

# No Smoking Resource Guide for Landlords with Section 8 Tenants



As a Section 8 landlord, you can play a vitally important role in the movement to provide safe and healthy housing to the approximately 46,000 low-income households in Washington who receive Section 8 housing subsidies. You own and operate your housing, and have the right to determine the rules of occupancy for your units.

None of this information should be taken as legal advice. You should consult your own legal counsel about implementing a no smoking policy and lease & occupancy rule changes.

**AWHA** *The Association of Washington Housing Authorities*



## No Smoking Resource Guide for Landlords with Section 8 Tenants

Since 2010 Washington's 38 housing authorities have been implementing no-smoking policies for their public housing and other subsidized housing units. Thanks to their efforts, and with support from the Comprehensive Health Education Foundation (C.H.E.F.) and Pacific NW Regional Council of NAHRO, 28 out of 38 agencies have adopted no-smoking policies, and five more are in the process.



As a Section 8 landlord, you can play a vitally important role in the movement to provide safe and healthy housing to the approximately 46,000 low-income households in Washington who receive Section 8 housing subsidies. You own and operate your housing and have the right to determine the rules of occupancy.

Our goal in providing you with this Resource Guide is to convince you that no-smoking policies make sense for your Section 8 subsidized housing, and your other, non-subsidized rental units as well.

Here are some questions that we commonly get from landlords, with answers that we hope will help you decide to make your properties smoke free.

### Q How does going smoke-free benefit landlords?

**A:** Going smoke-free saves you money and helps you meet your legal obligations. Adopting a no-smoking policy helps you:

- ◆ **Protect the value of your property.** Preserve your resale value. Damage from tobacco smoke can be a deal-breaker for prospective buyers, or at least reduce the resale price.
- ◆ **Save money on renovations.** Units that have been smoked in are much more costly to renovate—anywhere from two to 15 times more to renovate and turnaround, depending on how much tenants smoked and how long they lived in the unit.
- ◆ **Save money on insurance.** Some insurance companies offer as much as a 10% discount for units covered by no-smoking policies. Even if yours doesn't offer a discount, your insurance will likely cost less over the course of several years because you will have fewer smoking-related insurance claims.
- ◆ **Prevent fires.** Residential fires caused by smoking result in injury, death, and property damage. Over the past three years in Washington State there have been an average of 148 residential cigarette fires each year resulting in a total of \$16.9 million in property damage, 12 deaths, and 47 civilian injuries.
- ◆ **Fulfill your obligation to protect other tenants.** According to the Centers for Disease Control and Prevention, second hand smoke causes an estimated 46,000 deaths in adult nonsmokers each year, and triggers numerous health problems in children, including asthma attacks, bronchitis, and ear infections. It's impossible to contain it to just one unit or area of a rental property. Tenants with medical conditions are legally protected under the Americans with Disabilities Act and Fair Housing Act. Landlords may be required to provide "reasonable accommodations" to them if second-hand smoke effects their health.
- ◆ **It's good for business.** Renters will pay more for smoke-free housing. According to Smoke-FreeWashington.com, 92% of Washington renters prefer smoke-free housing—including 75% of those who smoke! Vacancies will rent sooner without the stigma and odor of tobacco smoke.
- ◆ **Get fewer complaints.** Landlords tell us that second-hand smoke is one of the most common sources of complaints from residents. They say that after implementing a no-smoking policy, complaints about second-hand smoke drop, as do requests for transfers.

## Q What about my tenants who smoke?

**A:** There is no legal right to smoke. Landlords, on the other hand, have the right to prohibit dangerous, harmful, and damaging behavior in their rental properties. You are not telling people not to smoke. You do, however, have a right to say whether they smoke in your rental unit or on the property.

## Q If I go smoke-free, how can I compete with other landlords?

**A:** Remember that you are joining a growing number of landlords in Washington who prohibit smoking in their rental units—including private sector landlords. Twenty-eight of the 38 public housing authorities in Washington have adopted policies that prohibit smoking in their units. In some cases smoking is banned everywhere, even on their grounds.

The 2012 Washington State Owner & Property Manager Survey reports that **95%** of landlords who have implemented no-smoking policies are satisfied with their decision. **92% reported no impact on their turnover rate.** Experience also shows that while smokers facing a smoking ban often talk about moving, they usually don't.

## Q Won't a no-smoking policy be hard to enforce?

**A:** Enforcement is a common concern but our experience indicates that no-smoking policies are largely **self-enforcing**. Because the vast majority of tenants expect and tend to prefer a smoke-free environment, they also tend to abide by a no-smoking policy—and exert peer pressure on smokers to do so as well. Tenants who do not comply should be handled the same way you handle any other non-compliance lease issues.

## Q How do I get started?

**A:** Start by thinking through the following points.

- ◆ Remember that smoking is very addictive. It is very hard for most people to quit.
- ◆ Communication with tenants is critical. Seek their support. Involving them will help build support during the process, and wider understanding once the policy is adopted.
- ◆ Find out how many tenants smoke. Survey everyone—smokers and non-smokers—to find out what they think about a no-smoking policy.
- ◆ Offer information about tobacco cessation services and products.
- ◆ Develop your policy based on tenant feedback. A total smoking ban on the property is best, but there are interim steps that you can do make it a smooth transition.
- ◆ Give lots of notice, even before the policy becomes legal. This will be a hard change for some tenants, but a longer timeline eases the difficulty of accepting it. Some landlords have eased the transition by giving as much as three times the legally required notice to change the lease agreement.
- ◆ Notify tenants in writing. Written materials should include
  - Areas where smoking is prohibited
  - Areas where smoking is allowed (if any)
  - Who is covered by the smoking ban (such as guests, family members, employees)
  - Definitions
  - Effective date
  - Consequences for violations

Give ample notice prior to the time that the formal, legal notice is given. This will be a hard change for some tenants who smoke, but a longer timeline eases the difficulty of accepting it. Consider giving as much as three times the legally required notice to change your lease agreement and rules of occupancy. Month-to-month rental agreements may be changed relatively easily and quickly, but in the case of a fixed term lease (one year or more) you may be required to wait to implement the no-smoking policy until those leases are up for renewal.

## How do I implement my no-smoking policy?

**A:** Make sure that leases signed on or after the effective date include the policy.

Where current tenants are concerned, you can add the policy when their leases expire.

With month-to-month leases that require 30 days notice, the no-smoking policy can go into effect on the first day of the lease term (the day rent is due), 30 days after written notice has been given.

Always have the tenant acknowledge the no-smoking clause by initialing the lease or addendum.

Make it clear that the no-smoking policy include residents' guests and your employees. Everyone must abide by the no-smoking policy, not just tenants.

Install permanent signage in key locations so that it is clear to both tenants and guests that the property is no smoking. Signs provide a good reminder to current tenants, and send a clear message to prospective renters that it is a smoke-free property. Make the signage appropriate: "In consideration of our tenants' health, this is a smoke-free property" is better than the more authoritarian "No Smoking" sign. You can find information on no-smoking signage on the website ([www.chef.org](http://www.chef.org)) under "Implementation Tools, Signs, Cessation Materials."

There are a number of good resource documents for landlords seeking to implement no-smoking policies. These include "A Landlord's Guide to No-Smoking Policies" developed by the Oregon Smoke Free Housing Project, and "Reasons to Explore Smoke-Free Housing" from the National Center for Healthy Housing. Another source of information is found on the Internet at <http://www.smokefreewashington.com/apartments/>. All of these resources may be accessed via interactive links on C.H.E.F.'s website, [www.chef.org](http://www.chef.org).

## I have a lot of tenants who smoke and I suspect that enforcing a no-smoking rule will be difficult. Will I lose good tenants as a result of a no-smoking policy?

**A:** Landlords who have implemented no-smoking policies report that few if any tenants move because of not being able to smoke in their units. There may be some who do, but that also gets you closer to the goal of having a smoke-free property. The cost savings and other benefits of no-smoking policies will quickly outweigh any negatives related to turnover.

Enforcement of a no-smoking policy does add one more rule of occupancy to enforce, but most tenants will comply, especially if you have included them in your policy change process and have given lots of advance notice of the pending change.

One option is to implement a no-smoking policy incrementally. This may be done in several ways. If you have more than one building or property, a no-smoking policy could be implemented in one building or site with other buildings/sites becoming no smoking later. Another method would be to "grandfather in" current tenants who smoke for either the length of their tenancy, or at least until their lease comes up for renewal. If you have tenants with long fixed term leases, you will need to implement the no-smoking policy for them when their lease expires. This means that secondhand smoke will continue to be present in a property for an extended period of time, but it is better than not moving in the direction of a smoke-free property. In this scenario, new tenants who may be smokers but are not allowed to smoke under the terms of their lease may be unhappy that existing tenants continue to do so.

If you adopt a no-smoking policy, the bottom line is that you should enforce that rule just as you do any other rule of occupancy. A policy that is not enforced ends up not being a policy at all.

- ◆ Respond promptly to complaints about violations and take reasonable and appropriate corrective steps, up to and including lease termination.
- ◆ Advertise the property as no smoking to attract tenants who do not smoke, or who will agree to only smoke off the premises.
- ◆ Put the no-smoking clause in your lease and emphasize it when the document is signed.
- ◆ Inform tenants that if they smoke in their units, they will be financially responsible for bringing the unit back to rentable condition, which could cost thousands of dollars.
- ◆ Visit the property regularly to perform inspections and meet your due diligence as a landlord. If you can, provide a designated smoking area outside and away from the entry and windows (25 feet or more). You will have the support of the majority of tenants who want a smoke-free environment.

### **Q Where can I find definitive information about second-hand smoke in multi-family properties?**

**A:** C.H.E.F. has posted A Law Synopsis by the Tobacco Control Legal Consortium (2009) entitled “Infiltration of Secondhand Smoke into Condominiums, Apartments, and Other Multi-Unit Dwellings” on its website for your review. ([www.chef.org](http://www.chef.org))

### **Q What do I say when my tenants argue that smoking tobacco is not illegal and therefore they should be able to smoke in their own units since they are entitled to privacy there?**

**A:** You can remind your tenants that there is no constitutional “right to smoke.” The U.S. Constitution does not extend any special protection to smokers. The practice of smoking is not protected under the Due Process Clause of the Constitution.

The so-called “right to smoke” is a smokescreen. The right to privacy does not apply to smoking. What’s more, secondhand smoke cannot be effectively contained in any given unit or area of a multi-family property as described above, so “smoking in the privacy of one’s own home” means that the smoker’s secondhand smoke will bother and potentially harm all other occupants, guests, and employees. Consequently, landlords are free to implement no-smoking policies so long as they do so properly and in accordance with required procedures under the Landlord/Tenant Law.

For more detailed analysis of this, see “There is No Constitutional Right to Smoke: 2008,” A Law Synopsis by the Tobacco Control Legal Consortium posted on C.H.E.F.’s website. ([www.chef.org](http://www.chef.org))

### **Q Where can I refer tenants for help if they want to quit smoking?**

**A:** There are a number of resources for smokers wanting to quit. One such resource is available on the Internet and provided by the American Lung Association ([www.lung.org/stop-smoking](http://www.lung.org/stop-smoking)).

Another resource in Washington State is the Quit Line at 1-800-QUITNOW. This service offers counseling, information, a step-by-step quit-smoking guide, and nicotine gum and patches. Nearly everyone in Washington State is eligible for Quit Line services, but everyone is entitled to one free call. Private insurance, Medicaid, and Medicare cover most residents.

While helping tenants who smoke to quit may not seem to be in your “job description” as a landlord, keep in mind that every one of your tenants who does quit smoking is one less tenant for whom you may have to enforce your no-smoking policy.

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### **So what's in it for you as a landlord?**

- ✓ Happier, safer, and healthier tenants
- ✓ A better return on your investment through
  - ◆ Fewer vacancies
  - ◆ Higher rents
  - ◆ Lower maintenance/renovation costs
  - ◆ Lower insurance premiums

*For more information contact Julie Peterson at [juliep@chef.org](mailto:juliep@chef.org)  
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COMPREHENSIVE  
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National Association of Housing  
and Redevelopment Officials  
Alaska, Idaho, Washington, and Oregon

**Pacific Northwest Regional Council**