



Property Management Edition: **Managing Marijuana Smokers**

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The Legal Information Line frequently receives questions from property management members asking guidance on the scope of “No Smoking” provisions within lease agreements and its applicability beyond tobacco, to controlled substances such as marijuana smoke. It’s a fair question because we traditionally think of smoking in terms of tobacco smoke. Bob Dylan’s famous tune rings true: the times they are a-changin. Changing times have given rise to e-cigarettes (vaping) and states have legalized the medical and recreational use of marijuana, so has the commonly assumed definition of smoking evolved. So what’s a landlord / property manager to do?

To clear the haze, we look to this particular law - NRS 678D.510(1)(c) - which provides, in short, that ***landlords can limit or prohibit smoking, cultivation, processing, manufacturing, sale, delivery or transfer of cannabis on that property.*** In summary, **landlords may safely adopt and enforce smoke free or marijuana free policies for their buildings.**

Considerations for Landlords / Property Managers:

- ***What does the lease agreement’s smoking policies say?***
 - If the smoking policy is vague or ambiguous, consider defining smoking in the additional terms, such as “*anything that involves lighting or heating and inhaling.*”
 - *See compiled list of Smoke-Free Resources, including sample lease addendums below.*
- ***How should tenant exemption requests from the No Smoking policies be handled when coupled with a medical disability?***
 - Department of Housing and Urban Development a.k.a. “HUD” has a memorandum that in summary states **property management may prohibit the use of medical marijuana as a reasonable accommodation because:**



- (a) persons who are currently using illegal drugs (which include medical marijuana) are disqualified from protection under the definition of disability in the law; and
- (b) such a proposed accommodation is not reasonable under the Fair Housing Act because it would constitute a fundamental alteration in the nature of the property's operation.

See HUD memo here: [USEOFMARIJINMFASSISTPROPTY.PDF](https://www.hud.gov/sites/dfiles/docs/USEOFMARIJINMFASSISTPROPTY.PDF)
([hud.gov](https://www.hud.gov))

- *What if the landlord wants to prohibit smoking but will allow use of marijuana on its property?*
 - We are talking about consumption of marijuana by other means such as edibles. Before taking this approach, **landlords should consult with their insurance carrier for any coverage consequences to allowing an activity that is illegal under federal law.** If applicable, property managers should review additional addenda to the lease, such as “House Rules”, and consider addressing preparation activities (e.g baking “special brownies”, producing hash oil, etc.) because of the potential damage to living spaces, building safety, and adjoining tenants' health from emitting odors.

The most important thing to take away here is landlords and property managers need to proceed with great caution because this is a rapidly changing legal environment! While today landlords may refuse to allow even medical marijuana that may change tomorrow. As we so typically do, we end with the best practice of:

If a landlord receives a request for a reasonable accommodation allowing medical marijuana, the best practice is to consult an attorney who's current on this rapidly evolving regulatory environment.

Free Lawyer Referral Service: <https://nvbar.org/for-the-public/find-a-lawyer/lrs/>

Smoke-Free Resources:

- 1) Smoke-Free Housing Tools and Information, powered by Southern Nevada Health District: [Clark County Smoke-Free Multi-Unit Housing Toolkit](https://www.getthehealthyclarkcounty.org)
([getthehealthyclarkcounty.org](https://www.getthehealthyclarkcounty.org))



- 2) Washoe County Health District, Resources for Owners and Managers to Adopt a Smoke-Free Policy: [For Owners and Managers \(washoecounty.gov\)](http://washoecounty.gov)
- 3) Tobacco Control Legal Consortium, Model No Smoking Policy Lease Addendum: [sf-lease-addendum.pdf \(gethealthyclarkcounty.org\)](http://gethealthyclarkcounty.org/sf-lease-addendum.pdf)
 - a) Legal Issues - Nevada: [sf-legal-issues-smoke-free-policies.pdf \(gethealthyclarkcounty.org\)](http://gethealthyclarkcounty.org/sf-legal-issues-smoke-free-policies.pdf)
- 4) American Nonsmokers' Right Foundation, Model Smokefree Lease Addendum: [Model Smokefree Lease Addendum - American Nonsmokers' Rights Foundation | no-smoke.org](http://no-smoke.org)

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