



RBDFASTFACTS SMOKING & SMOKE FREE POLICIES – SUGGESTIONS FOR HUD’S MULTIFAMILY HOUSING PROGRAMS

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Disclaimer

"The material contained in this document is not comprehensive of the continually emerging issues surrounding policies in The Multifamily Housing industry. In addition, the handbook guidance is derived from The HUD Handbook 4350.3 Rev 1 Change 4 released in August 2013 and in December 2013 and subsequent notices and memos from HUD.

The reader should understand that these materials are not designed for, nor should be relied upon, as a source of legal guidance or as a final authority with respect to any particular circumstance.

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Owners and management should seek competent legal advice in developing and carrying out housing policies and procedures.

We have been diligent in our efforts to provide comprehensive and accurate regulatory instruction; Ross Business Development shall not be responsible for errors or inaccuracies."

Introduction

This document was designed to assist owner/agents, managing one of HUD's Multifamily Housing programs, with development of smoking or smoke-free housing policies. There is a lot of published research regarding the benefits of Smoke-free housing, the risks of allowing resident to smoke and the effects of second-hand smoke on other people. This document does not discuss those statistics.



Rather, we want to make you aware of HUD notices explaining things you can and cannot do. We will provide you with some suggestions regarding implementation of these policies including review of sample policies and forms created by RBD. These forms are included as part of our [FASTForms House Rules](#) library, our [FASTForms TSP library](#) and our [FASTForms Application](#) library. We also want to provide new information that may help when addressing resident concerns.

WHY WOULD YOU IMPLEMENT POLICIES?



Regardless of whether you allow smoking or not, it is good to establish some kind of policy to communicate rules. Clear, written policy ensures that residents understand expectations including penalties when such rules are violated.

SMOKING POLICIES

While HUD has published a PROPOSED Final Rule to make all Public Housing smoke free, HUD has issued no such proposed rule for the Multifamily Housing Division (MFH). Owner/agents of HUD financed/subsidized multifamily housing are not required to implement smoke-free housing.



In most cases, if you wish to allow smoking in units, in common areas, in some public areas (such as parking lots) or in designated smoking areas, that is up to you as long as you are compliant with other federal and local smoking ordinances. We suggest, however, that you develop certain guidelines.

You should also make sure any policy is available for applicants, residents, guests and service providers. We recommend that language is included in the Tenant Selection Plan and House Rules.

SAMPLE TENANT SELECTION PLAN LANGUAGE

Our Tenant Selection Plans include basic language explaining smoking/smoke free policies. For example:

Smoking Policy

Smoking is allowed in individual apartments, on balconies attached to apartments and in designated smoking areas on the property. Smoking is prohibited in any other indoor or outdoor area. This policy applies to all owners, property staff, applicants, residents, guests, and servicepersons. "Smoking" shall include the inhaling, exhaling, or carrying of any lighted cigarette, e-cigarette, cigar, pipe, other tobacco product or other legal substance.

CONCERNS

These days, there is certain liability when you decide to allow smoking on your property so be sure to investigate the pros and cons of allowing your residents to smoke on your property.

AMERICANS WITH DISABILITIES ACT (ADA) AND FAIR HOUSING ACT (FHA)

A resident with a disability may request a reasonable accommodation. If a resident's condition is made worse by being exposed to secondhand smoke, they can request a reasonable accommodation or pursue a legal action requiring a reasonable accommodation to prevent exposure. Possible accommodations could include

- ✧ Implementing or enforcing a smoke-free policy,
- ✧ Modifications to the unit to reduce or eliminate secondhand smoke infiltration, or
- ✧ Adding separate ventilation or heating systems.

LEGAL LIABILITY

It is possible that a resident could bring legal actions against a property owner for any of the following:

- ✧ Nuisance
- ✧ Breach of the Warranty of Habitability
- ✧ Breach of the Covenant of Quiet Enjoyment
- ✧ Trespass



A successful outcome for a resident could result in rent abatement or judicial termination of leases.

In addition to the legal actions listed above, there is a growing likelihood of lawsuits based on the property manager's knowledge of a dangerous condition on the property, like secondhand smoke transfer, and not acting to warn prospective renters or reduce exposure for current residents.

STATE LAWS

You must be familiar with your state law in regards to smoking in residential units. For example, The Minnesota Clean Indoor Air Act provide the following rules:

- ***Common Areas of Rental Buildings***
 - *The Minnesota Clean Indoor Air Act prohibits smoking in common areas of rental apartment buildings with 3 or more rented living units.*
 - *The indoor common areas, including hallways, laundry rooms, underground garages, rental offices, building entrances, exercise rooms, indoor swimming pool areas, and party rooms must be smoke free.*
 - *Exterior smoking shelters need to be constructed in compliance with the state law definitions to avoid being considered "indoor common areas." The provision of smoking shelters is not required under any federal, state or local law.*
 - *For more information, read "Freedom to Breathe in Rental Apartment Buildings" from the Minnesota Department of Health.*
- ***Individual Units of Rental Buildings***
 - *No Minnesota state statute prohibits smoking in individual rental units.*
 - *No Minnesota state law or local ordinance prohibits a property manager from making an entire apartment property smoke free; landlords can choose to make individual units smoke free.*



According to the Minnesota Department of Health, the proprietor or property manager has the option of establishing and enforcing a policy for the property that is more restrictive than state law. If a more restrictive policy is adopted it should be stated in the lease agreement.

It is important to complete comprehensive research to ensure that you comply with HUD rules and with other federal and local guidance. Employment and housing rules must be included in your research.

SMOKING AND SMOKE FREE POLICIES – HUD RULES

If you want to establish policies that limit smoking on your property, you must be aware of HUD rules.

On September 17, 2010, HUD released Housing Notice H10-21 *Optional Smoke-Free Housing Policy Implementation*.



The purpose of this Notice was to encourage owners and management agents to implement smoke-free housing policies in some or all of the properties they own or manage.

This Notice answers common questions asked by owners and agents who wish to make their communities “smoke free”.

For example:

- ✧ Owner/agents may establish policies that allow smoking in individual units but prohibit smoking in all common areas
- ✧ Owner/agents may establish policies to create a totally smoke-free property
- ✧ Owner/agents are not required to grandfather current residents living at their property (you do have the option to do so)

Owners and agents choosing to implement a smoke-free housing policy must update their House Rules and Policies and Procedures, as applicable, to incorporate the smoke-free housing requirements. Owners and agents must comply with all applicable fair housing and civil rights requirements.

If the owner/agent wishes to implement a smoke free policy, the policy must:

- ✧ Be in accordance with state and local laws.
- ✧ Address smoking in a resident’s unit, common areas, playground areas, areas near any exterior window or door, and areas outside a resident’s unit.
- ✧ Designate specific smoking areas and identify these areas with clear signage unless the O/A establishes a totally smoke-free policy.

The O/A **must not** implement a smoke free policy that:

- ✧ Denies occupancy to any individual who smokes or to any individual who does not smoke who is otherwise eligible for admission.
- ✧ Allows the O/A to ask at the time of application or move-in whether the applicant or any members of the applicant’s household smoke. However, if the O/A has established a smoke-free building as of a certain date, the O/A must inform applicants after that date that the building is a totally smoke-free building.
- ✧ The O/A must not maintain smoking or nonsmoking specific waiting lists for the property.
- ✧ Allows the O/A to ask at the time of recertification, whether the resident or any members of the resident’s household smoke.
- ✧ Requires existing residents, as of the date of the implementation of the smoke-free housing policies, to move out of the property or to transfer from their unit to another unit.



Keep in mind, implementing smoke free housing policies is optional. Owner/agents must consider local requirements and HUD guidance.

In 2012, HUD released Housing Notice 12-22 *Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies*. This Notice enhances instructions previously provided in Housing Notice 10-21 *Optional Smoke-Free Housing Policy Implementation*.

In this Notice, HUD reiterates some of the instruction provided in the previous Notice.

HUD also provided new information about:

- ✧ Non-smoking wings, buildings, floors, or units - O/As are not restricted from establishing smoke-free wings, buildings, floors, and/or units at their property. When a unit becomes available, regardless of where this unit is located, it must be offered to the first eligible household on the waiting list.
- ✧ Penalties for Violating the House Rules - Repeated violations of the non-smoking policy may be considered material noncompliance with lease requirements and may result in termination of tenancy. When pursuing eviction due to material noncompliance with lease requirements, existing HUD procedures found in HUD Handbook 4350.3, REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Chapter 8 must be followed.

USE OF MARIJUANA INCLUDING MEDICAL MARIJUANA



Recently, a number of states have legalized the use of marijuana specifically for medicinal purposes. Some states have legalized the use of marijuana for recreational purposes. Regardless of the purpose of legalization under state law, the use of marijuana in any form, is illegal under the Controlled Substances Act (CSA) and therefore is an illegal controlled substance under Section 577 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA). Based on federal law, new admissions of medical marijuana users are prohibited.

QHWRA requires that owner/agents establish lease standards that prohibit admission based on the illegal use of controlled substances including state legalized marijuana. State laws that legalize medical marijuana directly conflict with QHWRA and thus are subject to federal preemption.

HUD's Office of Multifamily Housing has issued a memorandum titled [Use of Marijuana in Multifamily Assisted Properties](#). The memorandum, which is posted on the Multifamily Housing website, details how owners enforce the requirements found in the Controlled Substance Act and the Quality Housing and Work Responsibility Act of 1998.

Please note the following quotes:

"...owners must deny admission to assisted housing for any household with a member determined to be illegally using a controlled substance (e.g. marijuana).

Further, owners may not establish lease provisions or policies that affirmatively permit occupancy by any member of a household who uses marijuana. Owners must establish policies which allow the termination of tenancy of any household with a member who is illegally using marijuana or whose use interferes with the health, safety or right to peaceful enjoyment of the residents. Section 577 of QHWRA affords owners the discretion to evict or not evict current tenants for their use of marijuana."

"Unlike the prescribed admission standards which prohibit admission to federally assisted housing for any household with a member who the owner determines is illegally using a controlled substance (e.g. marijuana) or the owner has reasonable cause to believe that the illegal use may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents, the continued occupancy stands "allow" termination by the owner. In other words, QHWRA provides owners with the discretion to determine, on a case-by-case- basis then it is appropriate to terminate the tenancy of the household."

SAMPLE TENANT SELECTION PLAN LANGUAGE

Sample

In many states you must provide applicants with information about your smoking policies. Your property Tenant Selection Plan can include language explaining any smoke-free housing policies. Your property Tenant Selection plan must explain that HUD prohibits owner/agents

from allowing applicants who use marijuana to move in. Our TSP includes the following sample language.

Smoke Free Policies *(NOTE FROM RBD – OPTIONAL. PLEASE DELETE OR EDIT TO CONFORM TO YOUR OWN POLICIES REGARDING SMOKING.) Smoking is prohibited in any area of the property, both private and common, whether enclosed or outdoors. This policy applies to all owners, property staff, applicants, residents, guests, and servicepersons.*

“Smoking” shall include the inhaling, exhaling, or carrying of any lighted cigarette, e-cigarette, cigar, pipe, hookah, other tobacco products, marijuana including medical marijuana, herbal smoking products “Legal Weed” or products known as “bath salts” or other legal or illegal substance.

Use of Marijuana – Federally Funded Property

Regardless of the purpose of legalization under state law, the use of marijuana in any form, is illegal under the Controlled Substances Act (CSA) and therefore is an illegal controlled substance under Section 577 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA). Based on federal law, new admissions of marijuana user – including people who use medical marijuana - are prohibited.

QHWRA requires that owner/agents establish lease standards that prohibit admission based on the illegal use of controlled substances including state legalized marijuana. State laws that legalize medical marijuana directly conflict with QHWRA and thus are subject to federal preemption.

Residents are prohibited from using marijuana (even in a smokeless manner).

HUD's Office of Multifamily Housing has issued a memorandum titled Use of Marijuana in Multifamily Assisted Properties. The memorandum, which is posted on the Multifamily Housing website, details how owners enforce the requirements found in the Controlled Substance Act and the Quality Housing and Work Responsibility Act of 1998. If HUD rules change, the property Tenant Selection Plan and the property House Rules may be edited to conform to the policies set forth by HUD.

THE PROPERTY APPLICATION

HUD provides substantial guidance about what you can and cannot do. For example, can you ask if an applicant smokes? No. But you can ask if the applicant is aware that the property is smoke free.



If you have a different application for Live-in aides, you may want to ask the same questions of live-in aides.

REASONABLE ACCOMMODATION & MEDICAL MARIJUANA



The question of whether the use of medical marijuana must be allowed as a reasonable accommodation for a disabled person depends on whether the question arises as a state or federal fair housing issue. HUD has indicated that since marijuana in any form is a violation of federal drug law, owners are not required to permit its use as a reasonable accommodation.

While this addresses the federal issue, states have also implemented local protections for people with disabilities and some state courts have taken the position that owner/agents must allow for the use of medical marijuana if such use would alleviate one or more symptoms or side effects of a disability.

A simple search on the internet provides information that makes these decisions even more challenging for property management professionals charged with developing policy for property staff.

It is important to consult with a qualified fair housing attorney before granting or refusing such a reasonable accommodation request.

So, what about smoking marijuana in a smoke-free property? While smoking is the most common method of consuming medical marijuana, smoking can cause respiratory problems, and generates second-hand smoke. Alternatives to smoking medical marijuana include (but are not limited to) use of vaporizers; use of products that contain edible marijuana, and consuming medical marijuana tea.

The cost of marijuana may not be included as part of the medical expense deduction when determining the adjusted income for an elderly or disabled family.

LEASE ADDENDUM OR MODIFIED HOUSE RULES

We suggest owner/agents address the use of tobacco products, products used to smoke any substance, medical marijuana and recreational marijuana in property policies and procedures. It is best to set applicants' expectations in the resident selection plan and to establish specific guidelines in your House Rules.



A smoke-free or tobacco-free policy would considerably change the terms and conditions of the lease agreement. Owner/agents have a choice to modify their property House Rules or to create a Lease Addendum. If an owner/agent chooses to create a new lease addendum, such an addendum must be approved by HUD or the Contract Administrator before it is provided to new or existing residents.

SMOKE FREE TOOLKITS FOR OWNERS/MANAGEMENT AGENTS AND RESIDENTS

For those of you who are interested in developing smoke free housing policies, Smoke-Free Housing Toolkits are provided by the U.S. Department of Housing and Urban Development (HUD) in partnership with the American Academy of Pediatrics, the American Lung Association, and the U.S. Department of Health and Human Services.

<http://portal.hud.gov/hudportal/HUD?mode=disppage&id=SMOKEFREETOOLKITS>

They are a compilation of existing educational, "how-to" and resource brochures, pamphlets and other information designed to assist owners/management agents and residents of public and assisted multi-family housing who want safer and healthier homes.

CONSIDERATIONS



These policies seem easy, but they are actually pretty difficult to design. What you want to avoid is developing a policy and having to edit the policy later. So here are some things to think about.

Investigate local Requirements. You need to have a complete understanding of any federal or local requirements, ordinances or guidelines regarding smoking.

Educate your staff about the smoke-free or tobacco-free policy. Before you start discussing this with residents and before the policy goes into effect, educate your staff about it so they have an opportunity to ask questions. Make sure staff understands why the policy is being implemented and how to enforce it. Remember, the policy applies to your staff as well.

This is also a good time to make sure staff understands your reasonable accommodation process. It is important that requests for reasonable accommodation in regards to smoking are handled appropriately.



Should you survey your residents? We feel that it is a good idea to ask residents for their opinion regarding smoking and smoke-free policies.

This allows you to base implementation of new policies based on “real” information instead of assumptions. Information provided by HUD indicates that:

- ✧ Three-quarters of renters do not smoke at all.
- ✧ 19% of renters smoke daily
- ✧ But only 11% smoke inside regularly
- ✧ Two-thirds of smokers agree that even small amounts of secondhand smoke are hazardous to your health.

Should you offer support? Providing residents with local cessation information is a way to show that you care about their well-being. This type of policy provides incentive and support to those who were considering quitting.



Many existing developments offer some type of cessation services (quit smoking support). Look to your State or municipal health department, Lung Association, Cancer Society or local hospital for free cessation support.

What areas of the property should be covered? Owner/agents can tailor a smoke-free or tobacco-free policy to meet their specific needs. First, consider where you want to prohibit smoking or tobacco use. Choose any and all areas where you want the policy to apply:

- ✧ Everywhere on the property, inside and outside
- ✧ Inside residents’ units
- ✧ Outdoor exclusive-use areas (individual balconies, patios, etc.)
- ✧ Outdoor common areas (pool, parking lot, greenspaces, etc.)
- ✧ Outdoors within a “reasonable” distance from building entrances, such as 15 to 25 feet, to prevent smoke from entering another resident’s open windows or doors

Should we designate smoking areas? An option is to designate an outside smoking area on the property. It is important to consider how close the area is to other restricted places and how a designated smoking area might impact neighboring properties.



There may be local ordinances stating that minors cannot be allowed in designated smoking areas so you should check.

You should also consider the risk of allowing someone to use compressed oxygen in designated smoking areas.

Order and post signage before the date the policy goes into effect. Install signage in common areas and outdoor locations where the policy applies. Signage provides a friendly reminder and educates guests, visitors, and new staff who might be unaware of the policy.

When should the policy go into effect? Consider implementing the policy before key lease signing periods such as prior to the start of a school year. If most residents are on a month-to-month lease, the policy can be implemented much more quickly.

You must comply with HUD’s Notification requirements outlined in HH 4350.3 R1, C4, Paragraph 6.12.

How do we notify residents? We suggest that you notify residents no less than 60 days prior to when the new policy will go into effect.

However, optimally, we would hope that you allow six months to one year to implement a new policy limiting smoking. This is especially true if you plan to prohibit smoking in individual units.

Bring this up in a preliminary meeting and advise residents that you are considering a new smoking or smoke-free policy and that a survey will be forthcoming.

Draft your policy and set up a meeting for comments. Provide specific details about the policy, as well as the date it goes into effect.

We suggest that you schedule a meeting exclusively for smokers. Since smokers generally represent a minority of your residents, it is good to give them an opportunity to express any opinions or concerns without interference from non-smokers. You may also offer non-smokers the same opportunity.

Any new smoking-related House Rules must be implemented in accordance with HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, paragraphs 6-9 and 6-12.

- A. **New admissions.** Owners and agents are required by existing HUD policies to provide the House Rules to all new residents.
- B. **Existing residents.** Owners and agents must notify existing residents, who have completed their initial lease term, of the modifications to the House Rules 30 days prior to implementation. Notification is accomplished by forwarding a copy of the revised House Rules to existing residents. For those residents who have not yet completed their initial lease term, the owner must provide the resident with 60 days' notice, prior to the end of their lease term, of the change in the House Rules.

Do we need a Smoking Disclosure Statement? A smoking disclosure statement can be useful:

- ✧ If you plan to allow for “grandfathering” of existing residents who smoke or
- ✧ While making the transition to a smoke-free property.

It would inform new residents that they may experience smoke from other residents whose are “grandfathered” or whose leases have not yet come up for renewal.



A smoking disclosure statement can assist with enforcement issues and can reduce liability during and after implementation.

We do not provide a sample Smoking Disclosure Statement. It is best if this is provided by your attorney because he or she is more likely to be familiar with local smoking ordinances.

How do we make sure to enforce the policy promptly and consistently? Enforce the smoke-free or tobacco-free policy like all other policies. When a complaint is received, ask the resident to document the incident in writing in as much detail as possible. Act on every complaint, providing written notification to the resident of the reported violation, the policy, and future consequences of continued violations. Document everything!

SUMMARY

HUD continues to encourage owner/agents to implement smoking and smoke-free policies.

Impact on property policies should be addressed. Of special consideration are edits to the Application, House Rules and Tenant Selection Plans.

But most important, consider the impact on your residents. Regardless of whether you allow smoking, limit smoking or implement a smoke-free policy, impact on your residents is a concern.

This FASTFact provided additional information about HUD announcements and clarifications. We hope we also provided you with suggestions that will make your transition – whatever it is – successful.

ATTACHMENT A: SAMPLE SMOKING POLICIES

SMOKING POLICY - OPTIONAL

(Note from RBD: Including smoking options in the TSP is not required. If you choose to do so, only one of the following options is included in your Tenant Selection Plan. Choose one and edit as appropriate to comply with the property policies. More detailed information is provided in the House Rules. Remember, Tenant Selection Plans are not an attachment to the lease. House Rules are an attachment to the lease. Please delete or edit to conform to your own policies regarding smoking. Make sure that all other references to smoking are consistent. Please delete this note from RBD before completing edits to your TSP.)

Option 1: Smoking is allowed in individual apartments, on balconies attached to apartments and in designated smoking areas on the property. Smoking is not allowed in other common areas (e.g. laundry room, picnic area, etc.).

“Smoking” shall include the inhaling, exhaling, or carrying of any lighted cigarette or e-cigarette.

Please note that use of illegal substances or illegal use of controlled substances is grounds for denial or termination of housing/assistance in accordance with the Quality Work & Housing Responsibility Act (QWHRA). This includes marijuana (including medical marijuana).

Failure to comply with the Smoking Policy will be considered a material lease violation.

(NOTE FROM RBD – OPTIONAL. THIS LANGUAGE IS CONSISTENT WITH NEW HUD GUIDANCE. PLEASE DELETE OR EDIT TO CONFORM TO YOUR OWN POLICIES REGARDING SMOKING. DELETE THIS NOTE BEFORE COMPLETING THESE HOUSE RULES.) If the owner/agent receives a complaint, the head-of-household will be notified that there has been a complaint about violation of the smoking policy. The resident will be notified of the requirement to comply with the smoking policy.

If there is a second complaint, the head-of-household will be notified and will receive notice of a formal complaint.

If there is a third complaint, the household will be issued a notice of lease violation and all adult household members must meet with the property staff. All adult household members must agree to ensure that all household members, guests of the residents and service providers hired by the residents will comply with the smoking policy.

If all household members do not agree to comply, the owner/agent will begin the process to terminate tenancy (evict) in compliance with HUD’s guidance. If the household members agree to comply, yet there is another complaint, the owner/agent will begin the process to terminate tenancy (evict) in compliance with HUD’s requirements.

Nothing in the rules above shall be construed to restrict the power of any county, parish, city, municipality, town, or village to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimum applicable standards to establish smoke-free public places.

SMOKE FREE HOUSING - OPTIONAL

Option 2: Smoking is prohibited in any area of the property, both private and common, whether enclosed or outdoors. This policy applies to all owners, property staff, applicants, residents, guests, and service providers.

“Smoking” shall include the inhaling, exhaling, or carrying of any lighted cigarette, e-cigarette, cigar, pipe, hookah, other tobacco products, marijuana including medical marijuana, herbal smoking products “Legal Weed” or products known as “bath salts” or other legal or illegal substance.

Please note that use of illegal substances or illegal use of controlled substances is grounds for denial or termination of housing/assistance in accordance with the Quality Work & Housing Responsibility Act (QWHRA). This includes marijuana (including medical marijuana). State laws that legalize medical marijuana directly conflict with QWHRA and thus are subject to federal preemption.

Failure to comply with the Smoking Policy will be considered a material lease violation.

(NOTE FROM RBD – OPTIONAL. THIS LANGUAGE IS CONSISTENT WITH NEW HUD GUIDANCE. PLEASE DELETE OR EDIT TO CONFORM TO YOUR OWN POLICIES REGARDING SMOKING. DELETE THIS NOTE BEFORE COMPLETING THESE HOUSE RULES.) If the owner/agent receives a complaint, the head-of-household will be notified that there has been a complaint about violation of the smoking policy. The resident will be notified of the requirement to comply with the smoking policy.

If there is a second complaint, the head-of-household will be notified and will receive notice of a formal complaint.

If there is a third complaint, the household will be issued a notice of lease violation and all adult household members must meet with the property staff. All adult household members must agree to ensure that all household members, guests of the residents and service providers hired by the residents will comply with the smoking policy.

If all household members do not agree to comply, the owner/agent will begin the process to terminate tenancy (evict) in compliance with HUD's guidance. If the household members agree to comply, yet there is another complaint, the owner/agent will begin the process to terminate tenancy (evict) in compliance with HUD's requirements.

Nothing in the rules above shall be construed to restrict the power of any county, parish, city, municipality, town, or village to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimum applicable standards to establish smoke-free public places.

SMOKE FREE HOUSING – DESIGNATED SMOKING AREA - OPTIONAL

Option 3: Other than in designated smoking areas, smoking is prohibited in any area of the property, both private and common, whether enclosed or outdoors. This policy applies to all owners, property staff, applicants, residents, guests, and servicepersons.

“Smoking” shall include the inhaling, exhaling, or carrying of any lighted cigarette or e-cigarette.

Use of illegal or controlled substances is grounds for denial of housing/assistance in accordance with the Quality Work & Housing Responsibility Act (QWHRA). Use of illegal or controlled substances after move-in may result in termination of tenancy.

This includes marijuana (including medical marijuana). State laws that legalize medical marijuana directly conflict with QWHRA and thus are subject to federal preemption.

Failure to comply with the Smoking Policy will be considered a material lease violation.

(NOTE FROM RBD – OPTIONAL. THIS LANGUAGE IS CONSISTENT WITH NEW HUD GUIDANCE. PLEASE DELETE OR EDIT TO CONFORM TO YOUR OWN POLICIES REGARDING SMOKING. DELETE THIS NOTE BEFORE COMPLETING THESE HOUSE RULES.) If the owner/agent receives a complaint, the head-of-household will be notified that there has been a complaint about violation of the smoking policy. The resident will be notified of the requirement to comply with the smoking policy.

If there is a second complaint, the head-of-household will be notified and will receive notice of a formal complaint.

If there is a third complaint, the household will be issued a notice of lease violation and all adult household members must meet with the property staff. All adult household members must agree to ensure that all household members, guests of the residents and service providers hired by the residents will comply with the smoking policy.

If all household members do not agree to comply, the owner/agent will begin the process to terminate tenancy (evict) in compliance with HUD's guidance. If the household members agree to comply, yet there is another complaint, the owner/agent will begin the process to terminate tenancy (evict) in compliance with HUD's requirements.

Nothing in the rules above shall be construed to restrict the power of any county, parish, city, municipality, town, or village to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimum applicable standards to establish smoke-free public places.

USE OF MARIJUANA – FEDERALLY FUNDED PROPERTY REQUIRED

(Note from RBD: Mandatory. Currently, owner/agents are required to reject any applicant when the owner/agent knows the applicant is using marijuana including medical marijuana. Please delete this note from RBD before completing edits to your TSP.)

Residents are prohibited from using marijuana (even in a smokeless manner).

Regardless of the purpose of legalization under state law, the use of marijuana in any form, is illegal under the Controlled Substances Act (CSA) and therefore is an illegal controlled substance under Section 577 of the Quality Housing and Work Responsibility Act (QHWRA). Based on federal law, new admissions of any marijuana user – including people who use medical marijuana - are prohibited.

If HUD rules change, the property Tenant Selection Plan and the property House Rules may be edited to conform to the policies set forth by HUD.

USE OF SMOKE-FREE TOBACCO PRODUCTS

(NOTE FROM RBD – OPTIONAL. PLEASE DELETE OR EDIT TO CONFORM TO YOUR OWN POLICIES REGARDING SMOKING.) The use of any oral tobacco products will be prohibited from all public and common areas including, but not limited to, the management office, community room, any areas where meals are prepared or served, laundry room, sidewalks, parking lots, fields, walkways and recreational areas. The policy applies to all property staff, residents, residents' guests, residents' service providers, contractors and visitors

LANDLORD NOT A GUARANTOR OF SMOKE-FREE ENVIRONMENT

Each resident acknowledges that the owner/agent adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, do not make the Landlord or any of its managing agents the guarantor of the resident's health or of the smoke-free condition of the resident's unit and the common areas.

The owner/agent and/or property staff shall take reasonable steps to enforce the smoke-free terms of its leases/House Rules and to make the complex smoke-free.

LOCAL SMOKING LAWS/ORDINANCES

Nothing in the rules above shall be construed to restrict the power of any county, parish, city, municipality, town, or village to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimum applicable standards to establish smoke-free public places.

ATTACHMENT B – SAMPLE APPLICATION – SECTION 8 ELDERLY (EXCERPT)

Property Name:		Telephone:	
Address:		Fax:	
Address 2:		TTD/TTY:	711 National Voice Relay
Property Web Site		Email	

(Please return this form to the above address)

For Office Use Only:		
Date application received	Time application received	By

Applicant Name	
How did you hear about us?	
Gender	☐ Male ☐ Female ☐ Prefer not to disclose
Citizenship Status	☐ United States Citizen ☐ Eligible Non-Citizen ☐ Ineligible Non-Citizen
What is your relationship to the Head of household?	☐ Head of Household ☐ Co-head/Spouse ☐ Child ☐ Other adult ☐ Foster adult/child ☐ Live-in Aide (live in aides complete a different application and must be approved before move in) ☐ None of the Above
Current Address	
City, State, Zip	
Home Phone	
Birth date	
Social Security Number	
If you have no Social Security Number, you claim you are exempt because ☐ You are an ineligible non-citizen ☐ You were 62 as of 1/31/10 and receiving HUD housing assistance as of 1/31/10	
Are you enlisted in the U.S. Military or are you a veteran of the U.S. Military?	☐ Yes ☐ No
Are you a victim of a recent presidentially declared disaster?	☐ Yes ☐ No
Are you currently receiving housing assistance from HUD or a PHA?	☐ Yes ☐ No
If the head-of household or co-head/spouse is not 62 or older, do you claim eligibility because the head-of-household or co-head/spouse is disabled?	☐ Yes ☐ No
Are you a student enrolled in an institute of higher education?	☐ Yes ☐ No
Do you use marijuana?	☐ Yes ☐ No
Do you know that this property exists as a smoke free campus? This means that smoking is prohibited in the unit, on unit balconies and porches and in all indoor and outdoor common areas. This includes the parking lot, balconies, sidewalks, hallways, elevators, etc.	☐ Yes ☐ No
Do you agree that you, your guests and service providers hired by you will abide by the Smoke Free policy?	☐ Yes ☐ No
Do you understand that failure to comply with Smoke Free policies as described in the House Rules will result in termination of tenancy (eviction)?	☐ Yes ☐ No

Please Note: This application has been cropped for training purposes.
This is not the entire application.

ATTACHMENT C: SAMPLE SMOKING SURVEY

Property Name:		Telephone:	
Address:		Fax:	
City, State, Zip:		TTD/TTY:	

To Name	and all other adult household members indicated on the lease who wish to submit
Unit #	

Response requested by: _____ (If you do not respond by the date, we cannot consider your survey responses)

Dear _____:

In response to encouragement from HUD to adopt Smoke-free Housing, the owner/agent is considering the adoption of smoke free policies. We would like to hear from you!

Please fill out the attached survey and return it to _____ so we may consider your views. There is no requirement to complete this survey. If multiple household members would like to complete the survey, please feel free to copy and submit multiple surveys. The owner/agent will provide additional surveys upon request.

The owner/agent will accept your survey submission in an equally effective format as a reasonable accommodation if there is the presence of a disability.

We are dedicated to your continued enjoyment of your home in our community. Please contact the management staff with any questions.

Property Manager

The owner/agent does not discriminate on the basis of disability status in the admission or access to, or treatment or employment in, its federally assisted programs and activities.

The person named below has been designated to coordinate compliance with the nondiscrimination requirements contained in the Department of Housing and Urban Development's regulations implementing Section 504 (24 CFR, part 8 dated June 2, 1988).

Name		
Address		
City	State	Zip
Telephone - Voice		
Telephone - TTY		

Name (Optional)

Unit # (Optional)

Phone (Optional)

Email (Optional)

1. Do you smoke?
☐ Yes ☐ No
2. Do you allow people, including yourself, to smoke in your apartment?
☐ Yes ☐ No
3. Have you smelled smoke in your home?
☐ Yes ☐ No
4. Do you think the smoke comes from another apartment or outside?
☐ Another Apartment ☐ Outside ☐ Both ☐ N/A
5. Does smelling smoke in your home bother you?
☐ Yes ☐ No ☐ N/A
6. Are you concerned about the health effects of secondhand smoke?
☐ Yes ☐ No
7. Would you like the buildings to be smoke-free? (Meaning no smoking indoors, including in apartments.)
☐ Yes ☐ No
8. Would you object to a designated outdoor smoking area or areas?
☐ Yes ☐ No
9. Do you think residents who smoke should be allowed to smoke on balconies or patios (if available)
☐ Yes ☐ No
10. Would you prefer that smoking is prohibited everywhere on the property—both inside and outside?
☐ Yes ☐ No

Comments:

ATTACHMENT D: SAMPLE NOTICE OF CHANGE TO HOUSE RULES

Date: _____

TO: Resident Name

Address:

City, State, Zip

Response required by: _____

Dear _____:

As part of your lease and in accordance with HUD requirements, you agreed to abide by the House Rules and Pet Rules established by the owner/agent for this property. HUD encourages owner/agents to review these rules from time-to-time. As a result of such review, the owner/agent will make changes to the House Rules indicated in Attachment A and Pet Rules indicated in Attachment B. These changes will be effective **Enter date**. *(Note from RBD: You are prohibited from changing the lease until the end of a lease term. The dates indicated must be modified based on the date you incorporated the policy and based on an evaluation of residents' lease end dates. See HH 4350.3 Revision 1, Paragraph 6-12 for additional information about lease modifications)*

In accordance with HUD requirements, we are providing you with this 60-day notice regarding these changes. You will have 30 days to review these changes and accept them. If you do not wish to accept the House Rule Changes, you must provide the owner/agent with a 30-day Notice to Vacate. This is in accordance with the HUD Model Lease (HUD Form 90105-a) Paragraph 22.

*Note: Any resident who signed a 1-year lease between **enter date and enter date** is not required to accept modifications to the House Rules until the end of the lease term. A reminder will be sent with the Annual Certification Notice explaining that all household members must either accept any changes to the house rules or provide a 30-day Notice to Vacate.*

Questions about this Document

As always, we want to make sure that you are happy in your home and that you receive the correct assistance in accordance with HUD's assistance program rules. Please contact the property staff if you have any questions.

Your response to this letter does not preclude you from exercising other avenues available if you believe that you are being discriminated against on the basis of race, color, religion, sex, national origin, familial status, or handicap.

If you are disabled or have difficulty understanding English, please request our assistance and we ensure that you are provided with meaningful access based on your individual needs.

(Si se desactivan o tienen dificultad para entender el inglés, por favor solicite nuestra ayuda y nos aseguramos de que le proporciona un acceso significativo basado en sus necesidades individuales.) *Note from RBD – this Spanish translation was provided by a Microsoft translator tool. Be sure to verify with someone who speaks Spanish.*

Signature of Manager

Cc: Resident File

ATTACHMENT REVISED HOUSE RULES

Note from RBD – Include new or revised House Rules with appropriate wording.

I have reviewed the property House Rules including these new provisions. I have been given the opportunity to ask questions. I agree to abide by these rules.

_____ Resident Signature	_____ Date
-----------------------------	---------------

_____ Resident Signature	_____ Date
-----------------------------	---------------

_____ Resident Signature	_____ Date
-----------------------------	---------------

_____ Owner/agent	_____ Date
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ATTACHMENT: REVISED PET RULES

Note from RBD – Include new or revised Pet Rules with appropriate wording.

I have reviewed the property Pet Rules including these new provisions. I have been given the opportunity to ask questions. I agree to abide by these rules.

_____ Resident Signature	_____ Date
-----------------------------	---------------

_____ Resident Signature	_____ Date
-----------------------------	---------------

_____ Resident Signature	_____ Date
-----------------------------	---------------

_____ Resident Signature	_____ Date
-----------------------------	---------------

_____ Owner/agent	_____ Date
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Action Items

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. _____