

[www.chicagotribune.com/news/local/red-122908-banniversary-main,0,5501846.story](http://www.chicagotribune.com/news/local/red-122908-banniversary-main,0,5501846.story)

# chicagotribune.com

## Happy banniversary

### It's been a year since the state banned smoking in public places. Could residences be next?

By Alexia Elejalde-Ruiz

RedEye

December 29, 2008

In the year since the Illinois smoking ban snuffed out cigarettes in bars, Jake Perry has drastically cut back--not on cigarettes, but on bars.

"It's just not fun anymore," said Perry, 34, who used to hit the bars every weekend and now rarely ventures out.

"You have to go outside, you can't drink your beer while you're smoking a cigarette," he said. "Even nonsmokers you're with get annoyed because suddenly a bunch of people decide to go outside to smoke, so they're left sitting by themselves."

Instead, Perry, an actor and writer, has friends over to his Lakeview condo, where he and his wife have stocked up on cartons of cigarettes that they buy when they're in the suburbs or out of state to avoid Chicago's high cigarette taxes.

Vehemently opposed to what he considers an unconstitutional smoking ban, Perry takes heart that smoking is sacred in the privacy of his own home.

But if Chicago follows the example of other cities across the country, residences could be the next front in the smoking wars.

Several California cities have adopted legislation restricting smoking in apartments. In Calabasas, Calif.--which made national headlines in 2006 when it banned smoking in all public places where anyone might be exposed to secondhand smoke, including sidewalks--a law enacted in February requires that 80 percent of apartment buildings be smoke-free by 2012.

Even without legislation, landlords nationwide are increasingly opting to ban or restrict smoking in apartment buildings in response to a rise in complaints about secondhand smoke traveling between units, said Betsy Feigin Befus, vice president and counsel with the National Multi-Housing Council, which is based in Washington.

"This is an emerging trend," Feigin Befus said.

For smoking rights activists, it's an unnerving trend. Gary Nolan, U.S. regional director for the Citizens Freedom Alliance and the Smokers Club, said he has no problem with property owners choosing to make their buildings smoke-



free if they wish, but forcing it through legislation infringes on private property rights, which he says are "already slipping through our fingers."

"My guess is they're going to go after apartments and condos next, if not cars," Nolan said. Several states already ban smoking in cars when a minor is present. "Their ultimate goal is to eliminate anybody being seen smoking," Nolan said, "and every one of those steps is heading in that direction."

For now in Illinois, anti-smoking proponents are more concerned with implementing the smoking ban in effect since Jan. 1 than waging a smoke-free apartment campaign.

"We're not ruling it out, but we're still dealing with regular attempts to weaken the law as it exists," said Mike Grady, the American Cancer Society's Illinois director of public policy and government relations.

Grady said there were seven separate bills offered in the last legislative session to repeal or weaken the Smoke-Free Illinois Act, including proposals to exempt casinos, veterans organizations, private clubs and adult entertainment venues. All were defeated.

Rather than legislate, Illinois anti-smoking advocates hope to encourage landlords and condo associations to ban smoking voluntarily, said Kathy Drea, director of public policy at the American Lung Association of Illinois and Greater Chicago.

"We get an unbelievable amount of calls on this issue," Drea said. "We will be working on smoke-free apartment buildings or condos, just not through passing bills or legislation." (The group does, however, plan to propose a bill to increase the Illinois cigarette tax from 98 cents to \$1.98 a pack, Drea said.)

Landlords are legally entitled to ban or restrict smoking, so long as they add the provision at lease renewal rather than amend an existing lease, Feigin Befus said. Smokers are not a protected class under the Fair Housing Act or the Americans with Disabilities Act, and apartment owners may actually be held more liable for allowing smoking than restricting it because of the risk of fire and potential damage to other tenants' health, she said. Smoking tenants also cost more in maintenance, as the carpets have to be cleaned and a special paint applied to the walls to block the odor once they move out, running \$400 to \$3,000.

Condo associations also can ban or restrict smoking in their buildings, including in individual units, said attorney Charles VanderVennet, whose Arlington Heights-based practice concentrates on condos and homeowners associations.

VanderVennet this year helped a 60-unit North Shore condo building become smoke-free after several condo owners complained that they could smell the smoke coming from their neighbors' units. At least 75 percent of the owners had to approve the smoke-free amendment to the condo covenant in order for it to be binding on everyone--and 82 percent of them did.

"I suspect they weren't pleased," VanderVennet said of the smoking condo owners. "But when the unit owner bought into the condo association, they are bound by the terms of the covenant, and the covenant said the document could be amended."

The Smoke-Free Environments Law Project, a Michigan-based initiative, said in a year-end report that there was "enormous growth" in smoke-free multi-unit buildings in 2007 and 2008, and it called smoke-free housing "the hot new amenity."

In Chicago, a new apartment complex in the South Loop touts itself as the city's first smoke-free apartment community. Opened in June, AMLI 900 prohibits smoking anywhere in the building, including on balconies and on the rooftop deck. First-time violators get a warning, then are fined \$250 for a second violation and \$500 for violations thereafter.

Fines are donated to the American Lung Association.

"We have found that 99 percent of people walking through the door are very excited about the policy," said Jennifer Wolf, senior vice president at AMLI Residential. The complex is 40 percent leased.

Illinois has been slower than many other states to catch on to the smoke-free living wave.

Jane Garvey, president of the Chicago Creative Investors Association, an educational group for landlords and property investors, said that while she thinks smoke-free apartments are a good idea, she hasn't seen many landlords attempting it because they can't always afford to turn smoking tenants away.

"Landlords are still having trouble finding people able to pay rent," Garvey said.

As he puffed on a cigarette outside a downtown bar on a recent 20-degree evening, Mark Lancaster, 30, said banning smoking in residences crosses the line.

Lancaster, who lives in Rogers Park, supports the smoking ban in bars.

"It's better for other people, and it's not a problem for me," he said before throwing his butt in a trash can (he hates when smokers litter).

But if apartments are the next anti-smoking frontier, Lancaster said he won't be so compliant.

"I'd break that rule," he said.

---

### **The rules**

The Smoke-Free Illinois Act, in effect since Jan. 1, 2008, prohibits smoking in all public places, places of employment, student dormitories and government vehicles. It also bans smoking within 15 feet of any entrance or window of a place where smoking is prohibited. The only exemptions are private residences, retail tobacco stores, private rooms in nursing homes and no more than 25 percent of hotel and motel rooms. Fines for violators range from \$100 to \$250, while the owner of a place where a violation occurs can be fined \$250 to \$2,500.