



Enforcing a Smoke-Free Policy in an Apartment Building



A fact sheet for apartment managers on enforcing a smoke-free apartment policy in Minnesota

Introduction

As of October 1, 2007, Minnesota has provided extensive protection from exposure to secondhand smoke in public places and places of work through the Freedom to Breathe Act of 2007. Other states have found that in worksites and other public areas, smoke-free policies have been largely self-enforcing. No heavy policing has been necessary.



The Freedom to Breathe Act prohibits smoking in the common areas of rental apartment buildings, but the protection from exposure to secondhand smoke does not extend to individual apartment units. Landlords and property managers can, however, designate their buildings as smoke free if they choose. A landlord is not discriminating against smokers by imposing a smoke-free policy for the apartment building. Because the number of completely smoke-free rental apartment buildings in Minnesota is very small, there is little research in regards to enforcing a policy, but a small survey of owners with smoke-free policies revealed that the overwhelming majority of them did not experience an increase in staff time spent on managing the building after they put a smoke-free policy in place.

In any case, someday someone may test the rules. If the smoke-free policy is not enforced, the building will not have smoke-free units, and the tenants will be unhappy. The smoke-free policy should be enforced as would any other lease provision. This guide outlines some steps a landlord should take to ensure the enforceability of a smoke-free policy and the steps that the landlord should follow in the case of a violation.

**Enforcing a smoke-free policy
ensures happy tenants and
healthy homes.**

Preparing to Adopt a Smoke-Free Policy

1. Make sure that the lease contains a no-smoking provision or that the lease has a smoke-free lease addendum. Live Smoke Free has created a model lease addendum that can be customized for each property: http://www.mnsmokefreehousing.org/documents/Smoke_free_addendum.pdf.
2. Ensure that the lease contains a provision that allows the landlord the right to terminate the lease upon the breach of any provision. Some sample breach-of-lease language can be found in the Minnesota Standard Residential Lease, available on the Minnesota State Bar Association website: <http://www2.mnbar.org/sections/real-property/forms/leaseopenerv4.htm>.
3. Include in the lease a provision which states that any waiver of lease requirements can only be made in writing.



If a Violation Occurs

1. The landlord should document the instances of violations of the smoke-free policy by sending a Notice of Infraction or a letter to the tenant reminding the tenant of the terms of the lease, providing the tenant a description of the violation(s) and recording the date(s) of the violation(s).
2. If multiple infractions occur and the landlord wishes to evict the tenant, the landlord should confer with an attorney for an opinion as to whether the violations are substantial or minor. Generally courts will look for a substantial violation or multiple minor violations to justify an eviction.
3. The landlord will have the burden of proving the lease violation allegations if an eviction action becomes necessary, so the landlord should talk with other tenants to determine if they witnessed the lease violation and would be willing to testify in housing court.
4. If the landlord decides to proceed with terminating the tenant or resident, a Notice of Termination should be sent to the tenant in compliance with the notice terms specified in the lease or in compliance with state law if not specified in the lease. Generally, state law requires notice of a rental period plus one day. For example, for a tenant paying on a monthly basis, the landlord would need to notify the tenant on May 31 if the landlord wants the tenant to move out by the end of June.
5. In Hennepin and Ramsey counties, housing courts have been established to hear civil cases relating to residential housing. If a tenant does not vacate the property after proper notice from the landlord, based on a legitimate reason, then the landlord can bring an eviction action, sometimes referred to as an unlawful detainer action, in housing or district court.



Additional Resources

1. A description of eviction process can be found in the handbook, Landlords and Tenant: Rights and Responsibilities, available on the Minnesota Attorney General's website: <http://www.ag.state.mn.us/Consumer/housing/lt/default.asp>
2. Court forms for use in housing cases can be found on the Minnesota Judicial Branch website: <http://www.courts.state.mn.us/district/4/?page=1866>
3. Live Smoke Free has created several documents that can be used to assist in enforcing a smoke-free policy. These documents include a "Notice of Infraction" form that managers can fill out and give to tenants who violate the smoke-free policy, and a "Notice of Smoking Incident" form that tenants can fill out to inform managers if other tenants violate the smoke-free policy. These documents can be found on the Live Smoke Free web site: http://www.mnsmokefreehousing.org/landlords/steps_smokefree.html

Prepared by Warren Ortlund, staff attorney with the Tobacco Law Center. Mr. Ortlund provides legal consulting services to the Live Smoke Free multi-housing program. This fact sheet should not be considered legal advice or a substitute for obtaining legal advice from an attorney who can represent you. If you have specific legal questions, we recommend that you consult with an attorney familiar with the laws of your jurisdiction.

About Live Smoke Free

Live Smoke Free is a program of the Association for Nonsmokers—Minnesota that focuses on assisting apartment managers and renters in the Twin Cities metro area in finding solutions to the problem of secondhand smoke in apartment buildings.

**Smoke-Free Apartments:
Healthier Buildings, Happier Tenants,
A Smart Investment.**
www.mnsmokefreehousing.org

About The Tobacco Law Center

The Tobacco Law Center is a public interest law and policy think tank that helps local, state, national and international officials and tobacco control advocates use the power of law to address the epidemic of tobacco use.

Improving Health Through the Power of Law.
www.tobaccolawcenter.org