

How do I Enforce a No-Smoking Rule at my Rental Properties?

A no-smoking rule may be one of the most important things you can do to protect your property from damage, excessive cleaning, and fires. No-smoking rules also protect your tenants from secondhand smoke, a major health hazard, protecting you from potential legal liability.

No-smoking rules are entirely legal, even inside individual units. You can adopt a no-smoking rule following the same process as any other rule change, by adding it to your lease, amending your by-laws, changing your house rules and giving tenants adequate notice.

Now that you know the reasons for adopting a no-smoking rule, you may be wondering how to enforce it. Here is what other landlords and associations have done to enforce their new smoke-free policies:

“We do an addendum to the lease and tenants have to sign it.”

“I have them sign a thing saying that if they smoke they are responsible for bringing it back to condition, including drapes, carpets. So, they’re on the hook for several thousand dollars. So far it’s been bulletproof.”

“We give them a verbal warning, send in maintenance for a follow-up inspection, then a 10-day notice if they’re still doing it.”

“Our policy is that we charge \$250 on first offense. If they don’t pay, they get a notice to vacate. On the second offense, we fine them and ask them to leave.”

Whenever you change a house rule or modify your lease, you have to give tenants advance notice. But giving tenants notice is also very important because it will help you gain compliance with the policy. You might want to go “over and above” your normal procedures for announcing rule changes. A little bit of extra work at the beginning could help you avoid hassles later on.

Here are some things you can do to make sure everyone knows about the new rule:

- Hold a meeting
- Send memos to tenants
- Talk to individual tenants
- Post flyers in the halls
- Give tenants at least 30 days notice (60-90 is better)
- Tell prospective tenants about the rule
- Point out the rule when tenants sign or renew their lease
- Post signs in your building

- Market your building as non-smoking wherever you list vacancies (www.housingconnections.org) lets you list your smoking rules)
- Hawaii has a smoke-free homes initiative website (www.hawaiismokefreehomes.org) where, very soon, you will be able to post your smoke-free property and/or units for free advertising.

See the box for messages that you can include in tenant handouts, memos, or flyers that will help you explain the rule to tenants.

A no-smoking rule will do lots of good things, but here are the top 3 reasons why it's a good idea:

1. You will be safer from fires
2. The air will be healthier for everybody who lives here
3. There will be less damage to the units

Our no-smoking rule is not a 'no-smoker rule.' Smokers will simply have to step outside to the designated area. We understand this may be an inconvenience for you, and we appreciate your help in keeping our property clean and safe for ALL our tenants. The Hawaii Tobacco Quit Line is a free service that can help you quit smoking: 1-800-QUIT-NOW.

Facts about Smoking & Secondhand Smoke:

- Secondhand smoke has over 4000 chemicals, and at least 43 of them cause cancer. The chemicals include arsenic, formaldehyde, carbon monoxide, and benzene.
- Secondhand smoke is especially bad for children, the elderly, and people with health problems.
- Ventilation systems cannot remove the cancer-causing chemicals in secondhand smoke.
- Smoking is the number one cause of residential fire deaths.
- Smokers have been sued by neighbors who have been hurt by secondhand smoke.

It will also be helpful to train your management staff on the new policy and make sure they understand it is a priority. You might consider creating a designated outdoor area for smoking if you think it would help with compliance. Just be sure to move receptacles for smoking materials a reasonable distance (20 feet as required by Hawaii State Law) from building entrances, windows, and ventilation intakes, together with applicable signs.

Make sure that tenants know you will respond promptly to complaints about violations of the no-smoking rule. Let tenants know how to report a possible violation, and follow-up with a warning letter to the smoking tenant(s) and an inspection (following your normal procedures). During an inspection, you may be

able to observe smoking, smell smoke odor, or see ashtrays or cigarette butts, but even if you don't find any "evidence" you can still provide the tenant with a copy of the rule and a reminder that violations of the no-smoking rule can result in an eviction or fees. Sometimes the face-to-face contact is all that is needed for a tenant to take the rule seriously.

If tenants argue that they have the "right to smoke," remember there is no right to smoke and it is not a disability. The law is on the side of landlords and non-smoking tenants, not smokers. You have the legal right to create rules that protect your property from damage and fires. A no-smoking rule also protects your nonsmoking tenants from secondhand smoke, which protects you from potential liability. Non-smoking tenants have won a number of lawsuits against their landlord and/or the smoking tenants under legal theories such as Breach of Habitability, Breach of the Covenant of Quiet Enjoyment and Constructive Eviction.

If tenants fail to comply with the no-smoking rules in their units and common areas, they are in breach of the lease agreement, which could be grounds for eviction. Follow your normal procedures of inspections, warning letters, and evictions. Since non-smoking rentals are in such high demand, you should be able to fill vacancies quickly and easily.

Your property is an important investment. A no-smoking rule will protect your investment while providing tenants with a healthy living environment. If you have any questions or need more information, please contact us:

Coalition for a Tobacco-Free Hawaii
www.hawaiismokefreehomes.org
808-946-6851 x 201

Hawaii State Department of Health:
www.hawaii.gov/health

Community Health Division

Chronic Disease Management and Control Branch:

- Tobacco Prevention & Education Program (TPEP) 808-586-8251
- Hawaii State Asthma Control Program (HSACP) 808-692-7476
- Comprehensive Cancer Control Program 808-692-7449

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