



# SMOKE-FREE HOUSING

THE RIGHT DECISION





# THE RIGHT DECISION

## ATTRACT RESIDENTS

## SAVE MONEY

## PROTECT YOUR BUILDING

Smoke-free housing is a growing trend across Washington state and the nation. Many leaders in the rental housing industry emphasize that going smoke-free is the right business decision—and the right decision for the health and well-being of residents. Implementing a no-smoking policy is legal, straightforward and easy to enforce. Explore this guide for more information on the benefits of going smoke-free and practical tips for implementing a no-smoking policy at your property.

**NEED HELP?** Visit [www.SmokeFreeWashington.com](http://www.SmokeFreeWashington.com) and click on “Apartments and Condos” to find a local contact to help you develop a no-smoking policy.

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**NO-SMOKING POLICIES  
ARE LEGAL**

## YOUR LEGAL RIGHT

Property owners and managers have the right to set reasonable rules that protect their investments and the health of their residents. A no-smoking policy can legally include individual units, common areas and all outdoor areas.

A no-smoking policy is not discriminatory. Just as you might regulate pets or waste removal, you have the right to implement a no-smoking policy. There is no such thing as a "right to smoke."

## PROPERTY MANAGER LIABILITY

A no-smoking policy can reduce your legal liability. Courts in Oregon, Massachusetts and New York have found property managers liable when they fail to address problems caused by secondhand smoke.

Residents have successfully sued for breach of warrant of habitability, constructive eviction and breach of covenant of quiet enjoyment because property managers did not stop smoke from drifting into their units. Awards to the residents included reduced rent, court orders for property management to fix the problem, and payments for damages and medical bills.<sup>1</sup>

## NO-SMOKING AND THE FAIR HOUSING ACT

Residents with disabilities affected by secondhand smoke may request that property management implement a no-smoking policy as a reasonable accommodation under the Fair Housing Act.

The act makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling."<sup>2</sup> Note that smoking is not considered a disability by the Fair Housing Act, and you are not required to make accommodations for a resident to smoke.

## NO-SMOKING POLICIES ARE LEGAL IN PUBLIC HOUSING:

"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. Since HUD has not promulgated a binding smoking policy, this issue is left to the private owners consistent with any applicable state law(s)."

– Detroit Field Office, Department of Housing and Urban Development<sup>3</sup>



## THE ADVANTAGES OF GOING SMOKE-FREE

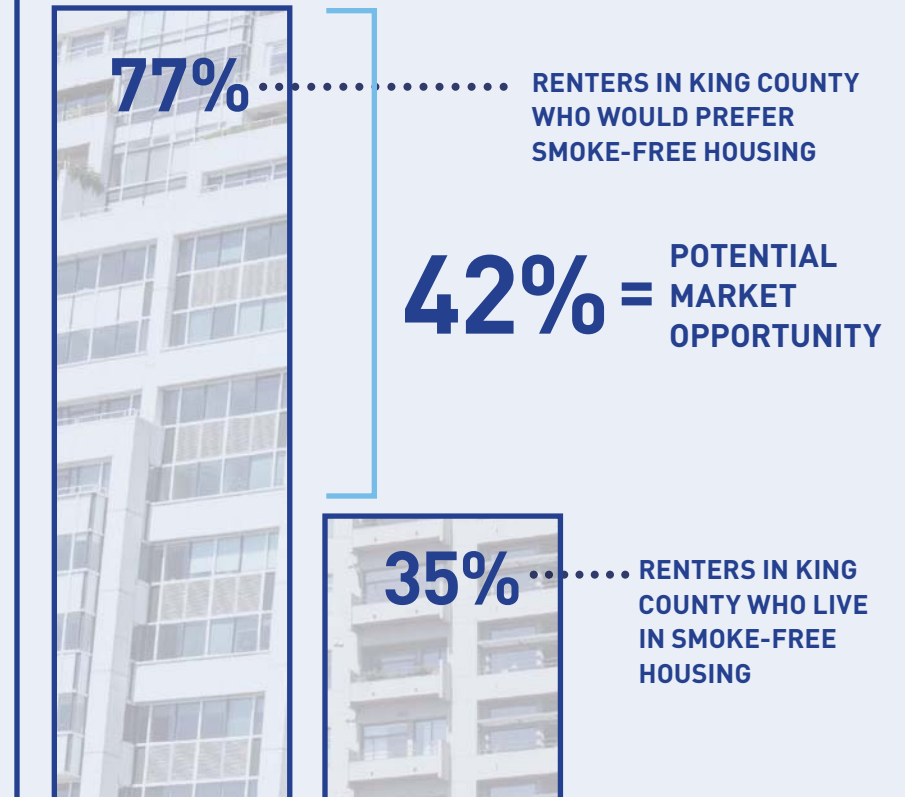
### ATTRACT RESIDENTS

Eighty-six percent of Washington renters prefer smoke-free housing.<sup>4</sup> People know that secondhand smoke is harmful to their health, and they don't want the smell of someone else's smoke in their homes. Even the majority of people who smoke prefer smoke-free housing.

Residents place a premium on smoke-free housing. In King County, half of the renters who prefer smoke-free housing also indicate that they would pay more to live in smoke-free buildings.<sup>5</sup>

Residents also support property management's right to go smoke-free. Four out of five King County renters agree that it is OK for property management to prohibit smoking in rental units and almost all (90 percent) agreed that people should be able to live in their apartments without secondhand smoke.

## GET AN EDGE WITH SMOKE-FREE HOUSING



### SMOKE-FREE PUBLIC HOUSING IN HIGH DEMAND:

People who live in public housing have also shown a strong preference for smoke-free housing. In a survey of the Vancouver Housing Authority in Clark County, 75 percent said they would prefer to live in smoke-free units.<sup>6</sup> 70 percent of respondents in a survey of the King County Housing Authority also indicated that they prefer smoke-free housing.<sup>7</sup>



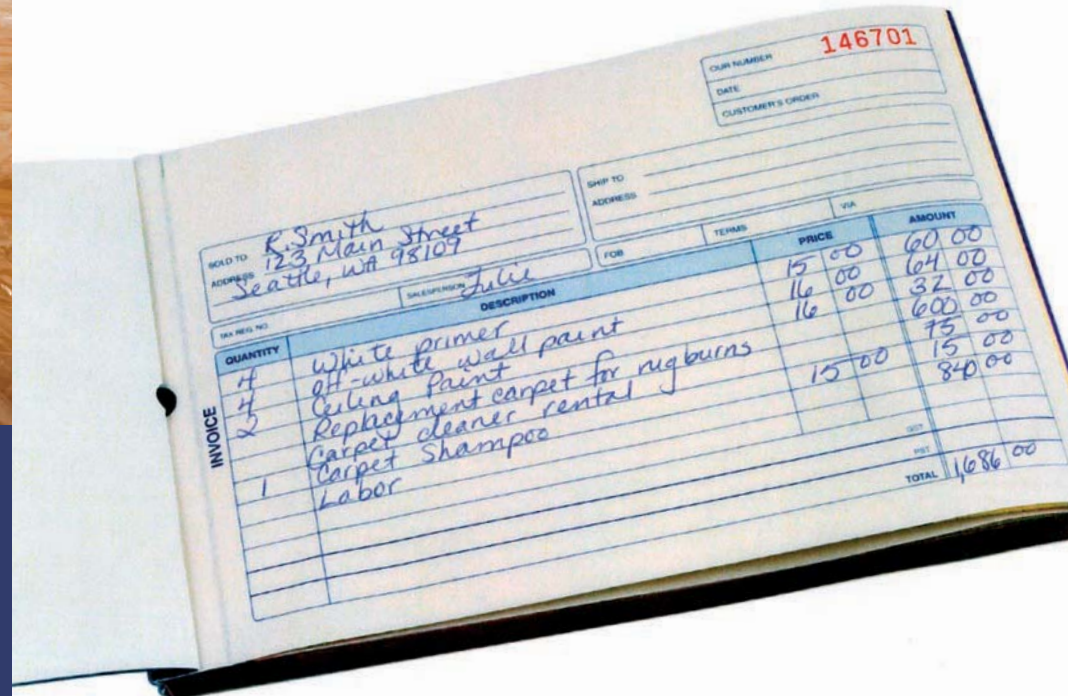
## SAVE MONEY

Every time a resident vacates a unit, the unit has to be cleaned in preparation for a new resident. However, property managers and owners who permit smoking in their buildings are faced with many additional expenses including:

- Extra cleaning or replacing of carpet
- Replacing blinds
- Replacing surfaces with burns or stains
- Repainting walls and ceilings, often with multiple coats to cover stains and smells

When you add the costs of fixing smoke damage, landlords can pay thousands of dollars extra every time they prepare a unit for a new resident.

Going smoke-free also protects the resale value of your property. With smoke-free workplaces, restaurants and bars in Washington state, people have come to expect buildings free from cigarette damage.



“Our primary motivation for adopting a no-smoking rule was the expense to turn over the units that had been smoked in. We were replacing perfectly good carpet because we couldn’t get the smell out, no matter what we did.”

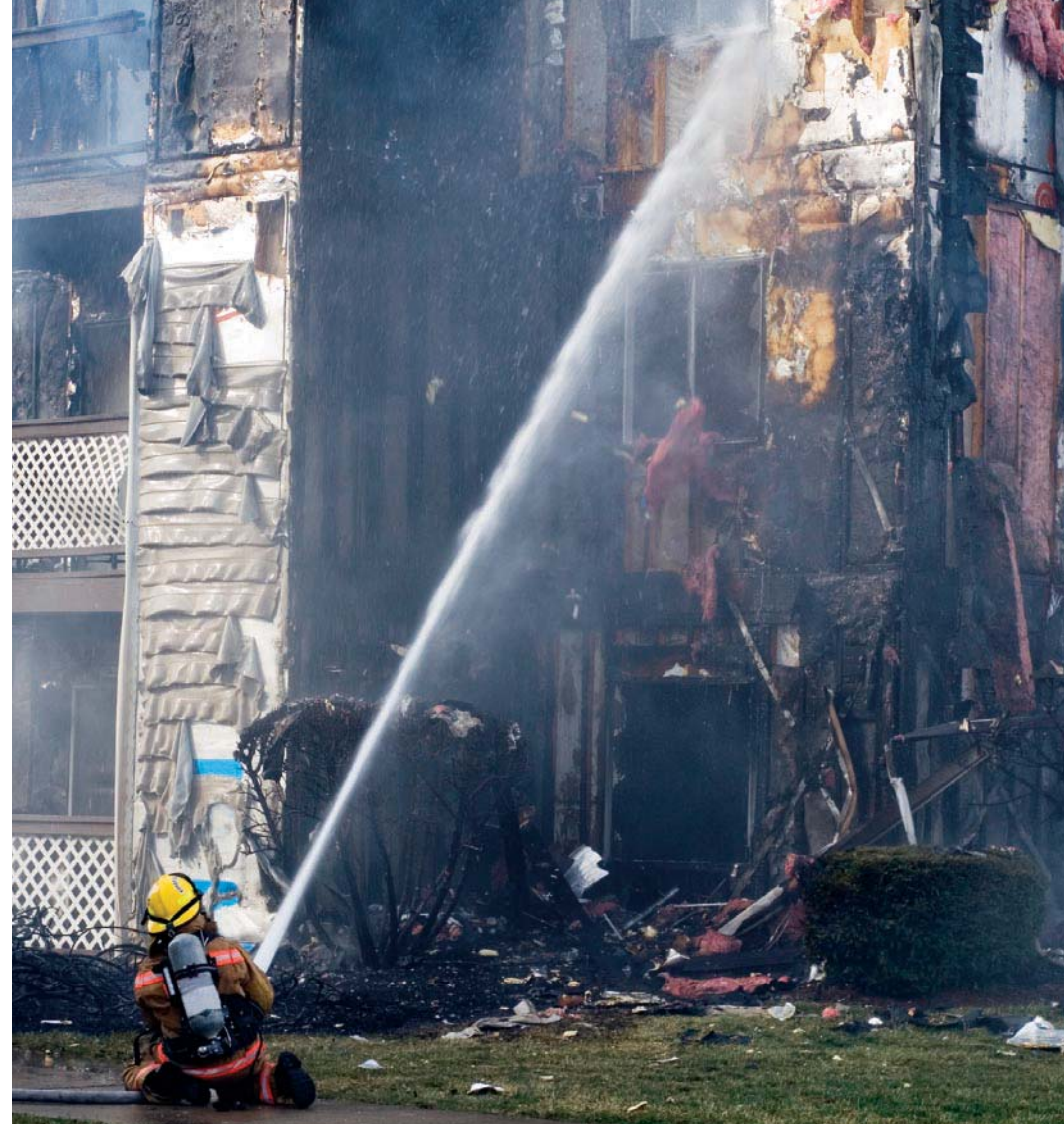
– Anita M., on-site manager, Kings Gate Apartments (Vancouver, WA)

## PROTECT YOUR PROPERTY

The damage caused by smoking goes beyond odors and stains. Smoking materials are the third leading known cause of fires in Washington state. In 2008, smoking caused \$15 million in damages from fires at residential properties.<sup>8</sup>

When residential smoking-related fires occur, they cause more injuries, more deaths and more expensive property damage than other types of residential fires. Additionally, smoking is the leading cause of death by fire in Washington state.

Going smoke-free will make your building safer. A no-smoking policy may even qualify your property for a lower insurance rate. Ask your broker.



**Cigarette fire destroys 10 apartment units**  
Seattle Times, July 17, 2009  
SEATAC - A two-alarm fire yesterday evening destroyed 10 units at the 48-unit Carriage House apartments in the 3600 block of South 180th Street.  
The fire broke out about 5:30 p.m. after someone tossed a cigarette onto the two-story apartment building's cedar-shake roof. It took firefighters nearly two hours to contain the blaze.  
"We thought we were doing pretty good, but it did run on us," said Soa Tae Fire Department Capt. Patrick...  
Damages were estimated at \$250,000. The Red Cross was helping fire...

February 25, 2009 5:55 AM  
Seattle Times, The Blister Blog  
**Fire guts apartment in Marysville**  
Posted by John de Lenc  
Improperly discarded smoking materials are blamed for a fire last night that caused \$50,000 in damage to an apartment in Marysville.  
Marysville Fire Department units responded to the fire at about 6 p.m. in the 700 block of Beach Avenue. The resident reported hearing noise outside and when he opened the door found flames along the back of the unit.  
Fire crews found heavy smoke and flames coming from an attic eave of the single-story unit. They contained and extinguished the fire, which had just spread from outside into the attic.  
The residents are staying with friends. They did not have renter's insurance.  
The Snohomish County Fire Marshal's office determined the fire was caused by discarded smoking materials and estimated damages to be \$50,000.

"The leading cause of fire fatalities in Washington state continues to be smoking, accounting for nearly 20 percent of the total fire fatalities over the past five years. The majority of smoking-related fires occur in homes. . . . When a cigarette comes in contact with flammable furnishings, beddings, or clothing, the potential of a fire starting is great."

- 2007 Fire in Washington Annual Report of the Washington State Patrol Office of the State Fire Marshal<sup>9</sup>

“The debate is over. The science is clear: Secondhand smoke is not a mere annoyance, but a serious health hazard.”

– U.S. Surgeon General Richard Carmona, 2006



## BE HEALTHY, BE GREEN

Going smoke-free makes your units healthier—and greener! Secondhand smoke is a known cause of cancer, heart disease, respiratory illness, sudden infant death syndrome (SIDS) and other illnesses.

Smoke does not just affect the health of residents in a unit where someone is smoking; secondhand smoke moves between units through windows, doors and vents—as well as through heating, plumbing and electrical ducts. Engineering studies of multi-unit buildings show that increased ventilation or sealing does not prevent smoke from drifting from one unit to another.<sup>10</sup>

Going smoke-free is not just healthy—it's green. The Seattle Office of Housing includes a no-smoking policy in its tips for being green because it makes housing more durable, reduces operating costs and improves air quality. Additional tips for green housing are at: [www.seattle.gov/housing/GreenUnitTurn](http://www.seattle.gov/housing/GreenUnitTurn).

### NO-SMOKING POLICIES ARE A HEALTHY AMENITY:

“We view a no-smoking policy and a smoke-free property as an amenity for residents that we can provide. We are marketing that policy as an amenity, and I think more and more renters are going to be seeking out communities that provide a cleaner, healthier smoke-free environment.”

– Jim Wiard, Vice President of Property Management, Guardian Management LLC. More than 8,000 Guardian units, including those in Washington, went smoke-free in January 2008.

# HOW-TO GUIDE

## GOING SMOKE-FREE IN FOUR STEPS

Property managers and owners who have implemented no-smoking policies report that they are easy to implement and easy to enforce. Most decision-makers find that policies can be implemented in four steps:

STEP 1: DEVELOP THE POLICY

STEP 2: COMMUNICATE THE POLICY

STEP 3: IMPLEMENT THE POLICY

STEP 4: ENFORCE THE POLICY

### STEP 1: DEVELOP THE POLICY

Your first step to going smoke-free is deciding what the policy will include and writing lease language.\* Your policy can apply to the entire property, including indoor common areas, individual units, private outdoor areas (decks, patios, etc.) and outdoor common areas.

A policy that covers the whole property will have the biggest impact on reducing cleaning and repair costs, reducing fire risk, and making the building healthier for residents. It is also the easiest policy to enforce because there are no exceptions. A comprehensive policy should also specify that it pertains to residents' guests, maintenance workers and other visitors to the property.

\*Sample lease addendum language is available in the Resources section of this guide.

### POLICIES FOR PUBLIC HOUSING:

Although the U.S. Department of Housing and Urban Development (HUD) has not developed its own no-smoking policy, it gives individual property owners and managers the right to do so. Managers of HUD properties can make changes to house rules that are in the interest of creating a better environment for residents and protecting the property. You can change house rules with a 30-day notice to residents. If you want to change model lease language in federally subsidized buildings, you will need approval from your HUD office.

### POLICIES FOR CONDOMINIUMS:

Most condominium bylaws or Covenant, Conditions, and Restrictions (CC&Rs) include a nuisance clause to ensure that no one at the property conducts activities that substantially interfere with the peace and well-being of another resident.

The easiest way to implement a no-smoking policy is for the homeowners' association or condo board to make a rule that secondhand smoke is considered a nuisance. In most cases a simple majority vote by the condo board is all that is needed to make this change. The condo board will need to inform its membership of the change at least 30 days before it goes into effect.

If that rule is challenged, you can work with the condo board and membership to amend the association's bylaws or CC&Rs to include a no-smoking policy. This approach usually requires a super-majority vote (3/4 or 2/3) of the overall condo membership. Start by talking with other owners to get support for the policy.





## STEP 2: COMMUNICATE THE POLICY

**Current residents:** Washington state law requires that you give current residents at least 30-days notice before changing any rules. Although 30 days is the legal minimum, giving residents more time to adjust to the new policy will make implementation easier. One way to inform residents is to send out a notice\*, including:

- What the policy covers
- Reasons for the policy (reducing fire risk, improving health, protecting the property units, etc.)
- Effective date for the policy
- Resources for quitting smoking, such as the free Washington State Tobacco Quit Line, 1-800-QUIT-NOW (optional)

You may also consider presenting this information at a resident meeting, where you can address concerns in person.

**Prospective residents:** Make sure to advertise your property as smoke-free. Explain the policy to prospective residents who visit the property, and again when new tenants sign the lease.

\*A sample letter to residents is available in the Resources section of this guide.



### TALKING POINTS FOR RESIDENTS:

Washington State Department of Health  
**Tobacco Quit Line**  
**1-800-QUIT-NOW**  
toll-free 1-800-784-8669  
**QUITLINE.COM**

- Residents and their families will be safer from fire.
- Air will be fresher and healthier.
- Unit materials and furnishings will last longer, making a greener building.
- A no-smoking rule does not mean “no smokers.” It means that people who smoke are required to do so according to the terms set forth in the no-smoking policy.
- If residents would like to quit, free help is available at **1-800-QUIT-NOW** or **www.Quitline.com**.

### STEP 3: IMPLEMENT THE POLICY

How you implement a no-smoking policy will depend on the type of leases you have in your building.

**New leases:** For residents who move in on or after the effective date of the no-smoking policy, include the policy in all new leases.

**TIP:** The easiest time to implement a no-smoking policy is when opening a new building, or when re-leasing a unit that has just been renovated.

**Current leases:** Many landlords add the no-smoking policy when a lease expires, during lease renewal. The no-smoking clause can be added sooner if a resident voluntarily agrees to a lease change before his or her lease expires.

**TIP:** All residents in Washington state are guaranteed at least 30-days notice, in writing, before a change to the rules in their lease. Make sure your lease or local regulations do not require additional notice.

**Month-to-month leases:** Residents on a month-to-month lease require 30-days notice before a policy change. The no-smoking policy can go into effect on the first day of the lease term (the day rent is due), 30 days after the resident has received notice.

### STEP 4: ENFORCE THE POLICY

Three out of four Washington state landlords who have implemented a no-smoking policy indicate it's easy to enforce.<sup>11</sup> The following tips will support easy enforcement:

- Post signs to remind residents and guests of the no-smoking policy.
- Include the policy in ads and explain the policy to all new residents.
- Act quickly when you see a violation of the policy, or when a violation is reported.
- Use the same warnings and penalties for the no-smoking policy as you do for other rules, like trash removal, pets or rent payment.
- Train maintenance staff to look for signs of smoking.
- Make residents liable for smoking-related damages.



Download smoke-free signs at [www.SmokeFreeWashington.com](http://www.SmokeFreeWashington.com).



Watercrest Apartments  
Guardian Management  
Smoke-free since January 1, 2008

## FREQUENTLY ASKED QUESTIONS

### Q: Will I lose residents if I go smoke-free?

**A:** Current research across Washington state and the Puget Sound area has demonstrated a high demand for smoke-free housing—though only a small percentage of properties have no-smoking policies. More than three quarters of tenants in King County indicate a preference for smoke-free housing and more than 50 percent of those people would even pay higher rent for a smoke-free building.

### Q: Does a no-smoking policy discriminate against smokers?

**A:** Smoking is not a protected behavior—and there is no legal “right to smoke.” It is legal for landlords and owners to prohibit smoking at their properties. Some property owners even legally choose to rent units to non-smokers only to ensure that their no-smoking policy is followed.

### Q: Can I adopt a no-smoking rule in HUD-assisted housing?

**A:** Yes! You can adopt a no-smoking policy as part of your house rules or lease. Changes to house rules can take effect after sufficient notice to residents. If you wish to change the model lease provided by HUD, you will need HUD approval.

### Q: My residents are complaining that a neighbor is smoking. What can I do?

**A:** Respond to all complaints in a timely and professional manner. Thank the resident for notifying you and ask for more details: What time of day do they smell smoke? How do they think it’s getting into their unit? Do they suspect a certain person? Let the resident know that you will look into the situation and make sure to follow up with your findings.

### Q: How do I prove that a resident is smoking?

**A:** The first sign of a resident smoking is often a complaint from a neighboring resident. After you receive a complaint or notice signs of smoking, alert the resident(s) that you will be conducting an inspection of their unit. Look for and document signs of smoking; if it’s helpful, you can bring another person to confirm your findings. Take pictures of cigarettes, ashtrays, cigarette burns or any other evidence that you see. Document each violation. With sufficient proof, proceed by enforcing the no-smoking policy like any other lease violation.

### Q: Where can I find assistance?

**A:** Visit [www.SmokeFreeWashington.com](http://www.SmokeFreeWashington.com) and click on “Apartments and Condos” to find a local contact to help you develop a no-smoking policy.

# RESOURCES

## SAMPLE LEASE LANGUAGE<sup>12</sup>

### SMOKE-FREE LEASE ADDENDUM

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

1. **Purpose of No-smoking Policy:** The parties desire to mitigate (i) the irritation and known health effects of secondhand smoke; (ii) the increased maintenance, cleaning and redecorating costs from smoking; (iii) the increased risk of fire from smoking; and (iv) the high costs of fire insurance for a non-smoke-free building.
2. **Definition of Smoking:** The term "smoking" means inhaling, exhaling, breathing or carrying any lighted cigar, cigarette, or other tobacco product or similar lighted product in any manner or in any form.
3. **Smoke-free Complex:** Tenant agrees and acknowledges that the premises to be occupied by Tenant and members of Tenant's household have been designated as a smoke-free living environment. Tenant and members of Tenant's household shall not smoke anywhere in the unit rented by Tenant, or the building where the Tenant's dwelling is located or in any of the common areas or adjoining grounds of such building or other parts of the rental community, nor shall Tenant permit any guests or visitors under the control of Tenant to do so.

4. **Landlord Not a Guarantor of Smoke-free Environment:** Tenant acknowledges that Landlord's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, do not make the Landlord or any of its managing agents the guarantor of Tenant's health or of the smoke-free condition of the Tenant's unit and the common areas. However, Landlord shall take reasonable steps to enforce the smoke-free terms of its leases and to make the complex smoke-free. Landlord is not required to take steps in response to smoking unless Landlord knows of said smoking or has been given written notice of said smoking.
5. **Effect of Breach and Right to Terminate Lease:** A breach of this Lease Addendum shall give each party all the rights contained herein, as well as the rights in the Lease. A material breach of this Addendum shall be a material breach of the lease and grounds for immediate termination of the Lease by the Landlord.
6. **Effect on Current Tenants:** Tenant acknowledges that current tenants residing in the complex under a prior lease will not be immediately subject to the No-smoking Policy. As current tenants move out, or enter into new leases, the smoke-free policy will become effective for their unit or new lease.

Signed:

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Tenant

---

Date

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Property Manager/Landlord

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Date

# SAMPLE LETTER TO RESIDENTS

Date

Dear Resident:

This letter is to inform you of a policy that is being implemented in regards to smoking on the property.

1. As of (date of your choice) this apartment complex will have a no-smoking policy. This means that there will be no use of any lit tobacco product in this building or anywhere else on the property. This policy includes tenants as well as guests, maintenance personnel and staff. (Include the details of your policy.)
2. This policy is being implemented to protect the health of our residents, staff and guests. Secondhand smoke is a human carcinogen, with no known safe level of exposure. Secondhand smoke can travel through doorways, windows, wall joints, plumbing spaces and even light fixtures, so secondhand smoke from one unit can adversely affect the health of residents in other units.
3. All new residents will be required to sign a no-smoking agreement when they sign their leases. Existing tenants on a term-lease will be required to sign the agreement when signing new leases. Month-to-month tenants will be required to sign the agreement within 30 days of the date the policy goes into effect.
4. If you or family members are interested in more information, please visit the following Web site, which can explain in greater detail the benefits of living in a smoke-free environment: [SmokeFreeWashington.com](http://SmokeFreeWashington.com). This Web site will also link you to a number of resources that can help if you are thinking about quitting smoking.

Please feel free to contact (name of landlord or complex manager, phone number) if you have any questions. We will be happy to assist you in any way possible in making this a smooth transition.

Sincerely,

Landlord

## ONLINE RESOURCES

**SmokeFreeWashington.com:** Provides downloadable lease language and sample tenant letters. You can also find local contact information to get support implementing a no-smoking policy and to request signage. Visit [www.SmokeFreeWashington.com](http://www.SmokeFreeWashington.com).

**Portland-Vancouver Metro Area Smoke-free Housing Project:** Provides information on going smoke-free including free listings for no-smoking units in that area. Visit [www.smokefreehousingnw.com](http://www.smokefreehousingnw.com).

**U.S. Environmental Protection Agency Smoke-free Homes and Cars Program:** Provides comprehensive information on the health effects of secondhand smoke and the benefits smoke-free homes. The Web site includes downloads for families about secondhand smoke in the home. Visit [www.epa.gov/smokefree](http://www.epa.gov/smokefree).

**Public Health – Seattle & King County Tobacco Prevention Program:** King County property managers and owners can use this site to request assistance with all the steps to implement a no-smoking policy, including ordering signage. Visit [www.kingcounty.gov/health/tobacco](http://www.kingcounty.gov/health/tobacco).



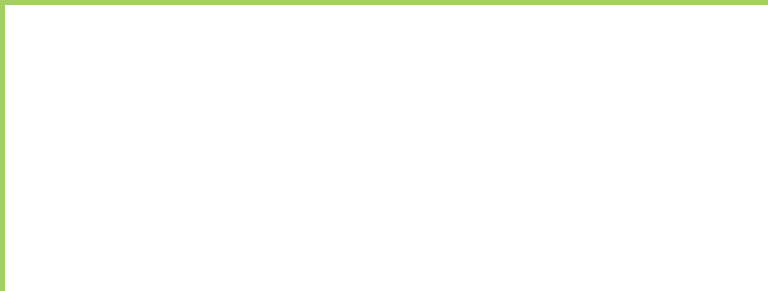
# REFERENCES

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- <sup>2</sup> The Fair Housing Act of 1968. 42 U.S.C. §§ 3601 – 3619.
- <sup>3</sup> Letter to the Center for Social Gerontology from the HUD Detroit Field Office, 2003. Available at [www.mismokefreeapartment.org/hudletter.pdf](http://www.mismokefreeapartment.org/hudletter.pdf). Accessed March 18, 2009.
- <sup>4</sup> Healthy Community Environments Survey. Washington State, 2007.
- <sup>5</sup> The Gilmore Research Group. King County Survey of Rental Housing Residents: Compliance with and Attitudes about Smoke-Free Rental Housing. August 2008.
- <sup>6</sup> Report to the Vancouver Housing Authority Board on the Healthy Air Survey Conducted with VHA Residents. December, 2007. Reported by Clark County Public Health.
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- <sup>8</sup> Washington State Fire Marshal's Office. Data from the National Fire Incident Reporting System. March 18, 2009.
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- <sup>10</sup> American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. ASHRAE Position Document of Environmental Tobacco Smoke. 2008. Available at [www.ashrae.org/aboutus/page/335](http://www.ashrae.org/aboutus/page/335). Accessed March 18, 2009.
- <sup>11</sup> Tobacco Policies in Multi-unit Housing Survey. Washington State, 2007.
- <sup>12</sup> Center for Energy and Environment. Legal Research Regarding Smoke-Free Buildings and Transfer of Environmental Tobacco Smoke Between Units in Smoking-Permitted Buildings. August 2002. Available at [www.mncee.org/pdf/research/report.pdf](http://www.mncee.org/pdf/research/report.pdf). Accessed March 13, 2009.

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This guide provided to you locally by:



**Public Health**   
Seattle & King County

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[www.kingcounty.gov/health/tobacco](http://www.kingcounty.gov/health/tobacco)