



# Smoke-Free Housing

## GET THE FACTS

### Legality of Smoke-Free Policies

Smoke-free policies are legal to implement and enforce. The following information can help you understand more about your rights as a private landlord, a property manager, or a public housing authority.

#### **There is no constitutional right to smoke.**

- ◆ Smokers are not a specially protected category of people under the Constitution's Equal Protection Clause.
- ◆ Under the Due Process Clause of the Constitution, smoking is not a specially protected liberty.
- ◆ The fundamental right to privacy does not apply to smoking.

Source: Samantha K. Graff, "There is No Constitutional Right to Smoke," Tobacco Control Legal Consortium, 2005.

#### **Landlords and property managers have the right to limit smoking.**

- ◆ There is no judicially recognized "right to smoke" in a multiunit dwelling, whether it is privately owned or public housing.
- ◆ In all fifty states private landlords, public housing authorities, and affordable housing owners can prohibit smoking in individual units as well as in common areas.
- ◆ In 2009, HUD issued recommendations "strongly encouraging" public housing authorities to enact smoke-free policies, and a number of other HUD opinions and cases approve the right of a public housing authority to prohibit smoking in properties subject to HUD authority.

Source: Susan Schoenmarklin, "Infiltration of Secondhand Smoke Into Condominiums, Apartments and Other Dwellings," Tobacco Control Legal Consortium, 2009.



To learn more about  
smoke-free policies and  
to access free resources,  
visit [smokefree.ne.gov](http://smokefree.ne.gov)  
or call 402-471-1807.

*Change is in the air.*