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December 2007

## Clearing the Air

Industry Discusses Trend  
Toward Smoke-Free Housing

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# Smoke Signals

*BY SUSAN SCHOENMARKLIN AND JACQUE PETERSON*

## *About This Report*

**W**hether change comes voluntarily or through the passage of laws, the demand for smoke-free housing is only going to increase, according to recent studies and apartment executives. More and more cities and states are banning smoking in public places and residents are becoming increasingly knowledgeable about the hazards of secondhand smoke.

In this new era, many owners and managers are choosing not to ignore the problems that can result from a smoke-friendly community. They are finding that keeping the smoke out is the best way to retain both residents and profits.

Following is a five-part look at smoke-free apartment communities, including reasons for such a policy, implementing a policy at large and small communities, awareness of legal implications and efforts and effects of remediating rental homes previously occupied by smokers.

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**A**s public awareness about second-hand cigarette smoke's hazards grows stronger, pressure is mounting for owners and managers of the nation's apartment communities to provide smoke-free living spaces.

Fortunately, what is in the best interest of resident health is also in the best interest of community owners' bottom lines. Surveys from market research firms in Portland, Ore., and in Minneapolis and St. Paul, Minn., as well as informal polls of renters from across the country, show a high demand for smoking to be banned in apartments, which means more residents and more revenue for those owners who meet that demand.

Before smoke-free air laws became prevalent in the mid-1990s, it would have been difficult to imagine renting an apartment without tobacco stains on the bathroom vanity and carpet. Although the smoking rate may be higher in some areas, the Centers for Disease Control note that less than one quarter (21 percent) of American adults smoke today. That means almost 80 percent of adults do not smoke, and of those who do, some smoke outdoors to protect loved ones and to avoid allowing the odor to seep into their furnishings.

### **Nation-Wide Appeal**

To assess the market's impression of secondhand smoke in the apartment arena, the Portland-Vancouver Metro Area Smokefree Housing Project commissioned a market survey of area renters in 2006. It found that 75 percent of renters would prefer living in a smoke-free building, and more than half would be willing to pay more rent to live in a smoke-free community.

Kirk Taylor, Executive Vice President in the Portland office of real estate firm CB Richard Ellis, said business for owners with no-smoking policies will improve because they will be able to show healthier-looking apartment home rentals. "For a [prospective resident who is a] non-smoker, it's like walking into a place with

a dirty toilet," Taylor said. "They think, 'Why would I want to rent this thing?'"

Three-quarters of respondents supported the right of owners to prohibit smoking in order to prevent secondhand smoke from seeping into neighboring units. The survey also found that while one-fourth of residents smoke, most are already taking the habit outside; only 11 percent of renters smoke inside their apartment homes on a regular basis.

Other surveys show a similarly strong preference for no-smoking apartments on the East Coast and in the Midwest. A recent survey by the New York Coalition for a Smoke-Free City found that more than 69 percent of New Yorkers want to live in smoke-free buildings, and nearly half of them would pay more to live in communities that ban smoking.

In a 2006 survey of King County Housing Authority residents conducted by the University of Washington, 84 percent reported that they did not allow smoking in their apartment homes. Surprisingly, although disabled respondents had a smoking rate of 39 percent, more than two-thirds did not allow smoking in their apartment homes.

Nearly three-quarters (73 percent) of residents surveyed supported prohibiting smoking inside apartments in housing authority buildings.

Many market leaders across the country are discovering that, contrary to conventional thought, when they ban smoking from their communities they attract new residents—those seeking apartments that do not allow smoking. These community owners' profits are encouraging others to join the trend.

Katie Zuleski, who manages 160 residences for Flo Mar Apartments in Ypsilanti, Mich., said that she believes the change to a smoke-free community "has been a selling point for us. It has made our community that much more attractive to prospective residents. I think it is beneficial to our bottom line."

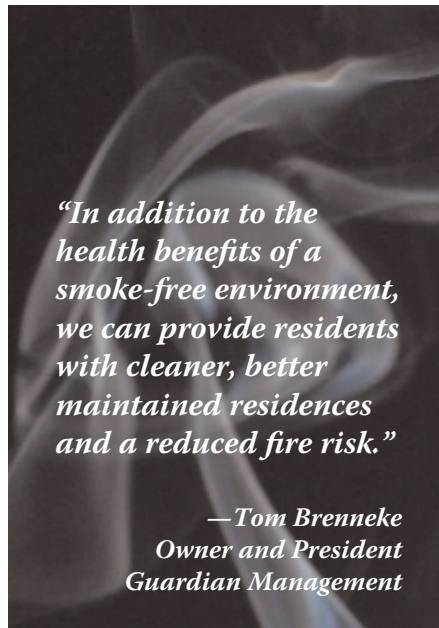
On Sept. 1, Guardian Management, a real-estate investment and management

firm based in Portland, Ore., operating in seven states, prohibited smoking in approximately 8,000 of its conventional and affordable housing units after the success of a no-smoking policy adopted for its new communities.

“We have successfully implemented no-smoking policies in several of our new communities, and we have found that residents appreciate the amenity,” Tom Brenneke, Owner and President of Guardian Management, said. “In addition to the health benefits of a smoke-free environment, we can provide residents with cleaner, better maintained residences and a reduced fire risk.”

### Raising the Rent

Charlene Jacobson, who owns and manages Elmcrest Estates in Waterloo, Iowa, banned smoking in her apartments nearly a decade ago. At first, some of her residents did not renew their leases because of the no-smoking rule, but today she has no vacancies, and when an apartment is up for lease, someone is



*“In addition to the health benefits of a smoke-free environment, we can provide residents with cleaner, better maintained residences and a reduced fire risk.”*

—Tom Brenneke  
Owner and President  
Guardian Management

ready to rent the open apartment. “From a manager’s standpoint, it has been a very smart decision,” said Jacobson.

According to a Minnesota study of both large and small apartment communities, 95 percent of owners or managers who have prohibited smoking in their apartments reported that no-smoking policies either increased occupancy or had no impact either way. A few community owners and managers even

raised their rents as a result of the policy change.

The Low Income Housing Institute recently opened a smoke-free apartment community in Seattle, and one of its first residents was a regular smoker. Executive Director Sharon Lee said the resident was directed to smoke outside—a community policy he has embraced.

“He figured it’s good for him,” Lee said. “He said it’s good for his health not to smoke in his apartment, and he will get lots of exercise walking up and down the stairs to go outside to smoke.”

“By being an early implementer of smoke-free policies, a community management company could earn a reputation in the market for doing a better job of recognizing and offering the amenities that residents want, while at the same time ensuring higher retained earnings as a result of lower maintenance and related costs,” said John Campbell, President of Campbell DeLong Resources, the market research firm that conducted the Portland area survey. ■

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# No Smoking, No Problem

Few owners experience backlash from residents after implementing and enforcing a no-smoking policy.

Although it is natural to worry about change, community managers who banned smoking in their communities have found it much easier than imagined.

The president of one large management company, Centrum Management, which has 5,450 affordable housing residences, prohibited smoking for all new residents and was pleased with the change. Centrum operates in four states, including tobacco-friendly North Carolina.

In a recent interview, Centrum President Rob Couch 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.’”

Monica Slamkowski, Community Administrator at the Village at the Bluffs Apartments in Colorado Springs, Colo., said the most important thing for her when implementing the policy was having the support of all of the upper management in her company.

Slamkowski’s community became 100 percent smoke-free Feb. 1, 2007. Prepared for a battle, she gave the community’s smoking residents notice (she suggests 30 to 60 days) and said she found it interest-

ing that they did not complain.

Katie Zuleski, who manages 160 apartments for Flo Mar Apartments in Ypsilanti, Mich., said the community’s transition to banning smoking three years ago went “smoothly.”

“There was no backlash,” Zuleski said. “People love it; for the most part, I don’t get negative input.” She said when management decided to adopt a no-smoking policy in the apartments, only one person, a smoker, complained. The smoker was given one year to comply with the new policy.

Community owners and managers who have banned smoking have found that enforcement is a lot easier than mediating disputes between smokers and non-smokers without a policy in place.

Gruber Management, based in Ann Arbor, Mich., has banned smoking in its 40 apartment residences for 20 years without significant enforcement difficulties. Fred Gruber, President, said that only twice in the past 10 years has he had to collect a fine from a resident who violated the smoke-free policy.

Gruber’s lease specifies that smoking is not permissible anywhere in the community and levies a fine for smoking violations.

## State & Local Policies in Progress

Smoke-free apartment housing educational initiatives are being considered in many states, including California, Colorado, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Oregon, Utah and Washington.

In addition to voluntary efforts, there is a movement in California to pass laws requiring some smoke-free apartments.

On Sept. 11, 2007, Belmont, Calif., passed an ordinance that went into effect Sept. 31, requiring all multifamily buildings, with the exception of side-by-side town homes, to be smoke-free within 14 months.

Temecula, Calif., recently passed an ordinance requiring 25 percent of all apartment housing (contiguous residences) to be smoke-free.

The California city councils in Calabasas and Belmont are considering laws that require some smoke-free apartments with residents not in compliance to be fined or evicted.

The industry’s position is for owners to voluntarily enforce no-smoking policies at their communities, instead of being forced to do so based on legislation. ■

## Model Lease Language for Smoke-Free Communities

**A**n apartment community owner or manager interested in operating a smoke-free community may consider reviewing a model lease drafted for the Center for Energy and Environment by a legal advisory committee that included attorneys who regularly represent community owners and managers.

Among other provisions, the lease states that the owner or manager is not a guarantor of smoke-free environments and informs residents that their assistance with enforcement is needed. The model lease is available at [www.mncee.org/pdf/research/report.pdf](http://www.mncee.org/pdf/research/report.pdf).



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## Work with Residents to Achieve a Smoke-Free Environment

**BY JIM WIARD**

**C**reating a smoke-free community requires community managers' dedication, but it also requires committed residents. Owners can take several steps to encourage the success of a no-smoking policy:

- Advertise the apartments as smoke-free to attract residents who do not smoke or who smoke only outside. Inform prospective residents of the no-smoking policy when showing the community.
- Put the no-smoking rule in the lease agreement and highlight the rule for residents as they sign their leases. For existing residents, request that they sign a no-smoking lease addendum.
- Post “No Smoking” signs in the building and around the community.
- Inform residents that smoking in their apartments will expose them to financial obligations for bringing the apartment back to rentable condition.
- Use the same warning and enforcement methods for smoking rule violations that are used for other community rules.

To accommodate residents who do smoke and who are in good standing, consider providing a designated outdoor smoking area. The space should be at least 25 feet away from windows and doors. Clearly mark the area to help avoid confusion. ■

*Jim Wiard is a Portfolio Manager with Guardian Management, which recently applied a no-smoking policy to approximately 8,000 apartments in the West.*



# Filtering Out Smokers

Independent rental owner Rich Sommer has perfected the fine art of informing prospective residents of a no-smoking policy.

According to Rich Sommer, an independent rental owner in Stevens Point, Wisc., asking applicants up front whether or not they smoke can clear the air about a no-smoking policy.

During a prospective resident's first phone call or visit to the community, Sommer asks, "Do you smoke?" Even if they say "only outside," he tells them that he rents only to non-smokers. "Yes, some callers get upset," Sommer said. "We also ask about the smoking habits of everyone who will be living in the apartment and explain that their guests cannot smoke in the building, either."

Sommer said this line of questioning causes him to eliminate many potential residents. "It is almost like asking callers if they will have any money to pay the rent," Sommer said. "Their answer right there may eliminate a lot

of people. They may have two jobs, make \$900 a month and are calling on a \$600 apartment. With no smoking, no pets and the requirement to have money to pay the rent, we continue the conversation with only about one in 10 callers."

Sommer said the positive side to leasing in a no-smoking community is that he can promote his smoke-free policy to current and prospective residents.

"When we get the right people on the apartment tour, we point out that they will not have to deal with smoke odors or pet sounds or odors, and they appreciate that," Sommer said. "When you fill your community with residents who don't smoke, the policy is easy to enforce, because no one is lighting up."

Sommer said one of his residents recently wanted to add a roommate to his lease. "The roommate had no problem with the size of the apartment or

the rent increase, but we later learned that the roommate smoked," Sommer said. "So, we ended the lease with our 30-day notice clause and then had to re-rent the apartment. This can happen, but it won't happen frequently if the owner sets the right tone in the no-smoking policy from the beginning." ■

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*This article was written based on a message Rich Sommer posted on NAA's IRO List Serve at [www.naahq.org](http://www.naahq.org). Sommer can be reached at 715/341-3158 or [rsommer@wctc.net](mailto:rsommer@wctc.net).*

# Smoked Out

State and federal courts have made it clear that smoking is not a protected activity.

**A**partment owners in every state are free to ban smoking in their rental communities, just as they are free to ban pets or loud music. This includes prohibiting individuals from smoking in their apartments, as well as in common areas, such as pools and playgrounds.

A U.S. Surgeon General's report issued in 2006, "The Health Consequences of Involuntary Exposure to Tobacco Smoke," states, "a review of potential legal remedies for residents affected by secondhand smoke concluded that state regulations, such as sanitary codes, provide general language for protecting the health of residents in multi-unit buildings. Residents can also use traditional claims of nuisance, warranties of habitability and the right of quiet enjoyment."

Some managers mistakenly believe that residents have a right to smoke, but state and federal courts have made it clear that smoking is not a protected activity. There are a number of cases in which smokers have sued for the "right" to smoke, and the smoker has lost every time.

In the words of one court: "There is no more a fundamental right to smoke cigarettes than there is to shoot up or snort heroin or cocaine or run a red light"

(*Fagan v. Axelrod*, 550 N.Y.S. 2d 552 (1990)). For details, see Samantha Graf, Tobacco Control Legal Consortium, "There is No Constitutional Right to Smoke" (2005), which is available at [www.tobaccolawcenter.org](http://www.tobaccolawcenter.org).

Instead of worrying about the smoker, the more critical legal worry for owners and managers should be liability for health problems caused by secondhand smoke.

## A Nuisance to Residents

David Wasserman, Vice President of the San Francisco Apartment Association who also serves on the Government Affairs Committee for the California Apartment Association, recently warned that courts were likely to consider secondhand smoke "a nuisance," or an act that substantially interferes with enjoyment of property, in light of new scientific evidence of its health effects.

In an article for a San Francisco Apartment Association publication, Wasserman wrote that "the [community owner or manager] could face problems for failure to abate the nuisance if another [resident] is injured as a result of the secondhand smoke. Imagine the claim a pregnant [resident] could make for being exposed to these toxins." Wasserman

advised community owners and managers to consider eliminating smoking in their buildings "before a claim can be made against you."

In 2004, the Ohio Court of Appeals upheld a jury verdict granting a damage award and rent reduction to a resident based on a finding that secondhand smoke from an adjoining apartment was infiltrating his apartment (*Heck v. Whitehurst*). The jury found that the community owner failed to keep the non-smoker's apartment in habitable condition even though the owner said he had made numerous efforts to seal the non-smoker's apartment. In another recent case, *Poyck v. Bryant*, a New York court found that secondhand smoke drifting between apartments was a breach of the implied warranty of habitability.

Additionally, federal fair housing laws could be interpreted to require prohibiting smoking in common areas and neighboring units from which smoke may drift. In a 1998 case against a rental-housing community receiving subsidies from the U.S. Department of Housing and Urban Development, the department approved as a "reasonable accommodation" a conciliation agreement in which an existing building was made smoke-free for future residents. ■



# Have Smoke Will Travel

Americans are finding that it's not whether or not secondhand smoke is harmful, but rather how harmful.

Fueling renter demand for no-smoking apartments is the 2006 U.S. Surgeon General's report, "The Health Consequences of Involuntary Exposure to Tobacco Smoke," which warns that there is no risk-free level of exposure to secondhand smoke, and that "even small amounts of secondhand smoke exposure can be harmful to people's health."

The report includes a discussion of the dangers of secondhand tobacco smoke in apartment housing and how the smoke travels from one apartment into others, and recommends that apartment owners and community managers begin voluntarily implementing no-smoking policies.

Community owners and managers may receive resident complaints about secondhand smoke that range from watery eyes and scratchy throats to such severe breathing difficulties that their doctors strongly advise moving. For some residents, secondhand smoke can be a life-or-death issue.

## Dangerous Habit

Recently, Richard Grelle of Arlington, Texas, a resident of River Ridge Apartments, received a frantic call from his

handicapped wife telling him she was having difficulty breathing. A new neighbor who smoked inside her apartment had moved in below the Grelles.

The smoke from the neighbor's apartment had traveled through cracks, electrical and plumbing outlets and into the Grelles' home. Grelle's wife experienced a severe respiratory reaction; by the time the ambulance arrived, she had passed out on the bathroom floor in respiratory arrest. If she had not managed to call her husband at work before passing out, she likely would have died.

Many community owners and managers are unaware of the extent to which secondhand smoke spreads through apartment buildings. Secondhand smoke seeps through electrical outlets, pipes, light fixtures, ceiling crawl spaces and doorways into all areas of a building that house smokers.

## Need to Vent

According to James Repace, a biophysicist and visiting professor at Tufts University School of Medicine, research on air quality in apartment buildings revealed that 60 percent of the air residents breathe is shared by all apartments.

Ventilation technology and air cleaners are often touted as solutions, but the latest ventilation techniques and air cleaners cannot stop all smoke from spreading. Engineers from the Center for Energy and Environment (CEE), in a 2004 study, unsuccessfully tried to eliminate secondhand smoke seepage in six apartment buildings through a variety of expensive ventilation and air-sealing treatments.

Almost one-third of the apartment homes they treated had no reduction in contaminants at all. The CEE study found that the leak sealing was only of marginal benefit if it was the sole method of treatment for secondhand smoke seepage.

According to the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE), governing agency for all air filtration systems in the United States, "no engineering approaches, including current and advanced dilution ventilation or air-cleaning technologies, should be relied upon to control health risks from ETS (environmental tobacco smoke) exposure in spaces where smoking occurs."

ASHRAE has acknowledged that sec-

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### *Unhealthy Facts*

**T**here are more than 4,000 toxins and more than 50 cancer-causing chemicals in tobacco smoke. Some of the better known carcinogens include:

- Acetone, an eyes, nose and throat irritant, which can cause liver and kidney damage;
- Cadmium, used in batteries, which can cause liver and kidney damage;
- Formaldehyde, a cause of nasal cancer, which can damage the lungs, skin and digestive system;
- Hydrogen cyanide, used in gas chambers, which weakens the lungs and causes nausea, headaches and fatigue; and
- Carbon monoxide, dangerous to heart and muscle function, which causes breathing problems.

ondhand smoke can drift into neighboring apartments, and encourages elimination of smoking in the indoor environment as the "optimal way to minimize ETS exposure."

Enforcing a no-smoking policy has led to cost savings for some apartment owners as they have been able to reduce damage to the apartment home.

Kennedy Restoration, a restoration maintenance company in Portland, Ore., recently developed a cost estimate for cleaning a smoker's apartment. It identified the need to replace carpeting and vinyl appliances, as well as the possible replacement of other flooring and sub-flooring, lighting fixtures, cabinets and ceiling fans, and the use of special sealants to control odors before painting. Kennedy estimated the cost of properly cleaning a two-bedroom, two-bath, smoked-in apartment at approximately \$15,000. ■