

# The New Smoking Ban: Are Your Communities in Compliance?



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As the smoke clears from your favorite watering hole, discussions linger about the propriety and constitutionality of New Jersey's Smoke-Free Air Act (the "Act"), prohibiting smoking from indoor public places and work places. While non-smokers leaving such establishments can revel in their newfound ability to still smell the fabric-softener from their clothes, smokers must grudgingly resign themselves to their now outdoor habit. Most of the press has focused on the impact of the Act on bars and restaurants, but the Act may also have a significant impact on the public areas of your apartment community. Failure to comply with the Act could subject residents, as well as owners and management companies, to not insignificant fines.

On April 15, 2006, the Act made smoking unlawful in indoor public places and workspaces. The penalty for refusal to comply is a fine for the smoker, of not less than \$250 for the first offense; \$500 for the second; and \$1,000 for each offense thereafter. The Act also obliges the local board of health, upon receipt of a written complaint, to issue written notification to the person in control of the indoor public place or workplace and to order compliance. Failure to comply subjects the "person in control" to the same fines as the smoker.

The most frequently discussed effect of the Act has been the ban of cigarette and cigar smoking in bars, restaurants, and taverns. Indeed, it was an alliance of bar and restaurant

owners that led the failed constitutional challenge to the Act in Federal Court in Trenton, immediately prior to its passage. The debate still centers around a smoker's right to smoke over a drink or dinner, and a non-smoker's right to breathe clean air.

However, the effects have also been felt in many work places which are now no longer permitted to allow a designated smoking area, and in indoor public places other than bars and restaurants. In this context, an "Indoor public place" is defined as a "structurally enclosed place of business, commerce or other service-related activity, whether publicly or privately owned or operated on a for-profit or non-profit basis, which is generally accessible to the public." N.J.S.A. 26:3D-57.

Indoor public places includes, by specific reference in the Act, the lobbies of apartment buildings. It also appears to extend to other public areas such as laundry rooms, community areas, maintenance buildings and leasing centers.

## What this means for your community:

1. Smoking is no longer permitted in apartment building lobbies, laundry rooms, models, work shops, maintenance buildings, community centers and leasing centers.
2. As an owner or management company, you must post a sign in every public entrance to the building containing letters or a symbol indi-

cating that smoking is prohibited and that states that violators are subject to a fine.

3. Owners, Management Companies, Residents and Guests are subject to fine for smoking (or allowing smoking) in the places listed above.

4. Owners and Management Companies are also obliged to order any person smoking in one of the places listed above to comply with the Act. If the smoker refuses, the smoker, but not the Owner or Management Company is subject to fine.

5. At least for now, smoking is permitted outside buildings at entrances and exits and on outdoor decks and patios. However, legislation has been introduced to ban smoking near entrances and exits.

The New Jersey Smoke-Free Air Act is codified at N.J.S.A. 26:3D-55, et seq. For more information, contact John D. Cranmer, Esquire, in Archer & Greiner's Haddonfield office at (856) 616-2686 or [jcranmer@archerlaw.com](mailto:jcranmer@archerlaw.com) ■

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