

Smokefree Apartment House Registry

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Smoking and Environmental Tobacco Smoke (ETS) in Multi-Unit Housing:

A summary of information for apartment owners, property management professionals, members of condominium associations, and developers

Owners of apartment buildings and condominium associations may choose to adopt a policy which requires all or part of a building to be smokefree including individual apartments and condominiums. There is no law which prohibits this.

Condo owners may require no smoking in their own condominiums when the condos are rented or leased to tenants.

People who smoke are not protected by state or federal anti-discrimination laws. Also, they are not considered disabled under state or federal disability rights laws.

"Discrimination against smokers by landlords serves legitimate business interests by potentially reducing the risk of fire damage and, in turn, reducing insurance and maintenance costs." (California Legislative Counsel Opinion, 9/23/99)

Owners of apartment buildings and condominium associations may also regulate or ban smoking in outdoor locations on the property. There is no law which prohibits this.

California's Smokefree Workplace Law (Section 6404.5 of the California State Labor Code) applies to multi-unit housing which employs workers whether they are regular employees or contractors such as painters or plumbers. The law requires that all enclosed common areas including lobbies, halls, laundry rooms, stairs, elevators, and recreation rooms be smoke-free.

The common areas of an apartment or condominium building or complex, such as hallways and stairwells are subject to the workplace smoking prohibitions contained in Labor Code 6404.5 if those areas are enclosed and are places of employment. (California Legislative Counsel Opinion, 9/29/99)

California landlords owe a variety of duties to their tenants including the implied warranty of habitability. It is possible that, under certain circumstances, a court might decide that a tenant's exposure to secondhand smoke violates the warranty of habitability.

Under state and federal law, individuals with disabilities are entitled to reasonable accommodations and/or modifications of policies from their landlords to ensure equal access to and enjoyment of their housing.

If a tenant is disabled, and exposure to secondhand smoke is preventing the tenant from using and enjoying the building, the law requires a reasonable accommodation. For example, the landlord may be required to allow the tenant to relocate to a different unit, away from drifting smoke. Or, the tenant may be able to break his/her lease without penalty. (Public Health Institute, Technical Assistance Legal Center, Oakland, CA)

'No smoking allowed' clauses, similar to those which prohibit pets, can be included in lease and rental agreements.

The Smokefree Apartment House Registry is administered by S.A.F.E. (Smokefree Air For Everyone) and Community Partners, Los Angeles. The Registry is made possible by funds through the Proposition 99 Tax Initiative.