

Frequently Asked Questions about Smoke-free policies

Are smoke-free policies legal?

Yes. Smoke-free policies in multi-unit housing are legal and permitted under federal and Utah law. Smoker's are not a protected class, so there is no "right to smoke" under U.S. law. The [Change Lab Solutions](#) in California has created an overview of legal options for tenants. The policy needs to address the "smoking" behavior, not the individual as a smoker. An individual may still rent in a non-smoking community, must comply with the non-smoking policy. Please note that some of the information in this document is specific to California state law, but many of the strategies can be used in any state.

What are the secondhand smoke amendments (SHSA)?

The SHSA were passed in 1997 by Utah State Legislature. These amendments apply to any tobacco smoke that drifts into any residential unit a person rents, leases, or owns, from another residential or commercial unit and is a nuisance under the law. §78B-6-1101-(3) These amendments:

- Provide authority for an apartment renter to file a nuisance under §78B-6-1106(2) even if the renter has signed away his rights to file a nuisance.
- Provide that residents of apartments and condominiums may seek injunctive relief and/or damages if exposed to tobacco smoke. §78B-6-1102
- Give authority for rules, regulations or rental agreements to include prohibitions on smoking tobacco products in the residential units, on the premises, or both. §57-22-5-1(h)
- Give authority to condominium associations to restrict smoking tobacco products in units, common areas and yard space. §57-8-16-7(a),(b)
- Exempt temporary rental units, for vacations, or available for only 30 days or less at a time from the nuisance tobacco provisions. §78B-6-1101-(4)(a),(5)

What is the difference between the SHSA and the Utah Indoor Clean Air Act (UICAA)?

The SHSA apply to drifting tobacco smoke in residential units. The UICAA applies to no smoking in places of public access. The SHSA cannot be enforced by the state or local health departments. Managers are responsible for enforcing their own policies. The UICAA is enforced by the state or local health departments.

I have problems breathing and live next to a smoker, is there anything I can do?

Yes. Non-smokers with serious breathing disabilities such as asthma or allergies may have legal protection under the American with Disabilities Act and the federal Fair Housing Act. If secondhand smoke seriously affects your ability to breathe, consult a doctor to have your condition documented.

What can I do SHS drifting into my apartment from other another unit? See [Temporary Fixes](#) and [What can I do if there is already a problem?](#)

Can air purifiers/freshners help with secondhand smoke?

The American Society of Heating, Refrigerating & Air Conditioning Engineers (ASHRAE) published a position document on secondhand smoke. The document states “at present, the only means of effectively eliminating health risks associated with indoor exposure is to ban smoking activity”. AHSRAE cautions that devices such as air fresheners, cleaners and purifiers should not be relied upon to control health risks associated with secondhand smoke. ASHRAE “encourages elimination of smoking in the indoor environmental as the optimal way to minimize [secondhand smoke] exposure”

I live in a condominium? Can we (or the HOA) adopt a smoke-free policy?

Yes. Most people assume that when they buy a home, they will be the ones making decisions about their property. If you live in a condo, however, much of the decision-making power lies with the homeowners’ association (HOA). The HOA, either through its elected board of directors (“the board”) or by a vote of the full membership, has the power to enforce or enact regulations controlling the use of property within the complex.

Owning a unit automatically means you are a member of the HOA, and any member of the HOA can begin the process of making a complex smoke free. Many board members are unaware that condos may legally prohibit smoking in part or the entire complex, so it is often up to the HOA members to educate the board.

Are their benefits of going smoke free that I can share with my manager/landlord?

Yes. Making the apartment community smoke free can reduce maintenance costs and reduce the damage that smoke causes (e.g., costs associated with cleaning carpets, walls and repairing property from burns). Additionally, insurance rates may be reduced. Smoking materials (e.g. cigarettes, cigars, lighters, matches, etc) are the leading cause of home and total fire deaths in the U.S. ¹

Are there resources available for my manager or landlord?

Yes. The Utah State Health Department, some local health departments and community agencies are addressing issues of secondhand smoke in multi-unit housing. Suggest to your manager to contact someone at the state or local level to discuss what options are available in establishing smoke-free policies. The [MUH Tool Kit](#) is an excellent resource, as well.

Reference

1. National Fire Protection Association. The Smoking-Material Fire Problem, John R. Hall, Jr., September 2010.