



Tobacco Free
Florida
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A FLORIDA GUIDE FOR SMOKEFREE CONDOMINIUMS



TABLE OF CONTENTS

TABLE OF CONTENTS	2
INTRODUCTION	3
WHY GO SMOKEFREE	4
HOW TO GO SMOKEFREE	5
Step One: Educate and Gather Resident Input.....	8
Step Two: Design your Amenity.....	9
Step Three: Implement your Amenity	10
Step Four: Enforce your Amenity	12
IMPORTANT CONSIDERATIONS FOR A SMOKEFREE POLICY	14
What Areas Can Be Designated Smokefree?.....	14
SMOKEFREE POLICY OPTIONS	15
Amend Governing Documents to Prohibit Smoking in Units and/or Common Areas.....	16
Amend Nuisance Provision of Governing Documents to State that Secondhand Smoke is a Nuisance.....	16
Adopt a Rule Prohibiting Smoking in Common Areas.....	16
REFERENCES	17
APPENDIX	19
Frequently Asked Questions.....	20
Reduce the Potential Legal Liability.....	22
Sample Resident Survey.....	23
Sample Resident Policy	24
Additional Resources	25
Acknowledgements	26

INTRODUCTION

Has your condominium or cooperative association considered going smokefree? Are residents complaining about cigarette smoke or e-cigarette aerosol drifting into their homes? Have you had secondhand smoke drift into your own home? You are not the only one.

Secondhand smoke travels easily between units, damaging your property and threatening the health of your loved ones. Many condominium and cooperative associations in Florida are responding to these problems by adding a smokefree policy as a new amenity to provide clean air and stop smoking and “vaping” in common areas, individual units, or both.

Smokefree amenity potential benefits:

- Improved health and comfort of residents
- Reduced risk of residential fires
- Higher property values
- Lower cost of repairs and maintenance
- Diminished conflicts among residents
- Reduced premiums on some association insurance policies

Your condominium or cooperative board can add an effective smoke-free amenity using this guide. It outlines each necessary step and should help answer questions you may have about these policies. If you have any other questions feel free to contact your local Tobacco Free Florida representative. Our information and resources can help your community become a happier, healthier, smokefree facility.





PROTECT YOUR HOME

- A smokefree policy can decrease smoke and burn damage to property, lessen smoking-related fire risks, reduce liability for managers and owners, and improve occupancy rates.
- **Smoke from other units can come into your home. Up to 65 percent of air can be exchanged between units**, involuntarily exposing residents to secondhand smoke in neighboring units.
- Current heating, ventilating and air conditioning systems alone do not control secondhand smoke exposure. In fact, these systems may distribute secondhand smoke throughout a building.
- Smoke residue stays on furniture, upholstery, carpet and other household items for years.



PROTECT YOUR HEALTH

- Secondhand smoke increases a nonsmoker’s risk of cancer, heart disease and stroke.
- The only means of effectively eliminating health risks associated with indoor secondhand smoke exposure is to stop smoking activity in buildings.
- Secondhand smoke exposure contributes **to nearly 42,000 deaths each year in the United States**. Reducing the areas where people are exposed can lead to a decline in deaths from secondhand smoke.
- Exposure to secondhand smoke increases a child’s risk of lung problems, ear infections, and severe asthma, and even doubles an infant’s risk of Sudden Infant Death Syndrome (SIDS).
- Thirdhand smoke is a health hazard that impacts children, pets, and new owners after smoker has moved out.

WHY GO SMOKEFREE



PROTECT YOUR INVESTMENT

- 84 percent of Florida adults are nonsmokers, and survey findings indicate that four out of five would prefer living in a building with a smokefree policy.
- Smoking-related fires in residential buildings result in an average of **\$326 million in property loss each year**.
- A smokefree policy can decrease turnover and repair costs.
- After implementing a smokefree policy, you may be able to save money with insurance discounts and tax credits such as:
 - » Property and casualty insurance discounts
 - » “Green” building and HUD points applied to funding and tax incentives
- Associations which do not have smokefree policies can find themselves embroiled in disputes and even litigation between unit owners.

HOW TO GO SMOKEFREE

the easy way



Do your **homework**



Inform **the board**



Survey the condo owners for options



Make a **timeline**



Meet with your **attorney** to develop a policy



Educate the owners & make **partnerships**



Vote on the amendment



Notify & inform residents and vendors



Post signage on the property & **enforce the policy**



Advertise the condo as smokefree. It's an **amenity!**

HOW TO GO SMOKEFREE

Adding a smokefree amenity is simple.
We recommend following these four steps.

1. Educate & gather resident input
2. Design your amenity
3. Implement your amenity
4. Enforce your policy



STEP ONE: EDUCATE & GATHER RESIDENT INPUT



1. DO YOUR HOMEWORK

Educate yourself on secondhand smoke. Know and understand the current policies, procedures, bylaws and rules of your building. Your local Tobacco Free Florida representative can provide you with information and resources to help make a case to your board.

2. INFORM THE BOARD

Meet with board members to bring up the idea of implementing a smokefree policy, and educate them on the benefits.

3. SURVEY RESIDENTS

Surveys will give everyone the chance to give their input and opinion. See an example of a resident survey in the appendix.

4. EDUCATE & INFORM OWNERS

Send out letters, start a petition, and/or hold open discussions early when creating your smokefree amenity. Make sure to make educational and smoking cessation materials available to everyone.

5. CONNECT WITH PARTNERS & GATHER RESOURCES

Connect with your local Tobacco Free Florida representative and/or AHEC Tobacco Cessation Specialists to help you support residents during this transition. Consider seeking advice from other communities with a smokefree amenity.

6. ADVOCATE FOR CHANGE

Build support among owners, both smokers and nonsmokers. Listen to concerns, share health safety facts, economic benefits, and remind them that the policy is about the smoke, not the smoker.

STEP TWO: DESIGN YOUR AMENITY

1. CHOOSE A METHOD & DETERMINE THE EXTENT OF THE SMOKEFREE POLICY

See Methods of Implementing a Smokefree Policy (page 9) to determine which avenue of change is the best fit for your community.

2. DETERMINE IF THERE WILL BE SMOKING AREAS

Americans for Nonsmokers Rights recommends that designated smoking areas be located at least 25 feet away from the exterior of any buildings. It is important to keep these distances in mind for any residential buildings, entrances, pools or other common areas.

3. TALK TO YOUR ASSOCIATION ATTORNEY

Meet with your condominium lawyer. Doing so will ensure the policy change is concrete, fair, legally binding, and contains appropriate language.

4. DEFINE THE ACT OF “SMOKING”

“Smoking” should be defined broadly to ensure an effective policy. Make sure to include e-cigarettes.

5. SET A TIMELINE

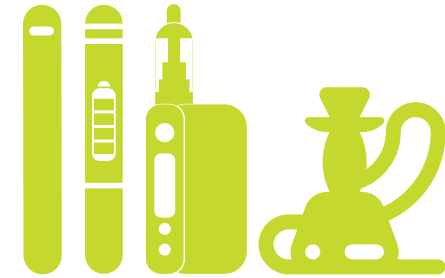
Pick a reasonable effective date. About 60 – 180 days after policy approval is a good place to start.

6. GRANDFATHERING

Determine if current residents will still be allowed to smoke, or “grandfathered” under the new policy. This is not recommended, but should be addressed in the policy.

7. ESTABLISH AN ENFORCEMENT COMMITTEE

Identify responsibility for ensuring compliance, and consequences for policy violation. Smoking-related policy violations should be dealt with similarly to existing policies and enforcement provisions.



What about e-cigarettes & hookah?

Make sure to include e-cigarettes, hookah and other products with nicotine in the policy.

E-cigarette aerosol contains dangerous chemicals, such as formaldehyde and acetaldehyde, and bystanders can absorb the nicotine from this aerosol.

For more information regarding e-cigarettes, visit the Tobacco Free Florida website or contact your local Tobacco Free Florida representative.

STEP THREE: IMPLEMENT YOUR AMENITY

1. BRING THE AMENDMENT TO THE BOARD

Amendments must be voted on by the condominium board, passing with a supermajority or majority vote. Make sure you check what your board requires.

2. DON'T VOTE TOO SOON

Wait until you are confident that you have the votes needed to pass a smokefree amendment before you actually call for a vote.

3. ADD AMENDMENT TO DOCUMENTS

Add the change to the official governing documents of the condominium or cooperative. Instruct owners to inform renters or rental agents of the policy.

4. NOTIFY & INFORM

Notify residents, vendors, contractors and staff of details surrounding the policy change. Clarify policy violation consequences, and let residents know their guests are also responsible for complying. Include the policy, as well as enforcement procedures, in contracts.







STEP FOUR: ENFORCE YOUR AMENITY

The following tips can help avoid enforcement issues & address violations as they occur.

1. POST SIGNAGE

Post no-smoking signs in common areas, hallways and outside building entrances. If the board decided to have a designated smoking area, make sure to post proper signage, install ashtrays, and locate it at least 25 feet from buildings and amenities.

2. REPAIR & REMOVE

Repair any cigarette damage in common areas. Consider installing new carpet in and around units where smoke damage may have occurred. Remove ashtrays from the property, and clean up cigarette litter. Doing so will discourage people from violating the nonsmoking policy.

3. ENFORCE THE POLICY PROMPTLY & CONSISTENTLY

Quickly respond to complaints of smoking and document where smoke is believed to be coming from. Follow up with enforcement promptly and fairly. Enforcing the smokefree policy as any other policy sends a clear message that smoking onsite is unacceptable, and those responsible will be held accountable.

4. ADVERTISE THE BUILDING AS SMOKEFREE

Advertise on your website, other communication channels (like social media), and onsite that your condominium or cooperative is smokefree. It is an amenity, after all!

IMPORTANT CONSIDERATIONS FOR A SMOKEFREE POLICY

Considering increased demand for healthy and smokefree living, policies that prohibit smoking are a sought-after amenity. Framing the new policy as a “clean air amenity” may attract new residents and aid in the passing of a vote. A smokefree policy does not mean that people who smoke cannot live in the building – it means that the act of smoking is not allowed in the areas which have been designated as being smokefree.

What areas can be designated smokefree?

Smoking can be restricted on the entire property or only in certain areas. There are different options you can mix and choose from when developing a smokefree policy. However, restricting smoking in individual units is the best and most effective option for ending issues with secondhand smoke.

INDIVIDUAL UNITS: Associations may restrict smoking in individual units, which would prohibit all current and future owners, renters and guests from smoking.

LIMITED COMMON AREAS: These areas may include balconies, and areas near windows and doorways. This option will prevent smoke from drifting to other residents’ balconies or lanais, and into their homes.

OUTDOOR COMMON AREAS: These areas include courtyards, swimming pools, patios, pathways, parking areas, and other common areas outside. Not only will this option protect residents from unwanted smoke, it will also reduce cigarette litter on the property. If you choose to designate a smoking area, be sure it is away from outdoor recreational areas to avoid secondhand smoke exposure.

INDOOR COMMON AREAS: These areas already have smoking restrictions in condo complexes, due to the Florida Clean Indoor Air Act. They include lobbies, elevators, stairwells, mailrooms, laundry facilities, and other indoor common areas.

To learn more about the FCIAA and how to report violations visit www.tobaccofreeflorida.com/clean-indoor-air-act.

SMOKEFREE POLICY OPTIONS

There are several ways **your condominium or cooperative** association can add a smokefree amenity. You can:

1. Make changes to the governing documents (such as the Declaration of Condominium or, in the case of Cooperatives, the Bylaws or Proprietary Lease “governing documents”) to prohibit smoking and e-cigarette use in individual units and/or common areas.
2. Amend the nuisance provision of the governing documents to state that secondhand smoke and e-cigarette aerosol are considered a “nuisance.”
3. Adopt a rule prohibiting smoking and e-cigarette use in common areas.

Your board should speak with legal counsel as to determine the proper steps to go smokefree, and discuss any expenses involved. It is not recommended for a board to attempt to craft or implement a smokefree policy without the assistance of counsel. Below are some options to take and considerations for going smokefree.

	AMEND GOVERNING DOCUMENTS	AMEND NUISANCE PROVISION	ADOPT A RULE
VOTING	Requires vote of condo owners, using formal voting procedures.	Requires vote of condo owners, using formal voting procedures.	Voted on only by the board, if the board has rulemaking authority.
ENFORCEMENT	The board has a duty to enforce the governing documents by fining, suspending common area use rights, restricting the rights of, and/or pursuing arbitration or injunctive relief against the violator. Individual owners can also enforce governing documents by suing the noncompliant owner (and possibly by suing the board if it failed to act to enforce the provision).		The board has a duty to enforce the rules and can do so by fining, suspending common area use rights and/or pursuing arbitration and/or injunctive relief.
IMPORTANT CONSIDERATIONS	Requires votes from enough owners to get passed. Because the owners vote to change the governing documents, their participation in the decision may make them more likely to comply with the new policy.	Adding smoking to the nuisance provision would not eliminate smoking in the condo – it would just allow the association and homeowners to more easily use the nuisance provision if secondhand smoke were entering their units. This approach may be useful if a ban on smoking in units isn't feasible.	Because a rule is only voted on by the board in most communities, this approach may work best for making the common areas nonsmoking – a less controversial restriction than smokefree units. Adopting a smokefree rule may work better for complexes where the board actively enforces rules.
DRAFTING	All options should be written by a lawyer.		

*Used with permission from Changelab Solutions

SMOKEFREE POLICY OPTIONS



AMEND GOVERNING DOCUMENTS

PROS: This option is more easily enforced by the board and condo owners. Also, it puts the decision in the hands of the membership, which will likely avoid a direct conflict between board members and current smoking residents. Amendments to the governing documents are cloaked with a presumption of reasonableness under Florida law. As such, legal challenges to the enforcement of recorded amendments are more difficult to mount.

CONS: This option requires more formal procedures that add time and possibly legal expenses.

VERDICT: This option is usually most effective, as it is easy to enforce and does the best job keeping secondhand smoke out of the home and away from residents.



AMEND NUISANCE PROVISION

PROS: This amendment would allow condo and cooperative owners, as well as the board, to utilize the provision more than they previously could. Both the board and condo owners are able to enforce this option.

CONS: This option would not eliminate smoking in the community, but will allow excessive secondhand smoke to be addressed as a nuisance activity. It will not create immediate change unless board members actively enforce it.

VERDICT: This action should only be used if it is highly unlikely that the membership will approve an amendment to their governing documents.



ADOPT A RULE

PROS: In most communities, this type of rule only has to be voted on by the board. Therefore, it is easier to pass a new rule. This option is the least expensive of all options, since no voting materials must be prepared.

CONS: The rules can be changed at any time. It may result in backlash by owners, since it is only voted on by the board. Also, due to the nature of how this change takes place, there is likely to be limited buy-in from condominium owners, reducing likelihood that the rule remains enforceable.

VERDICT: Adopting a smokefree rule may work better for complexes where the board actively enforces rules. This approach may work best for making the common areas nonsmoking, a less controversial restriction than smokefree units.

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A photograph of a family of four—two adults and two children—sitting on a light-colored rug and laughing joyfully. The father, on the left, is wearing glasses and a light blue button-down shirt. The mother, on the right, is wearing a light-colored blouse. The two children are also laughing and looking towards each other. The background is a softly lit indoor space.

APPENDIX

- A. Frequently Asked Questions**
- B. Reducing Your Liability**
- C. Sample Resident Survey**
- D. Additional Resources**

FREQUENTLY ASKED QUESTIONS

IS IT DIFFICULT TO ENFORCE A SMOKEFREE POLICY?

As with other association rules, like prohibiting loud music or overcrowding, it is important to create a clear policy with set consequences for policy violations. Further, enforcement must be prompt and consistent.

Enforcement may be progressive – perhaps starting with written warnings and increasing to fines. Be sure to consult with those responsible for ensuring compliance to ensure that the enforcement scheme is realistic. A smokefree policy is largely self-enforcing. Properties that have already adopted smokefree policies report needing minimal effort to enforce the policy.

IS ADDING A SMOKEFREE AMENITY EXPENSIVE?

Costs may be nominal and limited to printing (educational materials, surveys, signs, etc.), and filing fees to record the bylaw amendment. Your association may incur additional costs if it opts to hire an attorney to assist with the drafting process, or elects to construct an outdoor smoking area. Consider any costs an investment in the building and your health. Unlike costly cleaning and mechanical devices, an effective smokefree policy eliminates smoke hazards and reduces related health risks and discomfort. Communities with smokefree policies may even enjoy savings on insurance costs and building maintenance and experience a rise in market value.

“Going smokefree is one of the best things I have done in my career as a property manager.”

Mitzy Cordova, Wendover Management LLC.

ARE THERE ANY LEGAL BARRIERS TO ADOPTING A SMOKEFREE POLICY FOR COMMUNITY ASSOCIATIONS?

Federal and state laws allow private property owners and associations to adopt a smokefree policy for all parts of their property, including individual residential units.

IS SMOKING A PROTECTED RIGHT?

No. There is no such thing as a “Constitutional right to smoke.” The United States Constitution does not extend special protection to the decision to smoke. The fundamental right to privacy does not apply to smoking. Smoking is not a protected right under the Due Process Clause of the Constitution.

ARE SMOKEFREE POLICIES DISCRIMINATORY?

No. Nicotine addiction does not entitle anyone to special protections under federal or state anti-discrimination laws. Numerous condominiums in Florida are already smokefree, and many new developments are smokefree from the start. Smokefree policies do not discriminate against those who smoke or use e-cigarettes. Rather, they prohibit a type of behavior while in the unit or building. Anyone is welcome to live in a smokefree community provided they follow the rule.

FREQUENTLY ASKED QUESTIONS

WILL LEGAL LIABILITY INCREASE AFTER A SMOKEFREE POLICY IS INSTITUTED?

No. Condominium associations have a duty to act in the best interests of its members. Regardless of whether or not the association has a smokefree policy, owners may successfully argue that the association must act to stop secondhand smoke. Implementing a smokefree policy should deter smoking on the property, decreasing the likelihood of liability claims.

The condominium association should routinely and uniformly enforce the smokefree policy like any other rule. Your association should speak to its legal counsel about the various options to address the claims of existing smokers for grandfathered status.

WHAT RISKS DOES AN ASSOCIATION FACE BY CONTINUING TO ALLOW SMOKING?

If an association continues to allow smoking, anyone negatively affected by secondhand smoke exposure can take legal action against the offending resident or the association. Some condo owners have sued on the basis of nuisance, breach of fiduciary duty, breach of statutory duty to keep the premises habitable, breach of the common law covenant of peaceful enjoyment, negligence, harassment, battery, and intentional infliction of emotional distress. In several recent incidents, state courts have ruled against multiunit housing owners and managers, ordering significant rent reductions and other penalties.



REDUCE THE POTENTIAL LEGAL LIABILITY

Some owners who are frustrated by their associations' failure to control smoking in their building may seek to hold the association liable for the harmful environment created by secondhand smoke in common areas or individual units. The potential legal liability can be avoided by eliminating smoking.

COMMON LAW ACTION EXAMPLES

A resident can sue either the association or the offending resident on the common law grounds. This is an example from a previous court case:

MERRILL V. BOSSER

In 2005, a Florida resident was smoking excessively in his condominium to the point where the smoke alarm went off in the neighboring unit. One family living in a nearby unit experienced negative side effects from exposure to secondhand smoke due to a family history of respiratory allergies. The affected neighbor complained and the offending resident was evicted on technical grounds. The defendant (the owner, not the tenant), was found guilty of trespassing, nuisance, and breach of covenant. The complainant was awarded \$1,000 in damages.

If an individual has a serious health condition that is affected by exposure to secondhand smoke, he or she may be able to get some relief by using one of the disability statutes.

TENANT V. MAGNOLIA WALK APARTMENTS II

In 2011, a disabled tenant living in an apartment complex in Ocala, Florida was affected by secondhand smoke entering her unit. After she was diagnosed with chronic bronchitis and advised to avoid cigarette smoke, the resident brought an action against her building's management company for their failure to provide a reasonable accommodation for her disability. The defendant was charged with discrimination and ordered to compensate the affected party for her economic loss, including but not limited to: out-of-pocket expenses, emotional and physical distress, embarrassment, humiliation, inconvenience, and any and all other damages caused by Respondents' discriminatory conduct in violation of the Act.

GRANDFATHERING

Some current smokers may be against the new policy, and may suggest that some units be grandfathered under a new policy. Allowing current resident smokers to continue smoking in their units after the policy has gone into effect is not recommended – particularly when a smokefree policy is being considered as a result of one resident's secondhand smoke impacting another unit. Doing so can cause confusion about the application and enforcement of the policy among other residents, and fail to mitigate the negative impacts of secondhand smoke in the building. If board members insist on grandfathering units, the policy must include language that clearly states that grandfathered units will not be exempt from complaints under the nuisance provision.

SAMPLE RESIDENT SURVEY

Due to recent concerns about smoke and e-cigarette aerosol getting into homes where it is not wanted, we are currently reviewing our smoking policy. Your input will help us determine the best way to address these concerns in our community.

1. Do you allow smoking or vaping in your home?
 Yes No
2. Has anyone smoked or vaped anything in your apartment in the past 30 days?
 Yes No
3. Have you ever smelled smoke or e-cigarette aerosol in your home that comes from another unit or outside?
 Yes No
4. Would/does smelling smoke or e-cigarette aerosol in your home bother you?
 Yes No
5. Do any minors (under 18 years old) live in your unit or visit it regularly?
 Yes No
6. Do any seniors age 65 or higher live in your unit or visit it regularly?
 Yes No
7. Does anyone who suffers from a chronic illness such as asthma, chronic bronchitis, heart disease, diabetes, arthritis, or cancer (or a cancer survivor) live in your unit or visit it regularly?
 Yes No
8. Would you prefer to live in a non-smoking building so smoke from nearby units can't get into your home?
 Yes No
9. Would you prefer to live in a community where smoking is prohibited in outdoor areas such as balconies, the pool, and other activity areas?
 Yes No

Thank you for your input. Please leave any additional comments on the back of this sheet. Return your survey in the enclosed privacy envelope by _____ (date).

SAMPLE RESIDENT POLICY

SMOKING IS NOT ALLOWED IN <ALL COMMON AREAS & INDIVIDUAL UNITS>

Under the Rules and Regulations of the <Your Association Here>:

1. No owner, family member, tenant, resident, guest, business invitee, or visitor shall smoke cigarettes, cigars, or any other tobacco product, marijuana or illegal substance in outside common areas, enclosed common areas, and exclusive use common areas (balconies and patios included) within the project. <change these guidelines to match those in the title.>
 2. "Smoking" shall include the inhaling, exhaling, burning, or carrying of any lit cigarette, cigar or other tobacco product, marijuana, or illegal substance.
 3. "Business invitee" shall include, but is not limited to, any contractor, agent, household worker, or other person hired by the owner, tenant or resident to provide a service or product to the owner, tenant, or resident.
 4. Any owner who sells his/her unit shall specifically disclose to all potential buyers and Realtors that smoking is prohibited within all common areas in the project. Any owner who rents or otherwise allows someone other than the owner to reside within or occupy the unit shall disclose to all persons who reside within his/her unit that smoking is prohibited within all common areas prior to their residency or occupancy.
 5. Each owner is responsible for the actions of all other persons residing within or visiting his/her unit and shall be subject to disciplinary action or court action for an injunction, or any remedies available for the violation of this section. This section may be enforced in a court of law by any resident or the association. If any resident or the association is required to hire legal counsel to enforce this section, the resident or the association shall be entitled to recover his/her or its attorney's fees and costs incurred, whether or not litigation has been commenced. The association may collect the attorney's fees and costs it incurs through the use of a special assessment levied against the owner of the unit and an assessment lien, if necessary.
 6. The Board of Directors shall have the authority and power to enact rules and regulations which it deems necessary to enforce this restriction, including a schedule of fines which may be imposed after notice and a hearing, as described in the Rules and Regulations.
- Note: Drifting smoke from within a unit that enters another unit is also prohibited and will be enforced under the nuisance provision of the Governing Documents . Violation of any provision of the Governing Documents or Rules & Regulations may result in fines.

(MaineCondoPolicy.doc)

ADDITIONAL RESOURCES



TOBACCO FREE FLORIDA RESOURCES

- Smokefree housing: tobaccofreeflorida.com/smokefree-housing/
- Find your local Tobacco Free Florida representative: tobaccofreeflorida.com/get-involved/
- Resources to quit to tobacco: tobaccofreeflorida.com/quityourway/


FACT SHEETS

- Legal fact sheet: <https://publichealthlawcenter.org/topics/tobacco-control/smoke-free-tobacco-free-places/housing>
- CDC Florida fact sheet: www.cdc.gov/tobacco/about/osh/state-fact-sheets/florida/
- Secondhand smoke and disability: no-smoke.org/legal-requirements-protect-nonsmokers/

FLORIDA LAWS

- Protecting from secondhand smoke does not infringe on anyone's rights: www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0760/0760.html
- The Florida Clean Indoor Air Act: www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0386/0386.html
- Landlord/tenant statutes: www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099/0083/0083.html
- Abatement of nuisances: www.flsenate.gov/laws/statutes/2011/60.05





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ABOUT TOBACCO FREE FLORIDA

The department's Tobacco Free Florida campaign is a statewide cessation and prevention campaign funded by Florida's tobacco settlement fund. Since the program began in 2007, more than 212,000 Floridians have successfully quit using one of Tobacco Free Florida's free tools and services. There are now approximately 451,000 fewer adult smokers in Florida than there was 10 years ago, and the state has saved \$17.7 billion in health care costs. To learn more about Tobacco Free Florida's Quit Your Way services, visit www.tobaccofreeflorida.com or follow the campaign on Facebook at www.facebook.com/TobaccoFreeFlorida or on Twitter at www.twitter.com/tobaccofreefla.

