



U.S. Department of Housing and Urban Development

Minneapolis Field Office
920 Second Avenue South, Suite 1300
Minneapolis, Minnesota 55402-4012

August 1, 2007

Mr. Warren H. Ortland
Staff Attorney
Tobacco Law Center
William Mitchell College of Law
875 Summit Avenue
Saint Paul, Minnesota 55105

Dear Mr. Ortland:

SUBJECT: Interpretation of Implementation of Smoke-Free Policies for Housing Subsidized by the Department of Housing and Urban Development in Minnesota

In your letter of July 17, 2007, to Dexter Sydney, you requested this Office's interpretation as to the Department of Housing and Urban Development's (HUD) policy as to the establishment of smoke-free multi-residential properties assisted by the Department. Mr. Sydney has asked me to respond. Your research is correct that "there is no HUD policy, by statute, regulation, handbook, or otherwise, that restricts landlords from adopting a prohibition of smoking in common areas or in individual units." Enclosed are copies of letters provided by this Office to the Housing and Redevelopment Authorities of Melrose (2002) and Henning (2007), Minnesota, on that issue.

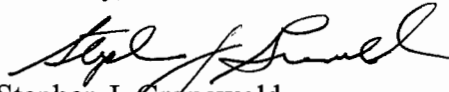
HUD, however, funds a substantial variety of housing programs: Public Housing, Section 8, FHA-insured, Section 202/811s, and various Community Development Block Grant (CDBG) programs, each with its own set of rules as to residency and occupancy. None, however, prohibit establishment of a smoke-free environment. The differences might be as to whether the establishment can be through the lease, a lease addendum, or a house rule. Section 202/811 projects, for example don't permit modification of the model lease, but a smoke-free policy could be established through the house rules.

You also mention the issue of "grandfathering of tenants" in the establishment of such a policy. You are correct that the HUD has no policy addressing the issue. However, strong caution is urged to any landlord to carefully craft such a policy in order to avoid suits based on theories of constructive eviction or breach of contract by tenants who have leases prior to such a policy.

In conclusion, smoke-free policies can be adopted in housing receiving HUD assistance, so long as they adhere to state and local laws.

If you have any questions, please don't hesitate to call me at (612) 370-3000, extension 2210.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen J. Gronewold". The signature is fluid and cursive, with the first name "Stephen" being the most prominent part.

Stephen J. Gronewold
Chief Counsel

Enclosure



U.S. Department of Housing and Urban Development

Minnesota State Office
920 Second Avenue South
Minneapolis, Minnesota 55402
<http://www.hud.gov/local/min/minhome.html>

FILE COPY

February 11, 2002

Mr. George O'Brien
Executive Director
Melrose Housing and Redevelopment Authority
16 East First Street South
Melrose, MN 56352

Dear Mr. O'Brien:

Subject: No Smoking Lease Addendum

Our Chief Counsel, Stephen Gronewold, reviewed the proposed no smoking addendum to be used by your HRA for units within the public housing project. Mr. Gronewold indicated there are no legal objections to the proposed addendum. However, he suggested one language change. The last sentence of the addendum reads:

"A violation or breach of this provision of the Dwelling Lease shall be enforced as provided in Article 16, paragraph g of the above referred to Lease."

It is his recommendation that you eliminate the reference to "paragraph g" since reference to Article 16 is sufficient. Termination under this addendum would be the basis, not termination under paragraph g. To be clearer, the HRA should reference the no smoking addendum as a separate paragraph under Section 16, such as 'paragraph t.'

A decision to prohibit smoking in Rose View Manor is at the discretion of the Melrose HRA Board and neither approved nor disapproved by HUD.

If you have any questions regarding the recommended changes, please contact Jerry Patiuk at 612 370-3135 ext. 2106.

Sincerely,

Diane C. Cmiel, Director
Office of Public Housing

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KPH:PATIUK

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KPH:CMIEL



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JUL 18 2007

Ms. Doreen Salvog, Executive Director
Housing and Redevelopment Authority
of Henning
500 Holden Avenue
Henning, MN 56551

Subject: Non smoking building

Dear Ms. Salvog:

You had requested a letter from our office asking for federal requirements of making a Public Housing building smoke-free. There are no federal regulations that govern designating a Public Housing building as a non smoking building. If a city ordinance does not address this issue, your Authority should follow state requirements. The Minnesota Department of Health allows rental property to be smoke-free, providing that you establish a smoke-free policy and that the smoke-free policy is stated in the lease agreement. Main entrances also need to be posted with the new policy. If you decide to adopt a smoke-free policy, your Board of Commissioners must approve it, and you will need to include this policy change in your PHA Plan. Residents also need to receive proper notice. Please keep in mind, a Housing Authority cannot deny applicants because they are smokers.

If you have any more questions regarding this topic, please call the Minnesota Department of Health at (651) 201-5000 or (888) 345-0823. If you have other questions, please call Tammy Widmann at (612) 370-3135, extension 2227.

Sincerely,

Diane C. Cmiel, Director
Office of Public Housing

Cc:

5KPH Henning Correspondence File
5KPH Reader Copy

5KPH:Widmann:taw:7-18-07 (g:NonsmokingbuildingHenning)

KPHM:WIDMANN

KPH:HEALY

KPH:CMIEL

TAW
7/18/07

HEALY
7/18/07

CMIEL
7/18/07