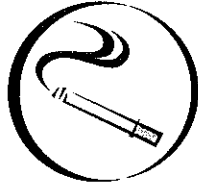




TO SMOKE OR NOT TO SMOKE IS NOT REALLY A QUESTION



It is a 'hotly' debated topic in rental properties. Because of the increasing complaints from non-smokers there have been local ordinances enacted in various parts of California and in other states prohibiting smoking within a certain distance of residential buildings, or certain portions of a building or certain apartments.

Q: What does California law say about smoking in residential rental properties?

A: At the present time there is no law specifically addressing smoking in residential rental property. CA Civil Code §1927 states that tenants are entitled to the quiet enjoyment of their home. A court would have to determine if second hand smoke was interfering with a tenant being denied the quiet enjoyment of their home. On the other hand the court might also have to decide if a smoker is being denied his right to the quiet enjoyment of his home if not allowed to smoke.

In addition to CA Civil Code §1927, there is also CA Civil Code §1941.1 and CA Health & Safety Code §179203, which require the landlord to guarantee that the rental property is and will remain habitable (Warranty of Habitability). Another possible court decision might be needed to determine whether or not a person's smoking results in an 'uninhabitable' condition.

Q: What steps can an owner take if a complaint is received from a resident about second hand smoke coming into their home from a neighbor?

A: After the complaint is verified, the owner should try to alleviate the problem.
For example:

1. If it is coming in through the vents he might have a technician look at ways to improve the insulation or filtering which might eliminate or lessen the problem.
2. If it is coming from outside and drifting upwards and into the unit, for example from a balcony, he might speak with the tenant who is smoking and ask them to be more considerate of their neighbor.

Q: What can a tenant do if the neighbor's smoke is causing health problems?

A: Notify the management of the problem and provide evidence of it causing health problems. If the health problems are severe enough that they are disabling, the tenant could submit a written request for a reasonable accommodation. Under the California Fair Employment and Housing Act (FEHA) an owner must grant a reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including public and common use areas. The exception to this provision would be if this accommodation would

create an undue administrative and financial burden to the property or result in a fundamental alteration of the services being provided.

Q: What should a tenant include in their request for a reasonable accommodation?

A: This request should include an explanation of the request, why the accommodation is being requested and confirmation from a physician or other persons/agency who can verify the disability and the need of the accommodation.

Q: What might constitute a reasonable accommodation for the smoking complaint?

A: Following are a few suggestions which might be considered by the owner:

1. Designating special smoking areas,
2. Prohibiting smoking within a reasonable distance of the building,
3. Prohibiting smoking on balconies or below balconies,
4. Allowing the tenant to relocate to another apartment,
5. Designate units adjoining the non-smoker's apartment to be smoke free,
6. Allowing the tenant to break their lease and move to a smoke free environment without penalty.

Q: Can policies be changed to make common areas smoke free:

A: Policies can be changed with a written 30-day notice and may be implemented with new tenants immediately. An owner can designate portions of a building or common areas to be smoke-free. There should be signage to indicate it is a 'smoke free zone'.

Q: Can there be certain apartments designated as non-smoking?

A: Yes, an owner can designate apartments as smoke free and this language should be in the rental agreement so that the tenants understand the rule applies not only to them but also to their guests.

Q: If a no smoking policy is implemented what would be the penalty for someone who violated the policy?

A: The enforcement of a no-smoking policy is no different than the enforcement of any of the other rules or policies, such as no pets, which the tenant has agreed to abide by. It could result in a warning and/or the serving of a termination notice.

Q: If a renter complains about the smoke does the owner have to terminate the smoker to accommodate the non-smoker?

A: No, the owner does not have to terminate the smoker unless the unit is designated as a non-smoking unit (see question above).

The owner is in an unenviable position of trying to maintain harmony and work out a reasonable resolution to avoid losing good renters because of a dispute between neighbors.

Q: Can a property owner be sued if he does nothing about a smoking complaint?

A: A property owner could be accused of failing to accommodate a person with a disability, if the smoke is interfering with a disabled person's ability to breathe properly and the owner fails to do anything to accommodate the person at their request.