

Many Affordable Housing Providers in Michigan Offer Non-Smoking Policies

You may be surprised to learn that Michigan has more than **6,000 non-smoking units** in public housing and in a variety of HUD and tax-subsidized housing for low to moderate-income tenants. This includes both non-profit and for-profit management companies and 22 local Michigan Housing Commissions of varying sizes in all regions of the state.

Michigan housing authorities and private "affordable housing" providers are increasingly adopting non-smoking policies as they discover that such policies are legal and result in higher profits and happier tenants.

Prohibiting Smoking in Affordable Housing is Legal

- According to HUD's chief counsel in Detroit, public housing providers are free under federal and Michigan law to make their buildings non-smoking, so long as they "grandfather" current residents who are smokers. "Grandfathering" means for a reasonable period, such as lease renewal. In the case of a permanent lease, the change can be made during the term of the lease, if legally adequate notice is provided.

According to the letter: "Currently there is no HUD policy that restricts landlords from adopting a prohibition on smoking in common areas or in individual units... The right to smoke is not a right protected under the Civil Rights Act because smokers are not a protected class under federal law."

(Letter from Sheila Walker, July 18, 2003, www.mismokefreeapartment.org/hudletter.pdf)

- Smoking is not a disability. The Americans with Disabilities Act (ADA) expressly provides that it DOES NOT require the accommodation of smoking.

On the other hand, sensitivity to secondhand-smoke may be determined to be a disability under the ADA's Fair Housing laws. In an Illinois case, HUD approved a conciliation agreement providing non-smoking housing for a section 8 tenant with respiratory difficulties who lived in a large high-rise (*U.S. Department of Housing and Urban Development and Kirk and Guilford Management Corp.*)

Smoking Increases the Cost of Apartment Turnover

Landlords estimate that it costs from \$500 to \$6,000 more to turn over an apartment in which a smoker lived compared to a non-smoker's apartment.

A Major Market for Non-Smoking Affordable Housing in Michigan

- More than two-thirds of Michigan residents in households earning less than \$20,000 do not smoke. Nearly three-quarters of Michigan residents with incomes between \$20,000 and \$75,000 do not smoke. (2005 Michigan BRFSS data)

Since the majority of low-income Michigan residents do not smoke, and in addition some smokers do not allow smoking in their units, there is a large market advantage for non-smoking units.

- In a 2006 survey of King County Housing Authority residents conducted by the University of Washington, 84% of residents reported that they did not allow smoking in their homes. Although disabled respondents had a smoking rate of 39%, more than two-thirds did not allow smoking in their units. Nearly **three quarters (73%) of residents surveyed supported prohibiting smoking** inside apartments in housing authority buildings. (*Study on Residents' Current Practices and Attitudes Toward Smoke-Free Housing*, Group Health Community Foundation Evaluation Team, October 19, 2006)

Ease of Implementation and Enforcement

- While worry about change is natural, the good news is that the adoption and implementation of non-smoking policies has gone exceedingly smoothly for Michigan's affordable housing providers with little or no resident resistance, no lawsuits, and no evictions. Significantly, none of the smoke-free policies adopted have been repealed.
- The President of one large management company with 5,450 affordable housing units, Centrum Management, prohibited smoking for all new residents, and was very pleased with the change. Centrum operates in six states, including Michigan. Centrum's President Rob Couch in a recent interview said that he had not heard a "single negative comment" from anybody, and that "a lot of people have come up and said 'thank you very much.'"
- The manager of Park Tower Apartments, the section 8 housing provider mentioned above, said that tenant response to the new smoke-free policy adopted as a result of an ADA complaint was positive, and did not result in the loss of prospective tenants. The manager, however, recommended against a permanent exemption for existing smokers because it was confusing to new tenants and created some enforcement difficulties.
- The recent trend among Housing Commissions in Michigan is to grandfather existing smokers for a limited time only (Sault Ste. Marie, 3 1/2 mos; Evart, 10 mos; Marysville, 18 mos; South Haven, 12 mos; Grand Rapids, 3 yrs). The Smokefree Environments Law Project (SFELP) advises limited term grandfathering because it is easier to administer and provides greater health protections for tenants than delaying change until tenants move or die.

SFELP recommends that public housing commissions changing to non-smoking refer in the lease to the non-smoking house rule, and provide that a violation of the house rule may provide grounds for eviction. SFELP has developed a model rule, which is available by contacting Jim Bergman, SFELP's Director, at: (734) 665-1126 or

jbergman@tcsg.org. SFELP has worked with every commission in Michigan that has adopted a non-smoking policy, and is available for assistance at no cost to any interested housing provider.