



## U.S. Department of Housing and Urban Development

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July 18, 2003

James A. Bergman, J.D.  
 Co-Director  
 The Center for Social Gerontology, Inc.  
 2307 Shelby Avenue  
 Ann Arbor, MI 48103

RE: No Smoking Policies at HUD Assisted Housing Developments

Dear Mr. Bergman:

This letter is in response to your letter dated December 23, 2002 relative to the above referenced subject. Currently, 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. Since HUD has not promulgated a binding smoking policy, this issue is left to the private owners consistent with any applicable state law(s). Currently, there is no Michigan statute in place that deals with this subject; however, Michigan's Attorney General has issued an opinion as to the separation of smokers and non-smokers in privately owned apartment complexes.<sup>1</sup> The Attorney General's opinion held that neither state nor federal law prohibits a privately owned apartment complex from renting only to non-smokers or, in the alternative, restricting smokers to certain buildings within an apartment complex. The opinion notes that Michigan law does allow for the regulation of smoking in public places,<sup>2</sup> which includes "a home for the aged, nursing home, county medical care facility, hospice or hospital long-term care unit." Therefore, FHA-insured homes for the aged and nursing homes are bound by state law concerning the regulation of smoking on the premises. Privately owned apartment complexes do not fall within the definition of public place as set forth in Michigan's Public Health Code.

Michigan's civil rights laws prohibit discrimination in real estate transactions, including the rental of apartment units. The Elliott-Larsen Civil Rights Act<sup>3</sup> states that "a person engaging in a real estate transaction...shall not on the basis of religion, race, color, national origin, age, sex or marital status of a person ...refuse to engage in a real estate transaction" with that person. There is no violation of this act, by virtue of the imposition of a no-smoking policy unless the refusal to rent or lease real estate is based upon one or more of the personal characteristics specified by the statute.

<sup>1</sup> Opinion No. 6719, dated May 4, 1992

<sup>2</sup> MCLA 333.12601-333.12617 et seq.

<sup>3</sup> MCLA 37.2101 et seq.

Likewise, the Federal Fair Housing Act<sup>4</sup> prohibits discrimination in the rental of a dwelling unit because of race, color, religion, sex, familial status or national origin. The right to smoke or not to smoke is not a right that is protected under the Civil Rights Act of 1964 or any other HUD-enforced civil rights authorities and because neither smokers or non-smokers are groups that receive special recognition under the Civil Rights Act of 1964, the restriction of smoking in privately owned apartment complexes does not violate the statute. Similar to Michigan law, federal law does not prohibit the separation of smoking and non-smoking tenants in privately owned apartment complexes and in fact, does not prohibit a private owner of an apartment complex from refusing to rent to smokers.

In summary, project owners may devise reasonable no smoking rules at their properties that express legitimate concerns for the safety of the residents and condition of individual units and the building as whole. As long as the no-smoking policies meet the normal house rules criteria, HUD approval is not required. Note however, that if the owners want to make their no-smoking policies a condition of the lease, HUD approval is required to the extent that the owner is bound to utilize HUD's model lease. In addition, if owners seek to make their complexes smoke-free they must take caution to grandfather in those smoking residents currently residing at the complex.

If you have any questions, please contact attorney Michael Polsinelli of my staff at (313) 226-7955.

Very truly,



Sheila Y. Walker  
Chief Counsel

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<sup>4</sup> 42 USC 3601 et seq.