

# PROFESSIONAL APARTMENT MANAGEMENT

## Attract Residents, Cut Maintenance Costs with No-Smoking Policy

Though smokers make up about a quarter of the rental market, many owners are finding that the benefits of banning smoking outweigh the costs. Smoking in apartments is a leading cause of fires, increases turnover costs, and drives away nonsmoking residents seeking fresh air in their homes. That's why many owners around the country are banning smoking in parts or in all of their communities to attract residents and save money.

To help you implement a no-smoking policy in your community, we'll give you a Model Lease Clause that you can use to ban smoking (see p. 2) and a Model Letter to help you enforce it (see p. 3). We'll also give you tips on how some managers have successfully enforced their no-smoking rules.

### Four Benefits

There are four reasons to offer smoke-free apartments. They are:

**1) Fills a market niche.** One quarter of the nation's apartment renters smoke, says Jack Lohman, founder of the Wisconsin Initiative on Smoking and Health, so owners might be leery about excluding such a big segment of the market. But in a recent survey by Americans for Nonsmokers' Rights (ANR), a nationwide organization that promotes smoke-free restaurants and housing, 68 percent of the residents in one Minnesota market expressed interest in smoke-free apartments. And since less than 1 percent of the nation's apartments are smoke-free, there's obviously a market niche waiting to be filled.

"Having smoke-free apartments has given us a unique marketing advantage," says Karen Horn, a Utah manager. Two of the buildings in her community are smoke-free. "Not only do we have high demand for our smoke-free apartments, but we capitalize on it by charging a premium," she says. Horn also advertises that her community has smoke-free buildings.

**2) Reduces maintenance costs.** It costs a lot more to turn over a smoker's apartment than a nonsmoker's, says

Horn. "It takes more paint to cover the walls and more time and effort to clean and deodorize," she says. In fact, it can cost up to twice as much to prepare an apartment that a smoker has lived in, according to ANR. And, if you ban smoking, you won't have to deal with the damage caused by smokers, such as cigarette burns in the carpets and countertops.

**3) Reduces risk of fire.** A significant percentage of fire deaths occur in fires caused by cigarettes. "Not only do you reduce the risk of fire by banning smoking, but you may be able to reduce your insurance premiums as well," says Rosalind Johnson of the Bloomington Health Division in Minnesota. Ask your insurer if you can get a lower premium for a building that bans smoking.

**4) Avoids lawsuits.** Though it's still rare for residents to sue their neighbors and the owners and managers of their apartments for allowing secondhand smoke to seep into their apartments, more and more residents are doing so, says Edward L. Sweda, an attorney with the Tobacco Control Resource Center in Boston.

In one case, an Oregon resident developed respiratory problems caused by smoke seeping into her apartment. She sued the owner, claiming that it breached its legal duty to keep her apartment habitable. A jury agreed with the resident and ordered the owner to reduce her rent by half and pay her medical bills [Fox Point Apts. v. Kippes].

And in Utah, there's even a law requiring owners to take action against residents whose smoking bothers their neighbors. If smoke enters an apartment at least twice in a seven-day period, the resident may complain to the owner, who must take steps to abate the nuisance. If the owner fails to do so, the resident may sue the owner. At press time, there were no other states with such a law.

### How to Implement a No-Smoking Policy

First, decide whether to ban smoking in your entire community or in only certain parts. If you have several buildings, you can reserve one or more of them for nonsmokers.

If your community has only one building, you may be able to reserve an entire wing. But don't set aside individual apartments or parts of buildings that aren't separate from the rest, says Horn. Smoke from a smoker's apartment will intrude on the nonsmoking neighbors.

To decide which buildings or parts of buildings to make smoke-free, you may want to survey your residents on their smoking habits, says Johnson. If there are many smokers in a particular wing or building and few in another, that will tell you which parts of the community to make smoke-free.

To get smokers to move out of the part of the community that you're making smoke-free, you have two choices, says Johnson. You can wait until their leases expire and have them sign new leases that ban smoking. Some will comply, and others will move out. Or you can offer smokers incentives to move immediately to the part of the community where you allow smoking. "Try offering a short-term rent discount," suggests Johnson. If a resident doesn't accept your offer or you have no vacant apartments in the area where you allow smoking, you'll have to wait until that resident moves out before making that part of your community smoke-free.

## What Lease Should Say

To implement a ban on smoking in your apartments, you'll need to put the ban in your lease, says James H. Deans, a Utah attorney. You can't change the terms of a lease in the middle, but you can put a clause in your new leases and add one to the leases of renewing residents. Our Model Lease Clause assumes that you're banning smoking in a particular building. If you choose to ban smoking in the entire community or in certain parts of buildings, you'll need to adjust your policy accordingly. Your clause, like our Model Lease Clause, should do three things:

**1) Prohibit smoking in or near the building.** "The leases for our smoke-free buildings say that residents can't smoke in the building or within 50 feet of it," says Horn. "That solves the problem of smokers congregating right outside the doors or leaning out their windows," she says. You can't prohibit residents from smoking when away from the property, so your rule will have to be appropriate for your community's layout. For example, in urban areas, the building might open right out onto a public sidewalk, where you can't prohibit smoking.

**2) Make residents responsible for ensuring that their family members, guests, and invitees also comply with the rule.** Just as you hold residents responsible for the misbehavior of their families, guests, and invitees, you can hold residents responsible for their smoking, too.

**3) Warn residents that their neighbors may smoke until their leases expire.** When you first start to implement a no-smoking policy, smokers who already live in

your smoke-free buildings will be able to continue to smoke until their leases expire. You don't want residents who signed no-smoking leases to complain about it, claiming that you promised them a smoke-free environment. So say in the lease clause that there may be smoking in the building for up to a year and that you're not responsible for stopping it until the individual smokers' leases expire.

**PAM Says:** Some owners worry that they might be discriminating against smokers. But smokers aren't protected by fair housing law. As long as you apply your ban on smoking to everyone, you won't run afoul of fair housing law. If you have federally subsidized housing, you can't refuse to rent to a smoker. But you may prohibit smoking in the apartment. You're banning the behavior, not the person, just as you'd ban noisy parties or criminal activity. Your residents may smoke as much as they want—just not at home.

## How to Enforce a No-Smoking Policy

"It can be difficult to enforce a no-smoking policy," concedes Atlanta attorney Robert P. Hein. You may have a hard time finding out whether residents or guests are smoking in smoke-free areas and an even harder time proving who did it. "Generally, you'll have to rely on your residents to enforce the policy for you," says Deans. "The residents in our smoke-free buildings are very vigilant," says Horn. "If they smell cigarette smoke, they'll call the manager right away."

### MODEL LEASE CLAUSE

#### Use Lease Clause to Ban Smoking in Apartments

We drafted this lease clause with the help of Utah attorney James H. Deans and manager Karen Horn. The clause is designed to create a smoke-free building. If your policy covers the entire community or parts of buildings, you'll need to adapt the clause accordingly. The clause prohibits smoking in or near the apartment building, makes residents responsible for ensuring that their family members, guests, and invitees comply with the rule, and tells residents that they'll have to tolerate their neighbors' smoking until their leases renew. Talk to your attorney about adapting this clause for your own use.

#### NO SMOKING

Smoking is prohibited anywhere in your apartment, your apartment building, or within 50 feet of the building. You are responsible for ensuring that your family members, guests, and invitees also comply with this rule. All new leases in your building contain this clause. Your neighbors may continue to smoke in the building until their leases expire.

Once you find out that someone has been smoking, you need to find out who it is. "It may be tough to figure out who's doing the smoking if it's coming through the air ducts or lingering in the hallway," says Deans. So you'll have to persevere. Knock on doors in the area and see whether you can smell cigarette smoke in the apartment when the resident answers the door. Also, ask the resident who made the complaint to call you as soon as he smells smoke again.

When you've determined who's violating the policy, send that person a letter telling her that she's violating her lease, says Deans. Your letter, like our Model Letter, should do three things:

**1) Remind resident of lease clause.** Remind the resident that it's a lease violation to smoke in the building. "Nobody really forgets that they're not allowed to smoke, but this is the best way to approach them," says Horn, who helped us draft our Model Letter.

**2) Tell resident that she is in violation of clause.** Tell the resident that you know she is violating the clause, and explain the circumstances.

**3) Warn resident.** Tell the resident that if you catch her smoking again, you'll take legal action. Take whatever legal action is appropriate in your area for residents who violate their leases, says Deans. In some areas it might be a formal warning, and in others it might be a notice to vacate. ■

#### PAM SOURCES

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#### LEGAL CITATION

■ Fox Point Apts. v. Kippes: No. 92-6924 (Dist. Ct. Lackamas Cty., Ore. 1992).

## MODEL LETTER

### Warn Residents to Stop Smoking in Apartment

We drafted this letter with the help of Utah manager Karen Horn. It reminds residents that they're not allowed to smoke in their apartments or anywhere in the building, tells them that you know they've been violating that rule, and warns them not to do it again. If you're in a state that has laws regarding smoking in apartments, you should talk to your attorney about using the law to make this letter even stronger.

Dear Resident:

Section 11 of your lease prohibits smoking in your apartment, anywhere in the apartment building, or within 50 feet of the building. Yesterday, at approximately 6:30 P.M., a staff member observed you smoking on the steps leading to your building. This is a violation of your lease. If you violate your lease again, we may take appropriate legal action. Thank you for your cooperation.

Yours truly,  
Martin Manager