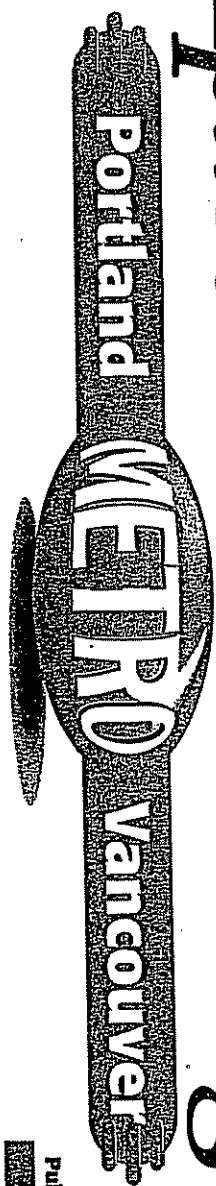


Over 50% of All Metro Apartment Manager Newspapers are Mailed to Apartment Owners

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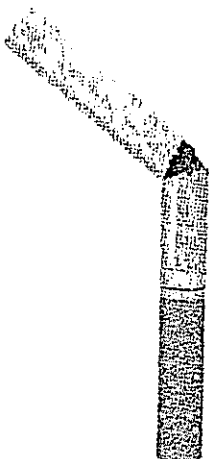
FHA Small Projects Demonstration Program Launched For Multi-Family Housing In Northwest and Alaska

Recently, the U.S. Department of Housing and Urban Development Region X announced the launch of a "fast track" Small Project Demonstration Program (SPP) for FHA insurance programs covering small mortgages up to \$1.5 million dollars. The SPP is available to all FHA-approved lenders for multi-family housing projects located in Alaska, Idaho, Oregon and Washington. The SPP Demonstration, which will run through June 30, 2008, is the cornerstone program for making new inroads into rural and other smaller project markets.

Continued on page 4

Can I Legally Prohibit Smoking at My Rental Property?

Yes! It is your property, and you have the right to protect it. You are free to ban smoking just as you would ban pets or loud music. Under the Oregon Indoor Clean Air Act (433.835-990), smoking is already prohibited in most enclosed indoor places, including indoor common areas of multi-unit housing. Landlords have the legal right to prohibit smoking inside rental



units and outdoors on their property, including doorways, balconies, courtyards, pools, and playgrounds. Prohibiting smoking is in your financial interest because it reduces damage to your property, decreases the expense of cleaning, repairs, and repainting when you turnover apartments, eliminates a major fire hazard, and appeals to the

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MOST, IF NOT ALL, OF THE MEMBERS throughout the course of the year at the monthly meetings.... well at least some members. In wrapping up our

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Chapter 29
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2007 COURSES

March 15 - 16, 2007
FIN 402 - Investment Real Estate
Financial Tools
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Clark County Rental Association

Wishing You a Healthy...

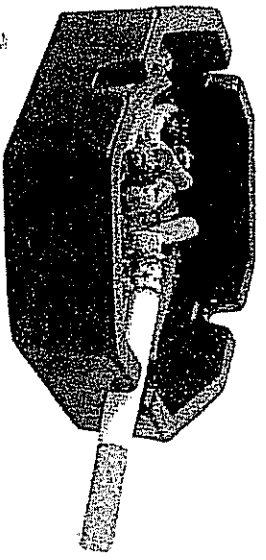
Can I Legally Prohibit

majority of Portland-area renters, three-quarters of whom would prefer to live in a smokefree building.

It is not discrimination to prohibit smoking. Smoking is a behavior, not an inborn characteristic, and smokers are not a protected class. If you prohibit smoking in your building, you will not be targeting any single protected group because there are smokers among people of every race/ethnicity, income level, education level, religion, sexual orientation, family type, disabilities, and other groups.

There is no right to smoke under the Constitution, Oregon laws, the Americans with Disabilities Act, the Fair Housing Amendments Act, the Civil Rights Act, the Housing and Community Development Act, or any other federal, state, or local law. There have been several court cases where smokers have sued for the right to smoke, and the smoker has lost every time. On the other hand, many nonsmokers have successfully sued for the right to be protected from secondhand smoke. A recent court case, *Poyck v. Bryant*, found secondhand smoke drifting between apartments was a breach of the implied warranty

of habitability and that secondhand smoke can be grounds for a constructive eviction (www.nylj.com). If you are interested in reading about these cases, or about how the ADA and FHA have been used to protect nonsmokers, please see the legal analyses listed at the end of this article. Sometimes, landlords wonder if smoking is a disability and if they will be required to allow smoking as a



reasonable

accommodation. In fact, smoking is not a disability. The Americans with Disabilities Act expressly provides that the act DOES NOT require the accommodation of smoking. It is much more likely that nonsmokers will request Reasonable Accommodations or start a lawsuit because of health problems caused by secondhand smoke. There are many conditions, such as chronic respiratory diseases, heart disease, cancer, asthma, Multiple Chemical Sensitivity, and Environmental Illness

that can be caused by and worsened by exposure to secondhand smoke.

There are a few different ways to create a no-smoking rule. You can add language to your lease at the time that new tenants move in, or when current tenants' renew their leases. You can also prohibit smoking as of a certain date. Make sure to give your tenants adequate notice, and have them sign the new rule. Post signs stating the rule, and enforce it like you would any other policy. The no-smoking rule

can be as simple or as detailed as you want to make it. Here are some things to consider including: a list of the places where smoking is and is not allowed; who the policy applies to (tenants, guests, staff, service persons, etc.); who is responsible for enforcing the rule; the consequences for violations; the effective date of the policy; and the definition of smoking. Smoking can be defined as "inhaling, exhaling, burning or carrying any

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SMALL LEGALLY PROHIBIT

lighted cigar, cigarette or other tobacco product in any manner or form."

Detailed model lease provisions can be found at <http://www.mismoke-freepartment.org/modellease.pdf>.

If you manage HUD-assisted housing, you can prohibit smoking using a House Rule or ask HUD to approve a Lease Clause. A letter obtained from HUD states 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 individual units," and that "project owners may devise reasonable no smoking rules at their properties that express legitimate concerns for the safety of the residents and conditions of individual units and the building as a whole." <http://www.mismokefreepartment.org/hudletter.pdf>

Prohibiting smoking at your rental properties is legal, saves you money, and is attractive to tenants. If you would like more information, and are in Multnomah County, and are in Multnomah County Health Department at 503-988-4163. For other areas in Oregon, please contact the American Lung Association of Oregon at 503-924-4094 ext. 23. If you are in SW Washington state, call Clark County Public Health at 360-

397-8000 ext. 7378.

Legal Analyses:

Infiltration of Secondhand Smoke into Condominiums, Apartments and Other Multi-Unit Dwellings
<http://www.wmitchell.edu/tobaccolaw/resources/schoenmarkinweb.pdf>

The Federal Fair Housing Act and the Protection of Persons who are Disabled by Secondhand Smoke in Most Private and Public Housing
http://www.tcsg.org/sfelap/fha_01.pdf

The Americans with Disabilities Act: Effective Legal Protection against Secondhand Smoke Exposure
<http://www.wmitchell.edu/TobaccoLaw/resources/Douglas.pdf>

Secondhand Smoke in Apartment Buildings and Condominiums
http://tcsg.org/sfelap/apt_condofact.htm

"The information in this article is for informational purposes only and is not offered or intended to be and should not be construed to be legal advice nor to be a substitute for obtaining legal advice from a licensed attorney."

President's Message

Continued from page 10

chase on line. Kathleen Harrison and Steve Siechau have started working with the State Association and are making progress toward integrated online availability of all of our forms. There are still a few kinks and details to work out, but we are hoping to be on line in the next few months.

Lastly, we installed our board and officers for 2007. I want to welcome our returning board members and officers as well as our new board members Maria Hickman, Leo Morley, Will McHarness and our new Treasurer Jon Moon. I look forward to working with all of you in the next year and hope you enjoy your service as much as I have enjoyed my two last years as President.

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