

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.

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AWHA *The Association of Washington Housing Authorities*



No Smoking Resource Guide for Landlords with Section 8 Tenants

Since 2010 Washington's 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, 32 out of 38 agencies have adopted no-smoking policies, and four 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.

HUD has issued three notices in the past couple of years endorsing the adoption of smoke-free policies by housing authorities and owners of project-based rental assistance. Although HUD has not yet targeted landlords participating in the tenant-based voucher program, it's safe to assume that the HUD endorsement extends to private landlords with Section 8 tenants, as well.

This Resource Guide is intended to help you decide if 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 convince you to make your properties smoke free.

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 and 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 where people have smoked are much more costly to renovate than smoke free units—anywhere from two to 15 times more costly to renovate and turnaround, depending on how much tenants smoked and how long they lived there. For example, a one-bedroom smoker's unit averages \$1,583 in turnover costs, compared with \$514 for a non-smoker's 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 and Fair Housing Acts. Landlords may be required to provide "reasonable accommodations" to them if second-hand smoke affects their health.
- ◆ **It's good for business.** Renters will pay more for smoke-free housing. According to SmokeFreeWashington.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.

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.

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. Thirty-two of Washington’s 38 public housing authorities 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.

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 other 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.

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. The use of a survey about smoking in your rental properties sends a strong message that you are concerned about your tenants and their health, not just your property. It also shows that you value the opinions of your tenants by including them in the process. The results of a survey will tell you more about your tenants, how many smoke, how many don’t, and how both groups feel about smoking in their homes. The majority will most likely be non-smokers, but it is enlightening when you learn that many smokers will support a no smoking policy. Strong support for a no smoking policy shown in survey results will provide you with support for the policy if some tenants resist and advocate for being able to continue to smoke on the premises.

The survey can also give you important information for deciding what your no smoking policy will look like. The results of your survey can help you decide things like:

- Should there be a designated smoking area outside? Should it include a shelter from the weather?
- Should you implement the policy quickly or extend implementation over a period of time?
- Should existing tenants who smoke be grandfathered in, or should everyone have to comply on a given date (depending on existing lease terms)?
- Should you supply smoking cessation information to help those who want to quit do so?

In the end results from a tenant survey can strengthen your position for implementing a no smoking policy. A sample survey is available on pages 7 and 8.

- ◆ Develop your policy based on tenant feedback. You have options ranging from a total campus ban on smoking, to a within-the-building ban on smoking, to smoking and non-smoking units in a multi-building property.
- ◆ 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. 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.
- ◆ 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



What is the best way to implement my no-smoking policy?

A: Make sure that leases signed on or after the effective date include the no-smoking 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 includes 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 smoke free. 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) 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 click on *Tobacco Prevention Network*.

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 added 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 to do it gradually than not at all. The drawback of this scenario is that you risk bad feelings on the part of new tenants who may be smokers but are not allowed to smoke under your new lease terms.

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.

Where can I find definitive legal 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)

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?

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 who implement no-smoking policies are legally supported as long as they do so properly and in accordance with required procedures under the Landlord/Tenant Law.

For a more detailed analysis, 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)

What do I say when my tenants argue that smoking marijuana is now legal so they should be able to smoke it in their units?

A: This is where your definition of “smoke” becomes important. Smoke is smoke and it interferes with the quality of life of your other, non-smoking tenants who share your multi-family housing. You have the same legal right to ban the smoking of marijuana in your units as you do tobacco.

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).

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 (now Apple Health), and Medicare cover this service for most Washington residents.

While helping tenants quit smoking 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.



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

None of the above 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.

Smoking Policy Healthy Air Survey

CONFIDENTIAL

The owner/manager of your rental property wants your opinion before adopting a no-smoking policy for all of their rental units.

What we are asking you to do:

- ◆ Please do NOT write your name on this survey.
- ◆ Answer as many questions as you can.
- ◆ Most questions can be answered by checking a box or filling in the blanks.
- ◆ Even if you decide not to answer any questions, please put your questionnaire in the pre-stamped envelope you were given, and drop it in the mail by _____.

1. How many years have you lived in your current home?

(Please fill in) _____years

2. How many people live in your home today?

(Please fill in) _____people

Please check a box for the rest of your answers

3. Do you smoke?

Every day Some days Not at all

3. a) Would you like help to quit smoking?

Yes No

4. Does anyone else in your household smoke besides you?

Every day Some days No one else smokes

4. a) Would you like help for a household member to quit smoking?

Yes No

Smoking Policy Healthy Air Survey *continued*

5. Does anyone smoke inside your home?

- Yes No

6. Do you think secondhand smoke is harmful to people's health?

- Yes No Don't Know

7. Have you smelled tobacco smoke in your home that comes from another apartment or from outside?

- No Yes, but it does not bother me Yes, it bothers me

8. Would you support rules that prohibit smoking inside units in your building?

- Yes No

9. Would you support a "No-smoking" policy where people could only smoke outside and at least 25 feet from any building?

- Yes No

10. Would you support rules that prohibit smoking anywhere on the property (for example, lawns, balconies and parking lots)?

- Yes No

11. Would you prefer to live in a building where smoking is prohibited on outside property?

- Yes No

12. Are you male or female?

- Male Female

Thank you very much for your help!



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Special Attention of:

NOTICE: H 2010-21

Multifamily Hub Directors
Multifamily Program Center Directors
Rural Housing Services (RHS) Directors
Supervisory Housing Project Managers
Housing Project Managers
Contract Administrators
Multifamily Owners and Management Agents

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Cross References:

Subject: **Optional Smoke-Free Housing Policy Implementation**

I. **Purpose**

The purpose of this Notice is to encourage owners and management agents (O/As) participating in one of the Multifamily Housing rental assistance programs listed in Section III of this Notice to implement smoke-free housing policies in some or all of the properties they own or manage. This Notice provides instructions to O/As on the requirements for implementing smoke-free housing policies and only applies to O/As who choose to establish such policies.

II. **Background**

It has been proven that exposure to smoke, whether direct or secondhand, causes adverse health outcomes such as asthma and other respiratory illnesses, cardiovascular disease, and cancer. In 2006, the U.S. Department of Health and Human Services published *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. This document expounds on health effects due to involuntary exposure to tobacco smoke. The report defines secondhand smoke, in the past referred to as environmental tobacco smoke (ETS), as smoke composed of sidestream smoke (the smoke released from the burning end of a cigarette) and exhaled mainstream smoke (the smoke exhaled by the smoker). The report lists several major conclusions, all based on scientific data, including the following: 1) The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke; and 2) Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke.

Below are relevant statistics and conclusions from *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*.

- According to a 2005 estimate by the California Environmental Protection Agency, Office of Environmental Health Hazard Assessment, approximately 50,000 excess deaths result annually in the United States from exposure to secondhand smoke.
- Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome, acute respiratory infections, ear problems, and more severe asthma.
- Secondhand smoke has been designated as a known human carcinogen (cancer-causing agent) by the U.S. Environmental Protection Agency, National Toxicology Program and the International Agency for Research on Cancer.
- Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.
- Nonsmokers who are exposed to secondhand smoke at home or at work increase their risk of developing heart disease by 25-30 percent.
- Nonsmokers who are exposed to secondhand smoke at home or at work increase their risk of developing lung cancer by 20-30 percent.
- The National Toxicology Program estimates that at least 250 chemicals in secondhand smoke are known to be toxic or carcinogenic (cancer causing).

In addition to the negative health effects of secondhand smoke, smoking is a proven hazard to physical structures. The United States Fire Administration (USFA) indicates smoking as the number one cause of home fire deaths in the United States. Furthermore, about 1,000 people are killed every year in their homes by fires caused by cigarettes and other smoking materials. The USFA states 25 percent of people killed in smoking-related fires are not the actual smokers; of this percentage, 34 percent of the victims were children of the smokers, and 25 percent were neighbors or friends of the smokers.

III. Applicability

This Notice applies to:

- A. Project-based Section 8
 1. New Construction
 2. State Agency Financed
 3. Substantial Rehabilitation
 4. Section 202/8
 5. Rural Housing Services Section 515/8
 6. Loan Management Set-Aside (LMSA)
 7. Property Disposition Set-Aside (PDSA)
- B. Rent Supplement
- C. Section 202/162 Project Assistance Contract (PAC)
- D. Section 202 Project Rental Assistance Contract (PRAC)
- E. Section 811 PRAC

- F. Section 236
- G. Rental Assistance Payment (RAP)
- H. Section 221(d)(3) Below Market Interest Rate (BMIR)

IV. Update to House Rules/Policies and Procedures

O/As choosing to implement a smoke-free housing policy must update their House Rules and Policies and Procedures, as applicable, to incorporate the smoke-free housing requirements. O/As are encouraged to establish smoke-free policies that pertain specifically to their building and grounds including any common areas, entry ways, openings to the building (e.g. windows), and/or playground areas.

In carrying out any smoke-free housing policy, O/As must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105, including, but not limited to, the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II of the American Disabilities Act; Section 109 of the Housing and Community Development Act of 1974.

V. Requirements for Implementing Smoke-free Housing Policies

O/As who choose to establish smoke-free housing policies may establish policies that allow smoking in individual units but prohibits smoking in all common areas or policies to create a totally smoke-free property.

A. The O/A's policies must:

1. Be in accordance with state and local laws.
2. Address smoking in a tenant's unit, common areas, playground areas, areas near any exterior window or door, and areas outside a tenant's unit.
3. Designate specific smoking areas and identify these areas with clear signage unless the O/A establishes a totally smoke-free policy.

B. The O/A must not have policies that:

1. Deny occupancy to any individual who smokes or to any individual who does not smoke who is otherwise eligible for admission.
2. Allow the O/A to ask at the time of application or move-in whether the applicant or any members of the applicant's household smoke. However, if the O/A has established a smoke-free building as of a certain date, the O/A must inform applicants after that date that the building is a totally smoke-free building. The O/A must not maintain smoking or nonsmoking specific waiting lists for the property.

3. Allow the O/A to ask at the time of recertification, whether the tenant or any members of the tenant's household smoke.
4. Require existing tenants, as of the date of the implementation of the smoke-free housing policies, to move out of the property or to transfer from their unit to another unit.

C. Grandfathering

O/As are not required to grandfather current tenants living at their property, however, they do have the option to do so. Such policies must be clearly defined (e.g. whether current tenants are allowed to smoke in their units).

D. Non-smoking wings, buildings, floors, or units

O/As are not restricted from establishing smoke-free wings, buildings, floors, and/or units at their property. When a unit becomes available, regardless of where this unit is located, it must be offered to the first eligible household on the waiting list. Waiting lists must be maintained according to existing procedures found in HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Chapter 4 and the removal of names from the waiting list according to HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, paragraph 4-20.

O/As who have already established smoke-free policies may continue to enforce their current policies so long as the policies do not violate state or local laws or any of the above guidance.

VI. Implementation

O/As must implement any new smoking-related House Rules in accordance with HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, paragraphs 6-9 and 6-12.

- A. **New admissions.** O/As are required by existing HUD policies to provide the House Rules to all new tenants.
- B. **Existing tenants.** O/As must notify existing tenants, who have completed their initial lease term, of the modifications to the House Rules 30 days prior to implementation. Notification is accomplished by forwarding a copy of the revised House Rules to existing tenants. For those tenants who have not yet completed their initial lease term, the owner must provide the tenant with 60 days notice, prior to the end of their lease term, of the change in the House Rules.

VII. Penalties for Violating the House Rules

Repeated violations of the non-smoking policy may be considered material noncompliance with lease requirements and may result in termination of tenancy. When pursuing eviction due to material noncompliance with lease requirements, existing HUD procedures found in HUD Handbook 4350.3, REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Chapter 8 must be followed.

VIII. Further Information

If you have any questions regarding the requirements in this Notice as they pertain to the Office of Housing's programs, please contact your local HUD Field Office.

/s/

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AWHA *The Association of Washington Housing Authorities*



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Pacific Northwest Regional Council