

## FREQUENTLY ASKED QUESTIONS ABOUT SMOKE-FREE APARTMENT POLICIES

### **Is it legal to restrict or ban smoking in apartment buildings?**

Apartment owners have the legal right to make their rental property smoke free, just as they are free to decline to rent to pet owners. Michigan's Attorney General in a 1992 Opinion stated that under Michigan and federal law a landlord may choose to rent only to nonsmokers and may prohibit smoking in individual units, as well as in common areas. It is legal for a landlord to advertise an apartment as "smoke free." There is no state or federal constitutional right to smoke. Owners of section 8 or public housing have the same right to ban or otherwise restrict smoking, according to the U.S. Department of Housing and Urban Development. However, if owners seek to make their complexes smoke-free, they must grandfather in (exempt) those smoking residents currently residing at the complex until the lease has been changed after providing proper legal notice of the change.

### **Does a landlord face any legal liability if smoking is not prohibited?**

Not only do landlords have the right to prohibit smoking, but they may in fact be liable under local health or safety codes, the Federal Fair Housing Act, or other common law legal theories for failure to prohibit smoking when a tenant is sensitive to secondhand smoke. In a number of cases, tenants affected by secondhand smoke were able to recover against their landlords for failing to protect them from secondhand smoke.

### **Are there health reasons for adopting a smoke-free apartment policy?**

Yes. Secondhand smoke poses a serious health danger to nonsmokers and has been classified as a "Toxic Air Contaminant" by the California Air Resources Board and a cancer-causing substance by the U.S. Environmental Protection Agency. The U.S. Surgeon General has said there is no safe level of exposure to secondhand smoke and has said that "eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure; separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely eliminate secondhand smoke exposure."

### **Isn't there a way to keep secondhand smoke from entering other apartment units?**

Unfortunately, secondhand smoke doesn't respect boundaries, seeping through light fixtures, wall electric outlets, ceiling crawl spaces, and doorways into all areas of a building with smokers. Air quality surveys in apartment buildings in Chicago revealed that 60% of the air in apartments comes from other units. Secondhand smoke cannot be controlled by ventilation, air cleaning or the separation of smokers from nonsmokers. The only complete solution to this problem is to make buildings smoke-free.

### **Are smoke-free apartments a smart investment for landlords?**

Smoke-free policies save owners money by reducing cleaning and re-painting costs and lowering the risk of fire. Apartment owners estimate that the cost of refurbishing an apartment after a smoking tenant moves out may be \$600 to \$3,000 more than when a non-smoking tenant moves out. Cigarettes are a leading cause of fires in buildings, and cause at least \$36 million a year in damages in Michigan. Further, recent research suggests that smoke-free apartment buildings may have increased rental and re-sale value. Real estate agents agree that as the number of public places in which a person can smoke has shrunk, so has the number of buyers who are even willing to consider the property of a smoker.

### **Is there a market for smoke-free apartments?**

Providing smoke-free apartments will help attract tenants, because the demand for smoke-free housing is strong. According to a recent survey conducted in the Midwest, nearly three quarters of renters would prefer to live in smoke-free apartments. Surveys taken in other parts of the country show a similar preference for smoke-free apartments. In Michigan, close to 80% of adults are nonsmokers, and among people 65 and older about 90% are nonsmokers; yet, currently, most renters cannot find smoke-free apartments to rent. Children and people with asthma and other respiratory problems are especially at risk of serious illnesses caused by secondhand smoke; for them, smoke-free apartments are particularly important.

### **How difficult is it for landlords to enforce smoke-free policies?**

A recent survey of owners with smoke-free policies found that an overwhelming majority of them reported that staff time spent on managing the building did not increase after the establishment of a smoke-free policy. In fact, enforcing a smoking policy is a lot less of a headache than mediating disputes between smokers and non-smokers without a policy in place.

### **Are there many smoke-free apartment buildings in Michigan?**

The number of smoke-free apartments in Michigan is growing almost daily. A few years ago, very few smoke-free apartments were available. Today, with increased awareness that smoke-free apartment policies are legal and with the advantages of smoke-free policies becoming better understood, many landlords have adopted smoke-free policies, include the requirement in their leases, and advertise their properties as smoke-free. Many Michigan rental properties with smoke-free policies are listed on the MISmokeFreeApartment web site at [www.mismokefreeapartment.org/listing.html](http://www.mismokefreeapartment.org/listing.html)

*Learn more about the benefits of smoke-free apartments, get tips for going smoke-free, and look at model lease language at: [www.mismokefreeapartment.org](http://www.mismokefreeapartment.org)*