

Landlords' Frequently Asked Questions

Q. What do I have to gain from a no-smoking rule?

A. A no-smoking rule 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 because as more people become aware of the health hazards of secondhand smoke, smoke-free is an amenity that most tenants want.

Q. Is a non-smoking building marketable?

A. A no-smoking rule will help you attract and retain tenants. In Colorado, 83% of all adults do not smoke, according to the Colorado Department of Public Health and Environment. Even greater percentages of older citizens do not smoke, including 85.5% of people 55-64 years old and 91.4% of people 65 and older. This means landlords should be able to attract non-smoking renters.

Q. Is a no-smoking rule discrimination?

A. A no-smoking rule is not discrimination. Smoking is a behavior, not an inborn characteristic, like race or sex. All sorts of people smoke, so prohibiting smoking does not target any particular group. Also, a no-smoking rule doesn't mean you can't rent to smokers, they just have to smoke outside, which many smokers already choose to do.

Q. Smoking is legal. Don't people have the right to smoke in their own homes?

A. There is no "right-to-smoke" under any federal, state, or local laws. Smokers are not a protected class. You own the building. It is your property and you have the right to set reasonable rules that protect it.

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. No federal or state court has 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 Reasonable Accommodation allowing them to smoke in their unit?

A. Because smoking is not a disability, it can not be used as a reason to ask for accommodations. Smoking is not an acceptable way to treat or medicate any health conditions, 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. Non-smokers may have legal protection from exposure to secondhand smoke under the Americans with Disabilities Act and the Fair Housing Act.

Q. How do I enforce a no-smoking rule?

A. Experienced landlords use a variety of strategies to enforce their no-smoking rules. They advertise their units as non-smoking to attract tenants who either don't smoke or only smoke outside. They put the no-smoking 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 have a system of warnings, fine, 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.

Q. I manage HUD-assisted housing. Can I make the property smoke-free?

A. Yes. An analysis of federal and state laws, HUD rules, and legal cases found "unequivocally that a ban on smoking for new tenants who move into public or section 8 housing is permissible in all 50 states." You may be required to allow existing tenants to continue smoking until the time of their lease renewal. A letter from the Denver HUD office states that "there is no written HUD policy requiring the grandfathering of any tenant" but HUD approval is required for changes to the model lease, and changes can be made only to comply with local or state laws or local management practices in assisted housing. Changes can be made to "House Rules" without HUD approval.

Q. Wouldn't no-smoking rules only work in high-end properties?

A. no-smoking rules appeal to people from all walks of life. While it is true that people with higher incomes and education levels tend to smoke less, most people don't smoke regardless of their background. Many lower income people have children, are elderly, or are disabled, and these groups are particularly vulnerable to the health hazards of secondhand smoke and may be especially interested in finding non-smoking housing.

Q. Where can I advertise my smoke-free property?

A. Landlords can advertise their smoke-free properties on the website www.gaspforair.org **free of charge**. Tenants can also visit the website to locate smoke-free housing in Colorado. Please go to: www.mysmokefreehousing.com.

(Permission granted by www.smokefreeoregon.com to share some of the above materials.)



Did You Know?

- No-smoking policies can help reduce tenant turnover, cleaning and repair costs, fire risks, and may lead to a reduction in insurance premiums.
- Surveys of numerous tenants throughout Jefferson County and other communities indicate that most tenants prefer living in a non-smoking building.
- More than 82% of all Colorado adults do not smoke.
- No-smoking policies are allowed under the 2006 Colorado Clean Indoor Air Act.
- No-smoking policies are easy to implement and enforce.

We can help you accomplish a no-smoking policy by:

- ✓ Assisting with surveys and implementation steps.
- ✓ Providing guidance, assistance, and educational materials.
- ✓ Offering smoking cessation resources.

This is a FREE service.

Please contact:
Susan Sobkoviak
Jefferson County Department of Health & Environment
303-275-7558
E-mail: sksobkov@jeffco.us

Smoke-free policies are good for business and good for health.

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