasonable Accommodation allowing them to smoke in their unit?

A. Because smoking is not a disability, it cannot be used as a reason to ask for accommodations. Smoking is not an acceptable way to treat or medicate any health condition, including mental illness. It is much more likely that requests for reasonable accommodations will be made by non-smokers with medical conditions that are worsened by secondhand smoke.

Q. Aside from the health benefits, are there other advantages to going smoke-free?

A. Yes! You can actually save money by implementing a smoke-free policy. You will dramatically reduce wear and tear and save on cleaning and repainting costs. The residue left behind by smoking contains toxins that devalue homes and health. Additionally, the risk of fire can be reduced. Over 7000 smoking-related fires in residential building occur yearly in the United States. Some insurance carriers also offer a premium reduction if your property is smoke-free.

Q. Won't I be at risk for losing my current residents by having a smoke-free building?

A. You may already be hearing from your residents who are bothered by smoke drifting into their unit from other parts of the building. 80% of North Dakota residents do not smoke.

Smokers as well as non-smokers want to live in smoke-free homes because they understand the danger of exposure to secondhand smoke.

Q. I'm worried about having difficulty filling vacant units if I have a smoke-free building. Won't a smoke-free policy turn away potential residents?

A. Secondhand smoke policies have focused primarily on reducing or eliminating secondhand smoke exposure in public places or places of employment. Since people spend more time in their homes than in any other location, a significant majority of residents in both rental buildings and in condominiums have stated their preference for smoke-free properties. Resident surveys conducted across the country have documented their adverse response to exposure to secondhand smoke and willingness to give up other amenities across all income levels. It is always helpful to remember that a smoke-free policy does not mean that an individual who smokes is not welcome to be a resident in the building. They just have to be reminded where they can smoke if they choose. (Just as if they are in a public place or place of employment where smoking is prohibited.)

Q. Several of my current residents smoke in their units and they will be resistant to our building becoming smoke-free. Is there anything I can do to make the transition easier?

A. Communicating with residents is key to having a smooth transition to a smoke-free building. Let residents know that a smoke-free policy is being considered before it's officially adopted. Educate residents about why a smoke-free building is beneficial from their perspective: the purpose is to create a cleaner, healthier, safer living environment for all residents, including people who smoke and their families. Ask for resident input while you're considering a smoke-free policy to give residents an opportunity to voice their opinions. Conduct a resident survey to assess their thoughts about having a smoke-free building by putting an anonymous survey in each mailbox or sending it by email. Their responses can help you address concerns head-on before the policy goes into effect. Communicate what the policy requires residents and their guests to do, and what the consequences are for violating the policy. Send a letter to residents when the policy is adopted, and again when the policy goes into effect. Hold a meeting for residents before the policy goes into effect to discuss the policy change to allow residents to voice concerns and get answers to their questions in person. Provide information about how to access local cessation resources in case residents who smoke are interested in quitting.

Q. Should I allow "grandfathering" for residents who currently smoke?

A. When a building adopts a new smoke-free policy, the question of whether or not to allow current residents to smoke in their unit often arises. This is known as "grandfathering" and it can be temporary or permanent. Grandfathering may seem fair, however, there are concerns that may arise if smoking continues in the building. First, the many benefits associated with a smoke-free policy (lower cleaning costs, reduced fire risk, potential insurance savings and protecting the health of residents, staff and guests) are delayed until the building is completely

smoke-free. Second, allowing some residents to smoke in their units and not others can make it hard for management to determine where the smoking is occurring and whether it is a policy violation. Lastly, residents moving in may feel misled. If they have signed a smoke-free lease, they most often assume the entire building is smoke-free. To avoid these concerns, it is recommended to completely prohibit smoking in the entire building without grandfathering.

Q. How do I enforce a smoke-free policy?

A. Experienced landlords use a variety of strategies to enforce their smoke-free policies. They advertise their units as smoke-free to attract tenants who either don't smoke or only smoke outside. They put the smoke-free rule in their lease agreement and talk to their tenants about it when they show the property and when tenants sign the lease. They post signs in the building and on the property. They tell tenants that if they smoke in their units, they will be financially responsible for bringing the unit back to condition, which could cost thousands of dollars. They perform a "knock and talk" to have a conversation about the complaints of smoke coming from the unit. If they smell smoke or observe an ashtray or other tobacco products from the doorway, they may request an inspection of the unit. They have a system of warnings, fines and evictions for failing to follow the smoking rule just like any other rule. They visit the properties regularly and perform inspections. Some provide a designated smoking area outside, away from windows and doors. Many residents support smoke-free policies. In fact, once the rule is established, you are likely to attract residents who not only support smoke-free policies, but also intentionally seek out properties that are smoke-free.

References:

ANR's In Your Home www.no-smoke.org/homes.html; <http://www.no-smoke.org/getthefacts.php?id=824>

Live Smoke Free. Grandfathering Policies: Tips for Managers.
http://www.mnsmokefreehousing.org/documents/Grandfathering_Handout_2015.pdf

Public Health Law Center. Tobacco Control-Smoke-free Housing. <http://www.publichealthlawcenter.org/topics/tobacco-control/smoke-free-tobacco-free-places/housing>

United States Fire Administration
<https://www.usfa.fema.gov/downloads/pdf/statistics/v13i6.pdf>

Laugesen M. Safety Report on Ruyan E-cigarettes Cartridge and Inhaled Aerosol. Christchurch: Health New Zealand Ltd.; October 30, 2008.

Going Smoke Free, A Guide for Landlords, Ohio Department of Health, Bureau of Healthy Ohio, Creating Healthy Communities Program.

Smoke-Free Policy Implementation

Step One	<ul style="list-style-type: none"> • Contact local public health organization for advice/assistance • Additional Resources Smoke-Free Housing ND www.breathend.com/TobaccosHarm/smokefreehousing • Consider utilizing surveys to determine current occupant perceptions; use the <i>Sample Secondhand Smoke Survey and Tenant Letter</i> • Choose a transition plan: <ul style="list-style-type: none"> ○ Example: Effective date for all current and new residents will be June 1st • Develop the policy: (see model lease addendum) <ol style="list-style-type: none"> 1. Decide if this will be a smoke-free or tobacco-free policy 2. List definitions of smoking, tobacco products, electronic smoking devices 3. Identify where tobacco is and is not allowed 4. List who the policy applies to (tenants, guests, staff, service persons) 5. Choose an effective date(s)
Step Two	<ul style="list-style-type: none"> • Review sample tobacco-free and smoke-free lease addendum: Meet with legal counsel for review of policy and existing lease agreements. Select language/addendum to use for the new policy • Decide on an Enforcement Plan see <i>Enforcement Tips</i>
Step Three	<ul style="list-style-type: none"> • Give residents notice (ND Century Code 47-16-07 - The landlord may change the terms of the lease to take effect at the expiration of the month upon giving notice in writing at least thirty days before the expiration of the month) See the <i>Sample Notice to Tenants</i> • Order signage/stickers • Post flyers announcing tenant meeting • Provide NDQuits (https://ndquits.health.nd.gov) information, post flyers
Step Four	<ul style="list-style-type: none"> • Hold tenant meeting <ul style="list-style-type: none"> ○ Property Manager to explain why they are going smoke-free and explain lease addendum ○ Invite local public health organization to offer information for residents who would like to quit smoking or other tobacco products including electronic devices ○ Set a target date for the new lease addendum to be signed by all residents • (Optional) Begin drafting press release with quotes from landlord, tenants, local public health organization(s)
Step Five	<ul style="list-style-type: none"> • Thoroughly clean up cigarette butts and remove ash trays • Post signage at properties
"In Effect Day"	<ul style="list-style-type: none"> • New lease addendum in effect for current and new residents • (Optional) Send out press release • Update advertising to include "smoke-free building/property" amenity

Sample Secondhand Smoke Survey and Tenant Letter

Dear Residents,

We are pleased that you have chosen to reside at **[name of property]**. The **[name of management/property]** have been studying changes that are occurring in the management of apartments. Many owners are deciding to regulate the use of tobacco products within their properties.

Apartment building owners are adopting smoke-free policies for several reasons. Secondhand smoke is a health hazard, especially in children, the elderly and persons with chronic illness. There is no safe exposure to secondhand smoke (Source: U.S. Surgeon General, 2006). In addition, unattended smoking materials can lead to building fires and loss of lives.

To ensure the health and safety of all persons living here, we are considering adopting a smoke-free policy for our building and all units. Your opinions are very important to us and we would like to hear from you! Let us know what you think about having rules about tobacco use in the building and on the grounds. Please fill out the short survey and return it to **[name of manager/rent box etc.]** If you have questions, please call **[name]**. Thank you for your help with this important project.

Sincerely,

[Property Manager/Owner]

[Date]

Please check the appropriate box for your answer:

1. How often do you smoke cigarettes or other tobacco products?
 - ☐ Not at all
 - ☐ Some days
 - ☐ Every day
2. Which of the following statements best describes the rules about smoking inside your home?
 - ☐ No one is allowed to smoke anywhere inside my home
 - ☐ Smoking is allowed in some places or at some times
 - ☐ Smoking is allowed anywhere inside my home
3. Has someone, including yourself, smoked cigarettes, cigars or pipes anywhere inside your home in the past 30 days?
 - ☐ Yes
 - ☐ No
4. Do you think secondhand smoke is harmful to people's health?
 - ☐ Yes
 - ☐ No
 - ☐ Don't know
5. Have you smelled tobacco smoke in your home that comes from another apartment or from outside?
 - ☐ Yes
 - ☐ No
- 5b. If you said yes to #5, does smelling tobacco smoke in your home bother you?
 - ☐ Yes
 - ☐ No
6. Would you prefer to live in a building where smoking is prohibited inside all apartments?
 - ☐ Yes
 - ☐ No
- 6b. If you checked yes to #6, would you prefer that smoking to be prohibited everywhere on the property (both inside and outside)?
 - ☐ Yes
 - ☐ No

THANK YOU! Please return to [place of return]

Sample Notice to Tenants

Dear Residents,

To provide a healthier environment for our residents and guests, our property has decided to go completely smoke free on **[date]**. The harmful effects of secondhand smoke and the fire dangers caused by smoking indoors are simply too great to ignore.

Please consider this letter as a **[number]** day notice about the changes that will be taking place on **[date of new policy]**. To meet the new requirements of the smoke-free policy, tenants will be required to complete and sign an addendum for their individual unit, which will then be added to each individual's lease agreement.

Hazards of Secondhand Smoke

Secondhand smoke is a serious health hazard. The National Toxicology Program estimates that at least 250 chemicals in secondhand smoke are known to be toxic or carcinogenic (cancer causing). The 2006 Surgeon General's report, "The Health Consequences of Involuntary Exposure to Tobacco Smoke," states that there is no risk-free level of exposure to secondhand smoke. Secondhand smoke is particularly dangerous to children and has been linked to childhood asthma, low birth weight, ear infections and Sudden Infant Death Syndrome.

Fire Risk

Smoking is the leading cause of fire death in the United States. Fires can start on decks and porches as well as in units. According to the National Fire Protection Association's report "The Smoking-Materials Fire Problem," one in four victims who die in residential smoking-related fires is not the smoker whose cigarette started the fire. Fires caused by smoking are costly, deadly and leave many people with damaged property and no place to live. We want to protect our residents from these dangers.

Ventilation is Not Effective

Research conducted during air movement studies has shown that secondhand smoke travels from unit to unit. The smoke can seep through electrical outlets, heating ducts and structural gaps. The remodeling required to prevent secondhand smoke from traveling to another residence can be costly and ineffective. The only effective way to stop the spread of secondhand smoke is by adopting a smoke-free policy.

Our Building's New Smoke-Free Policy

Effective **[date of new policy]**, all new tenants will be signing leases with a smoke-free addendum that explains the policy. All current tenants will be required to sign the enclosed smoke-free lease addendum, and have it returned to the management by **[date]**, which will be added to their current lease. The smoke-free policy will cover all individual units and all indoor common areas **[if applicable, list other smoke-free places on property]**. Tenants are responsible to communicate the new policy to all individuals living within their unit and all residents and guests will be required to follow the policy.

This policy will help everyone breathe easier and live healthier lives. If you have any questions about this policy, please contact management.

Thank you,

[Property Manager/Owner]

[Date]

Enforcement Tips

It is beneficial to explain the policy before it goes into effect. This includes explaining where smoking is and is not allowed, how to report a violation, what the process is for addressing violations and the consequences for not complying with the policy. Enact a plan to address smoking complaints and violations, be sure to follow the guidelines in the lease. A smoke-free policy is like any other building policy. It will need to be enforced using similar procedures you have in place for addressing other lease violations.

- Post smoke-free signs at all entrances and in common areas as a visual reminder of the policy. Remove ashtrays and clean up any tobacco litter.
- It is important to document each reported violation and evidence of the violation. Decide what will serve as evidence that a person is violating the policy. Seeing a person smoke or vape where smoking is not permitted is key evidence, but it does not have to be the only evidence that smoking is occurring. Other evidence may include seeing cigarette butts, an ashtray on a counter, new burn marks or smoke damage, maintenance staff smelling smoke during a visit and reports from neighbors about seeing or smelling drifting smoke on specific dates and times.
- Keep a log. Encourage residents and staff who report seeing or smelling smoke to keep a written log of dates, times and locations when they smell the smoke and/or see evidence of smoking activity. This is helpful information that can demonstrate a pattern. (*Secondhand Smoke Communication Record*)
- Encourage community-supported compliance by letting residents know how they can anonymously report a suspected violation. Residents are one of the best enforcement tools. Most people want to live in a building where they don't have to breathe secondhand smoke and they tend to speak up if they are being exposed—especially when they know a policy is in place and is being violated. (*Sample Notice of Smoking Incident*)
- Follow through promptly with all reports of smoking violations. A prompt response can enhance compliance if residents know management takes the smoke-free policy seriously and are consistent and responsive to reported violations. If residents continually smell or see smoking in prohibited locations it will be difficult to enforce the policy because people will be receiving the cue that smoking is allowed.
- Maintenance staff will report signs of smoking or vaping to building management—cigarette butts, ashtrays, smell of smoke, new burns or smoke damage—when they work in the building and on the grounds, including visiting a unit in the course of their usual business, such as making a repair in the building.
- Do a “knock and talk”: Knock on the door of a person who is suspected of violating the policy to have a chat at the doorway to let them know that you're hearing about smoke coming from the unit. You do not have to enter the unit, note if you smell smoke or

observe any evidence of smoking or vaping from the doorway. If there is evidence of smoking or vaping:

- Inspect the unit: Consider notifying the resident suspected of violating the policy 24 hours in advance (or according to other requirements) and do an inspection of the unit. Document if the unit smells of smoke, ashtrays are present or if there is other evidence of smoking or vaping.
 - Send a letter to the resident acknowledging your “knock and talk conversation” and/or unit inspection, and that you expect that the person will start complying with the policy. Remind the person about where smoking and vaping are allowed and highlight the next steps and consequences if they choose to not adhere to the policy.
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- Document each violation by sending a copy of the violation to the resident with written notice and keeping a copy for your records. A resident who violates the smoke-free policy may also be violating other lease provisions and house rules.
 - Follow existing procedures when following through with any lease violations. Typically, a written warning letter to the resident is the first formal step. List all reported violations in the letter. Depending on your building’s continuum of procedures, subsequent violations may include referral to smoking cessation services, a written letter of lease violation, a meeting with management, signing a contract to remedy the situation and notice of lease termination.
 - While lease termination is an enforcement action available to management, the goal of a smoke-free policy is to have enforcement actions that help management achieve improved compliance, with eviction only being the very last resort. Following a continuum of enforcement steps can connect residents with services to help them comply before the need arises for termination. Working to improve compliance can help to ensure both a healthy environment and housing security for residents.

Secondhand Smoke Communication Record

This form can be used to track everything you do or say to resolve problems with secondhand tobacco smoke. Be as specific as possible – include dates, times, locations, types of communication, what was communicated and the result of the communication. Keep copies of any correspondence (letters, emails, etc.).

Date, Time, Location, Who was present?	Type of Communication (letter, phone call, email) Who did you talk or write to? What was the purpose and what did you ask for?	What action was taken, what was the response?

Sample Notice of Smoking Incident

PROPERTY/ADDRESS: _____ DATE: _____

RESIDENT/LEASEE: _____ UNIT NO: _____

This notice is to inform management of _____
(address/development)
of the following smoking-related incident:

Description of incident:

- _____ 1. Smoking observed upon entering the rental unit
- _____ 2. Smoking observed in indoor common area
- _____ 3. Smoking observed in outdoor area (if prohibited)
- _____ 4. Smoking observed in other rental units
- _____ 5. Other: _____

Remarks/Detailed Description:

Tenant Signature
Date

Landlord/Management Signature

Date

Staff Use Only

Date of Review: _____ Reviewer(s): _____

Follow-Up: _____
