

# Ready to go Smoke Free?

Log on to the Live Smoke Free website to learn more about the benefits of smoke-free multi-housing and the steps you can take to create a smoke-free environment in your building.

[www.mnsmokefreehousing.org](http://www.mnsmokefreehousing.org)



**The Public Health Law Center**  
St. Paul, MN  
[www.publichealthlawcenter.org](http://www.publichealthlawcenter.org)



**Live Smoke Free**  
Program of the Association for  
Nonsmokers - Minnesota  
St. Paul, MN  
[www.mnsmokefreehousing.org](http://www.mnsmokefreehousing.org)



**The Center for Energy  
and Environment**  
Minneapolis, MN  
[www.mncee.org](http://www.mncee.org)

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# Adopting a Smoke-Free Policy:

A Guide for Minnesota Homeowners' Associations



**Smoke-Free Multi-Housing:  
Healthier Buildings. Happier Residents.  
A Smart Investment.**



# Background

## Who Should Read This Guide?

This guide is intended for homeowners' associations, residents, and property managers of owner-occupied common interest communities (condos, townhomes, and other attached housing). The guide is designed to assist you as you think about or plan for adopting a smoke-free policy for your community.

## Secondhand Smoke and Common Interest Communities

In recent years, there has been a movement toward smoke-free policies for rental multi-housing buildings such as apartments and other attached rental housing. This is due, in part, to an increasing understanding about the way in which secondhand smoke travels in multi-housing buildings. According to a report issued by the U.S. Surgeon General, "Smokers living in multifamily residences (such as apartment and condominium complexes) can affect not only family members, but other residents as well."<sup>1</sup> Despite the movement toward smoke-free rental properties, there has been little information about and movement toward smoke-free owner-occupied properties such as condominiums and townhomes.

In response to the need for more information on this topic, in 2009, the Center for Energy and Environment, in partnership with the Public Health Law Center and the Association for Nonsmokers-Minnesota, surveyed 17 Minnesota property managers and a random sample of 495 residents of owner-occupied common interest communities in order to determine how often residents experience and report exposure to secondhand smoke in their common interest community (see the "Owners Survey" and "Managers Survey" tabs for results and more information). In addition, the Public Health Law Center conducted legal research about implementing and enforcing smoke-free policies in common interest communities. The material in this guide is based on that research.

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## Research conducted in 2009:

- Survey of a random sample of 495 residents of owner-occupied common interest communities in Minnesota.
- Survey of 17 Minnesota property managers.
- Legal research about implementing and enforcing smoke-free policies in common interest communities.

# Healthier Buildings

## Secondhand Smoke Is Toxic

Secondhand smoke—the smoke that comes from a lighted tobacco product or exhaled by a smoker—contains more than 4,000 chemicals.<sup>2</sup> Of these chemicals, at least 250 are known toxins, and more than 50 are cancer causing chemicals. There is no risk-free level of exposure to secondhand smoke, and the only way to protect people from the dangers of secondhand smoke is to eliminate the smoke exposure, according to the 2006 Surgeon’s General’s report titled *The Health Consequences of Involuntary Exposure to Tobacco Smoke*.<sup>3</sup>

## Secondhand Smoke Is a Health Hazard

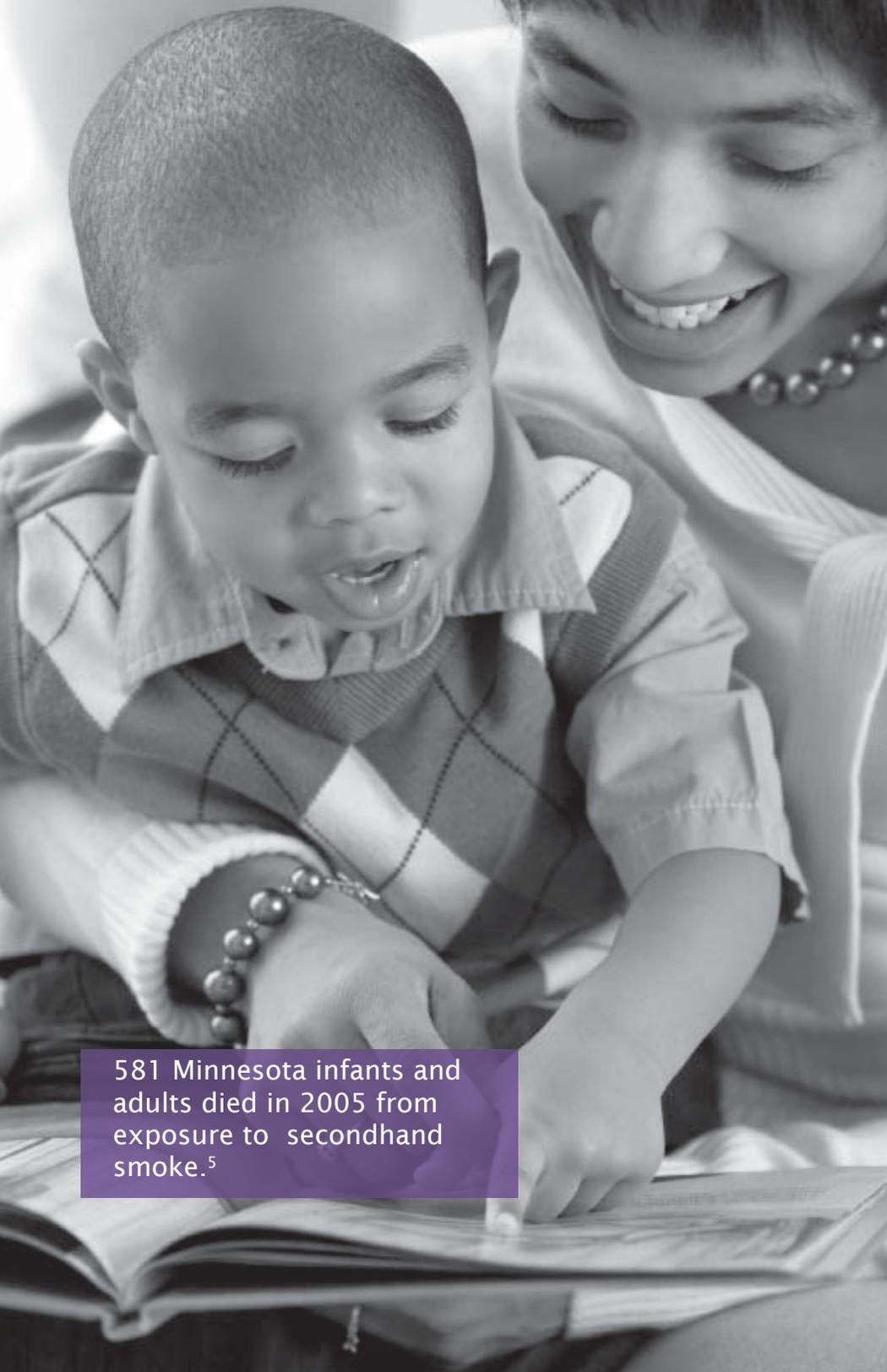
Exposure to secondhand smoke is responsible for at least 3,000 lung cancer deaths and at least 46,000 coronary heart disease deaths each year.<sup>4</sup> Thousands more people suffer from diseases caused or made worse by secondhand smoke such as emphysema, asthma, pneumonia, and chronic bronchitis. Secondhand smoke also causes ear infections, sore throats, watery eyes, and coughing. In 2007, 66,000 Minnesotans of all ages were treated for conditions that were caused by secondhand smoke exposure.<sup>5</sup>

### Some of the Chemicals in Secondhand Smoke<sup>2</sup> (and other products they are found in)

Chemical	Other Product	Chemical	Other Product
Formaldehyde	Embalming fluid	Arsenic	Pesticides
Benzene	Gasoline	Chromium	Steel
Polonium-210	Spark plugs	Lead	Old paint
Vinyl Chloride	Metal pipes	Cadmium	Batteries
Carbon Monoxide	Car exhaust	Butane	Lighter fluid
Ammonia	Household cleaners	Toluene	Paint thinners

## Owner-Occupants Are Exposed to Secondhand Smoke

When asked: “In the past six months, how often has tobacco smoke from somewhere else in or around the building come into your unit?” 15% of owner-occupants responded “sometimes,” “often,” or “most of the time.”<sup>6</sup>



581 Minnesota infants and adults died in 2005 from exposure to secondhand smoke.<sup>5</sup>

# Indoor Air Quality

## Air Flow Between Units Is Significant

Research conducted by the Center for Energy and Environment on buildings in Minnesota concluded that air flow between units in a multi-housing building is significant. This air flow is difficult to reduce and virtually impossible to eliminate.

The research found that the average cost to seal a unit to reduce secondhand smoke leakage was about \$700 per unit. However, sealing the air leaks was still not enough to completely eliminate the secondhand smoke problem.<sup>7</sup>

## Secondhand Smoke Cannot be Controlled by Ventilation and Air Purifiers<sup>8</sup>

“At present, the only means of effectively eliminating health risks associated with indoor exposure is to ban smoking activity,” according to a 2008 position document from the American Society of Heating, Refrigerating, & Air Conditioning Engineers (ASHRAE).

Engineering approaches such as air fresheners, cleaners, and purifiers are not effective, and ASHRAE cautions that such devices should not be relied upon to control health risks from secondhand smoke. ASHRAE “encourages elimination of smoking in indoor environments as the optimal way to minimize [secondhand smoke] exposure.”

## Eliminating Smoking Is the Only Way to Protect People from the Dangers of Secondhand Smoke<sup>3</sup>

Eliminating smoking indoors is the *only* way to fully protect people from secondhand smoke according to *The Health Consequences of Involuntary Exposure to Tobacco Smoke* report by the U.S. Surgeon General. The report further states that ventilation systems can actually distribute secondhand smoke throughout a building.



Secondhand smoke cannot be completely controlled by ventilation or air purifiers. A smoke-free policy is the only way to eliminate secondhand smoke exposure.

# Owner-Occupant Survey

Eighty percent of owner-occupants reported that they would “Definitely” or “Probably” chose a smoke-free building over an identical smoking-allowed building.

## Owner-Occupants Are Bothered by Secondhand Smoke

When asked how much they are bothered by the secondhand smoke that enters their unit, the majority of owner-occupants (52%) reported being bothered “a lot” by tobacco smoke that entered their unit from somewhere else in or around the building. Twenty-nine percent of owner-occupants reported being bothered “a lot” by tobacco smoke that entered their personal patio, deck, or balcony.

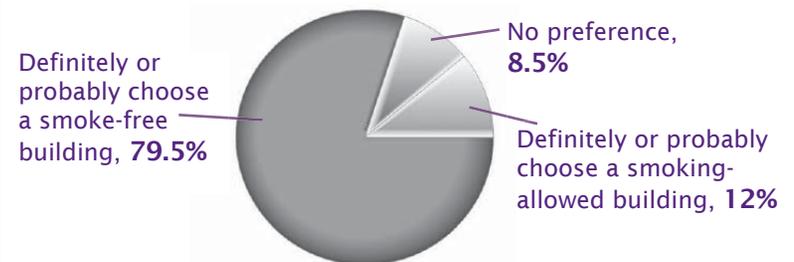
## Many Owner-Occupants Would Prefer a Smoke-Free Policy

Forty-two percent of owner-occupants reported “strongly” or “somewhat” preferring a smoke-free policy for the building where they live. Despite the fact that more than one-third of owner-occupants indicated preferring a smoke-free policy, only 6% of owner-occupants indicated that their association had a policy that prohibited smoking in residents’ units.

## Most Owner-Occupants Would Chose a Smoke-Free Building

Most owner-occupants (79.5%) reported that they would “definitely” (63%) or “probably” (16.5%) chose a smoke-free building over an identical smoking-allowed building.

Likelihood of Choosing a Smoke-Free Building Over a Smoking-Allowed Building (n=494)



## Many Owner-Occupants Are Willing to Pay More

When asked if they were willing to pay more for a unit in a smoke-free building over a unit in smoking allowed building, all other things being equal:

- 34% of owner-occupants reported being willing to pay 1%- 5% more;
- 8% of owner-occupants reported being willing to pay 6% - 10% more; and
- 4% of owner-occupants were willing to pay more than 10% more.

# Property Manager Survey

According to a Minnesota manager of a smoke-free property, implementing a smoke-free policy had no effect on:

- Length of time it took to sell units,
- Sale price of units, and
- Time required to manage the community.

In 2009, the Center for Energy and Environment, in partnership with the Public Health Law Center and the Association for Nonsmokers-Minnesota, surveyed 17 property managers of owner-occupied common interest communities in Minnesota.

This survey was conducted in order to determine: how often property managers deal with issues related to owner-occupants being exposed to tobacco smoke in their housing units and property manager experiences with and perceptions of smoke-free policies for common interest communities.

## Direct Experience with Smoke-Free Communities

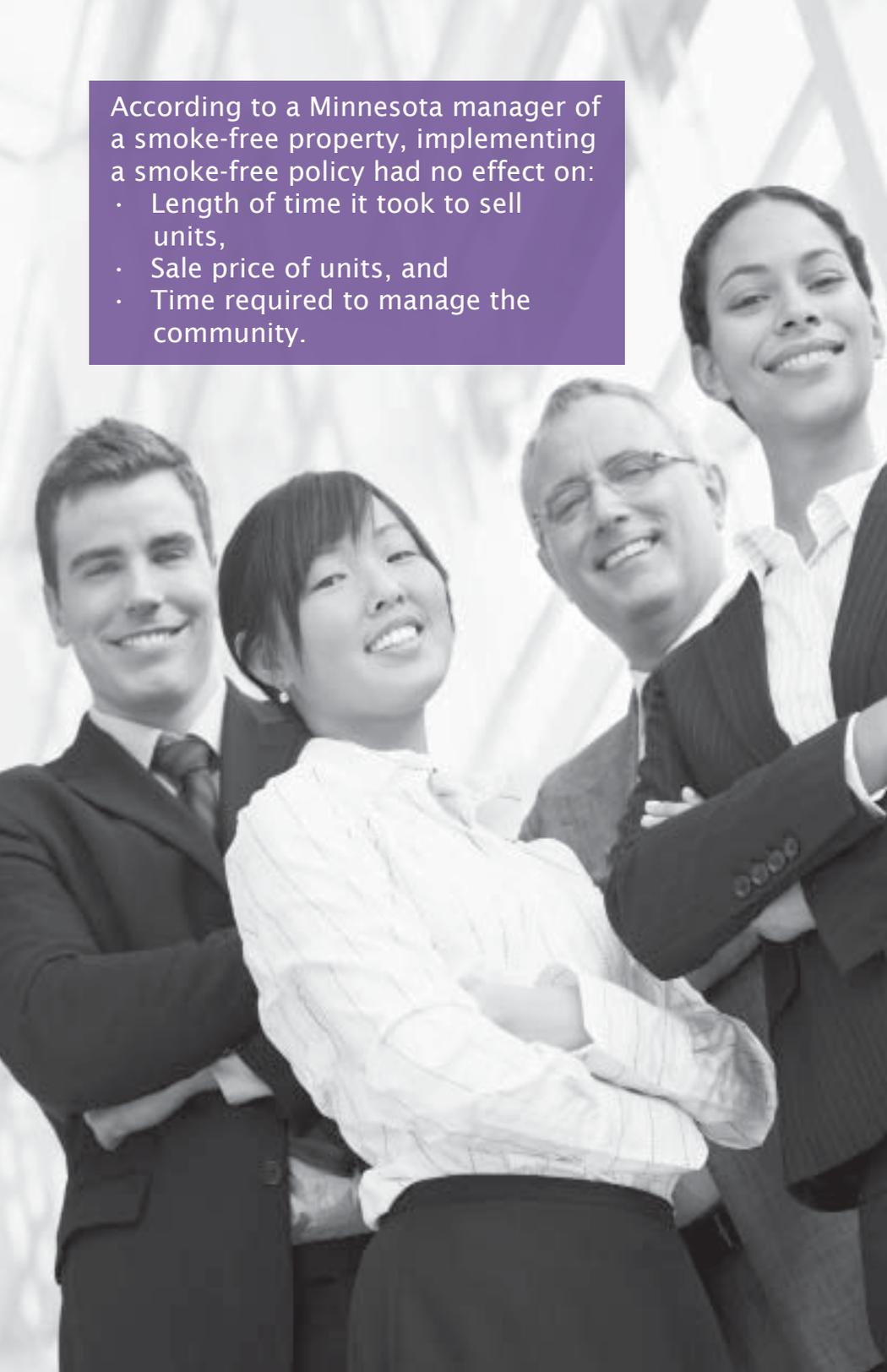
Only one of 17 respondents managed any common-interest communities that prohibit smoking both in indoor common areas and individual units. This community adopted a policy in 2007 in order to reduce disagreements between residents over smoke incursions. The smoke-free policy covers individual units; individual balconies, patios, and decks; and indoor and outdoor common areas.

The respondent reported that this policy has had **no effect on: how long it took owners to sell the units, the sale price of the units, time required to manage the community, maintenance costs, and legal or insurance costs for the community.** The respondent indicated that there were no negative effects of the policy. An additional positive effect he identified was “not having to deal with smoke smell.”

## Perceptions of Smoke-Free Policies Among Those Without Direct Experience

Only six of the 16 (38%) respondents who do not manage a smoke-free community were aware of any common-interest communities in Minnesota that have established smoke-free policies for all individual units.

Respondents who had no direct experience managing a smoke-free community perceived “providing a healthier or cleaner environment for residents” as the primary potential benefit of a smoke-free policy. Other benefits mentioned were “reduced maintenance costs” and “attracting ‘better’ buyers.”



# Smoke-Free Policies Are Legal

## Smoke-Free Policies:

- Are not discriminatory
- Are legal
- Reduce potential health-related lawsuits

## “What Does Minnesota Law Say Concerning Smoking in Multi-Housing?”

The common areas of rental apartment buildings are considered indoor public places and smoking is completely prohibited under the Minnesota Clean Indoor Air Act (MCIAA). The language of the law does not address common interest communities, and the Minnesota Department of Health has adopted an interpretation that MCIAA does not apply to common interest communities.<sup>9</sup> *No federal or state law prohibits private property owners and associations from adopting smoke-free policies for all parts of their property, including individual residential units.*

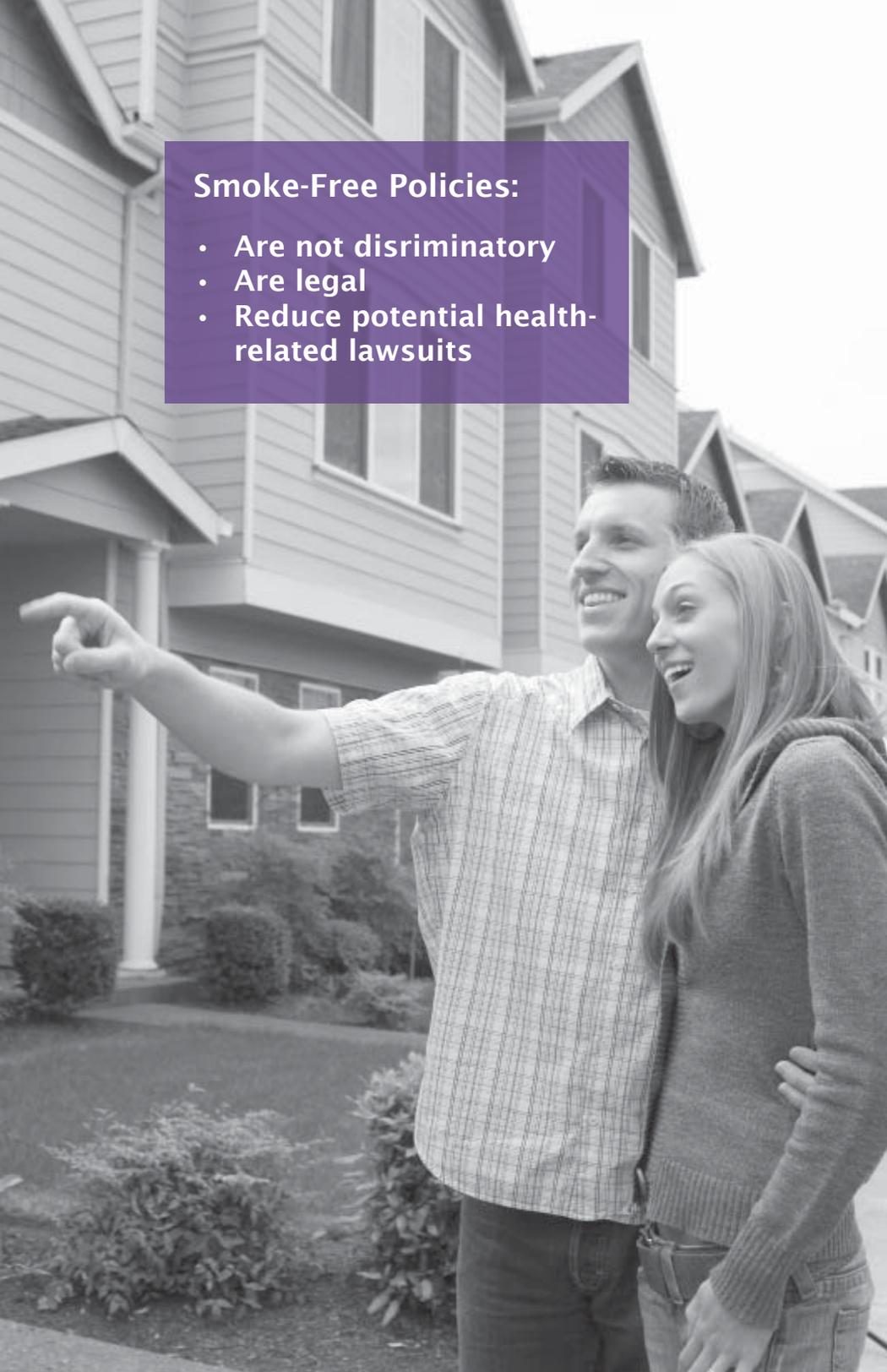
## “Is it Discriminatory to Designate an Entire Building or Property as Smoke Free?”

No. Smoking is not a protected activity or right. An individual’s status as a smoker is not a protected category or recognized disability.<sup>10</sup> A smart decision is to implement a policy based on the activity of smoking and not an individual’s status as a smoker. Write the policy so that a person who smokes can live in your building, but he or she must refrain from smoking in the areas that are included in the policy.

## “What Risks Does an Association Face by Remaining Smoking Permitted?”

If an association remains smoking permitted, two primary legal challenges may arise: a resident could sue either the association or the smoking owner claiming a nuisance. Most association declarations contain a generic nuisance clause stating that an owner cannot engage in activity that affects the use and enjoyment of another owner’s property. A resident bothered by secondhand smoke could bring an action against the association or the individual smoking owner.

If an individual bothered by secondhand smoke has a serious health condition that is affected by exposure to secondhand smoke, he or she may be able to get some relief by using one of the disability statutes. If the courts find that the condition is a disability, then the non-smoker is entitled to a reasonable accommodation, which could include imposition of a smoke-free policy.



# Adopting a Policy

## “What Areas of My Property Should be Covered?”

### Individual residential units

Covering all residential units ensures that smoke cannot drift from one unit to another unit in the building.

### Outdoor areas

You can choose to allow smoking in all outdoor areas, only allow smoking in designated outdoor areas, or prohibit smoking in all outdoor areas. Keep in mind that outdoor smoking areas should be a considerable distance away from entrances, storage areas, windows, patios, balconies, and ventilation intakes to prevent fires from starting in those areas and prevent smoke from drifting into the building.

### Common areas

Covering all indoor common areas such as pools and lounges will protect all residents from secondhand smoke exposure.

## “How Should My Association Adopt a Policy?”

A smoke-free policy can be implemented by a change to the declaration or to the rules and regulations. The Minnesota Common Interest Ownership Act (MCIOA) states that the declaration can contain, “any material restrictions” on use or occupancy of a unit.<sup>11</sup> The statute also permits rules and regulations concerning “the use of the units, and conduct of unit occupants, which may jeopardize the health, safety or welfare of other occupants, which involves noise or other disturbing activity.”<sup>12</sup>

## “Is it Better to Include the Policy in the Declaration or in the Rules?”

That decision depends on a number of factors that the association should consider such as: support for the policy change by association members, likelihood that the policy will be modified in the near future, and expectation that the policy will be legally challenged.

A change to the declaration is more difficult and costly to pass, but it will be given deference by the courts and be stronger against legal challenges. A new rule and regulation is easier to implement and change, but also more susceptible to challenges.

## Governing Documents: Definitions

- **Declaration** – the governing document that creates a common interest community. The declaration contains key information about the CIC including: whether it is a condominium, a cooperative or a planned community; the name of the community; a description of the property; and any material restrictions on use and occupancy. State law requires a supermajority of at least 67% of votes in the association to amend the declaration.
- **Rules and Regulations** – restrictions on the use of the units and/or conduct of unit occupants which may affect the health, safety or welfare of other occupants and requirements in areas such as payment of fees and conduct of meetings. The rules and regulations can generally be changed by a majority vote of the association board.

# Policy Enforcement

## “Is it Difficult to Enforce a Smoke-Free Policy?”

A smoke-free policy should be enforced as the association would enforce any other policy. From the experience of rental properties and condominiums that have already adopted smoke-free policies, these policies tend to be self-enforcing and do not require a substantial or unique amount of effort to enforce. In the survey conducted in Minnesota in 2009, the vast majority of condominium owners reported that they are already non-smokers; therefore, most owner-occupied units are likely already smoke free and will not require enforcement actions.

In order to remind residents about the policy and inform guests that are temporarily visiting, make sure to place signs on your property indicating which areas are covered by the smoke-free policy. If you have designated outdoor smoking areas, make sure that they are marked and have appropriate tobacco litter receptacles.

## Tips to Assist with Enforcement

To help the association enforce the policy, the procedures to warn a violator of infractions and the steps for enforcement should be clearly documented in the policy. If enforcement becomes necessary, the association should follow the procedures as documented, and always enforce the policy uniformly (against all violators), consistently (whenever a violation occurs) and in a timely manner.

Grandfathering current smokers is strongly discouraged because it can have an impact on enforcement. With grandfathered smokers scattered among non-smokers, identifying the source of the smoke may be challenging and maximum health benefits will not be achieved.

## “Can a Smoke-Free Policy Be Enforced Against Existing Smokers?”

Most likely, yes. As long as the homeowners’ association follows the state law on common interest communities and any of the requirements in their governing documents for amending the declaration or changing the rules and regulations, then the courts should support the association in enforcing the policy. In one case from Colorado, the court upheld a policy implemented by way of a change to the declaration and required the existing smoker to comply.<sup>13</sup>



# Resources

# References

## Smoke-Free Multi-Housing Programs—Minnesota

- **Twin Cities Metro Area:**  
Live Smoke Free: [www.mnsmokefreehousing.org](http://www.mnsmokefreehousing.org)
- **Northeast Minnesota:** American Lung Association of Minnesota's Smoke-Free Multi-Housing Program: [www.lungmn.org/tobacco](http://www.lungmn.org/tobacco)

## Smoke-Free Multi-Housing Programs and Resources—National

- **California:** Public Health Law and Policy/ Technical Assistance Legal Center: [www.phlpnet.org/tobacco-control/products/how-make-condo-complex-smokefree](http://www.phlpnet.org/tobacco-control/products/how-make-condo-complex-smokefree)
- **California:** Smoke-Free Apartment House Registry: [www.smokefreeapartments.org](http://www.smokefreeapartments.org)
- **Colorado:** Group to Alleviate Smoking Pollution: [www.gaspforair.org](http://www.gaspforair.org)
- **Maine:** Smoke-Free Housing: [www.smokefreeforme.org](http://www.smokefreeforme.org)
- **Ohio:** Smoke-Free Housing: [www.ohiosmokefreehousing.com](http://www.ohiosmokefreehousing.com)
- **Oregon:** Smoke-Free Housing Project: [www.smokefreeoregon.com/housing](http://www.smokefreeoregon.com/housing)
- **Utah:** The TRUTH: [www.tobaccofreeutah.org/aptcondoguide.html](http://www.tobaccofreeutah.org/aptcondoguide.html)
- **United States:** Americans for Nonsmokers' Rights "In Your Home:" [www.no-smoke.org/goingsmokefree.php?id=101](http://www.no-smoke.org/goingsmokefree.php?id=101)

## Minnesota Common Interest Community Associations

- **CIC Midwest:** [www.cicmidwest.com](http://www.cicmidwest.com)
- **Community Associations Institute:** [www.cai-mn.com](http://www.cai-mn.com)

## Minnesota Health Organizations

- **American Cancer Society:** [www.cancer.org](http://www.cancer.org)
- **American Heart Association:** [www.americanheart.org](http://www.americanheart.org)
- **American Lung Association of Minnesota:** [www.alamn.org](http://www.alamn.org)
- **Association for Nonsmokers—Minnesota:** [www.ansrmn.org](http://www.ansrmn.org)
- **ClearWay Minnesota:** [www.clearwaymn.org](http://www.clearwaymn.org)
- **Minnesota Department of Health Office of Tobacco Prevention and Control:** [www.health.state.mn.us/divs/hpcd/tpc/](http://www.health.state.mn.us/divs/hpcd/tpc/)
- **Minnesota Department of Health Indoor Air Unit:**  
(for help complying with the Minnesota Clean Indoor Air Act)  
1-800-798-9050 or [www.health.state.mn.us/divs/eh/indoorair/mciaa](http://www.health.state.mn.us/divs/eh/indoorair/mciaa)

## Tobacco Cessation Services

- **QUITPLAN® Services:** [www.quitplan.com](http://www.quitplan.com) or 1-888-354-PLAN

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12. Minn. Stat. § 515B.3-102(a)(ii).
13. Christiansen v. Heritage Hills 1 Condominium Owners Association, No. 06CV1256, District Court, Jefferson County, Colorado, November 7, 2006.