The Smoker Next Door …  
Handling Unwanted Tobacco Smoke in Apartments and Condominiums

Secondhand smoke seeping into apartments or condominiums from neighboring units poses both a health risk and a significant nuisance. The only fail-proof solution to this problem is for buildings to go entirely smokefree, either by a policy voluntarily adopted by building management or by local ordinance. Since personal dwellings are not considered public spaces, they are generally not covered under existing legislation regulating smoking in public places, but many states and municipalities prohibit smoking in common areas of multi-family housing. Additionally, some communities are now adopting ordinances to require no smoking in all or a certain percentage of the private units of multi-family housing.

While it is possible to file a lawsuit, the record of resolving drifting secondhand smoke conflicts in the courts is somewhat mixed. Nonsmokers have filed lawsuits against landlords or fellow tenants on the basis of nuisance, 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; courts have ruled for and against nonsmokers in individual cases.

Despite not always having a specific law to turn to, there are still a number of steps that you can take to protect yourself from secondhand smoke in your home. When weighing your options, keep in mind that air filtration and other ventilation systems do not eliminate the health hazards caused by secondhand smoke. Ventilation is not an effective alternative to creating safer and healthier smokefree living environments.

If you're sharing a building, you're sharing the air.
Visit no-smoke.org/at-risk-places/homes/ to find additional resources about your options for protecting yourself and your family from drifting secondhand smoke.

Clarify your goals.

- Your main goal is clear—you want to breathe smokefree air. It will be helpful if you have some specific ideas about how you want the problem resolved. Do you want an expense-paid voluntary relocation? Do you want out of your lease? Do you want the building designated as completely nonsmoking? Do you want at least one building of a multi-building complex designated as completely nonsmoking? Do you want outdoor private and common areas, such as patios, balconies and pool areas, to also be smokefree? The more you can clarify what it is you want from the neighbor or the management, owner, or condo association, the better your position. More and more, the choice is being made to designate all indoor areas of the buildings as smokefree and to create an outdoor smoking area away from the buildings, windows, doorways, and outdoor common areas.

- If you live in an apartment, you can encourage the management to create a smokefree environment by adding no-smoking language to the leases of tenants. If you live in a condominium, a solution that you can pursue is changing the conditions, covenants and restrictions (CC&Rs) through the established rule-making procedure so that the condo is
declared smokefree. Sample policy language for a smokefree apartment lease or condo CC &R is available at [https://no-smoke.org/at-risk-places/homes/](https://no-smoke.org/at-risk-places/homes/)

**Do your homework.**

- Learn about the health impacts of secondhand smoke exposure and the benefits of a smokefree apartment. There are several documents available at [https://no-smoke.org/at-risk-places/homes/](https://no-smoke.org/at-risk-places/homes/) to familiarize yourself with the dangers of secondhand smoke, your options to improve the situation, and why smokefree air is a benefit for tenants, landlords, and building owners alike.

- Read your lease or condominium agreement. Most leases contain language about the enjoyment of quiet and safe premises, implied warranty of habitability, nuisance, and rules about noise and other potential nuisances. These clauses prohibit tenants from engaging in activities that interfere with another tenant’s peace and well-being, such as loud music, noxious odors, noisy late-night parties, etc. Even if your agreement does not specifically address smoking, you can make a case that another tenants’ smoke drifting into your unit violates these other protections in your agreement that address quality of life and safety issues. Secondhand smoke is not only a nuisance but a serious health hazard.

- Check to see if there are any applicable local laws that regulate or prohibit smoking in multi-unit housing. Your city or county health department or local smokefree coalition can assist you. Even if there isn’t currently a law in your area, there may be efforts underway to track complaints about drifting smoke in housing, encourage landlords to make their buildings smokefree, and other local resources that you can utilize.

- Learn about applicable housing, tenants’ rights, and disability laws. Contact tenant and housing rights’ organizations and local bar associations to learn if any local or state laws apply to your situation, especially if you have a health condition that is impacted by the secondhand smoke exposure. ChangeLab solutions has [information on how California and federal disability laws can help residents exposed to secondhand smoke](https://changelabsolutions.org/).

**Try to resolve the situation amicably.**

- Approach the situation positively. Roughly 80% of smokers report that they want to quit, and only 20% are successful. Most smokers want to do the right thing but may not realize the negative impact they are having on their neighbors. So, begin with the assumption that your neighbor and manager are interested in your health and well-being. Take a friendly, educational approach. Let the neighbor know that you are experiencing difficulty from their secondhand smoke, and that you are concerned about your health. Let them know that you are flexible and interested in working out a mutually satisfying solution.

- Don’t assume that your neighbors or your landlord know much about the health effects of secondhand smoke. Try posting information about secondhand smoke on apartment bulletin boards, in laundry rooms, or in condominium newsletters.

- **Share information with Property Management and neighbors,** including many resources available at [https://no-smoke.org/at-risk-places/homes/](https://no-smoke.org/at-risk-places/homes/)
• The biggest hurdle to resolving disputes about drifting secondhand smoke is misinformation. Your landlord, management company, or owner’s association may be unaware that it is perfectly legal to require that an apartment building or condominium be smokefree. This can include private units, as well as outdoor areas such as patios and balconies. People often mistakenly believe that there is a legally protected “right to smoke” or that a smokefree building policy would discriminate against smokers. However, there is no such legal right to smoke, and people who smoke are not a protected class. The courts have held that protection of nonsmokers against the hazards of secondhand smoke takes precedence over smokers’ desire to light up wherever they choose.

A smokefree building is the best interest of both management and residents. It protects the health of residents at the same time as protecting management’s investment by saving money and reducing the risk of fire.

• Recognize that your landlord or property management may not care about your health, but they probably do care very much about the safety of the building and their economic investment. You may want to remind management of the significant economic costs associated with smoking. Property management companies and building owners usually choose to make their buildings smokefree to reduce the risk of fire, reduce maintenance costs, limit the cost of repairs and replacements (carpets, drapes, painting) when turning over a smoker’s unit, and reduce vacancy since there is increasing public demand for smokefree apartments.

• A no-smoking policy is an easy change to carry out: a no-smoking clause can simply be added to all rental agreements, in most cases including existing leases. Then, inform all residents of the change prior to its implementation, and post clear signage. Violations are handled just like any other lease violation.

• Property managers also may not be aware of the various legal protections afforded nonsmokers and the legal remedies that can be pursued by someone who is being impacted by secondhand smoke, especially by people who have breathing disabilities.

Find allies.

• You may not be the only one affected by secondhand smoke in your apartment or condominium complex. Other tenants may be willing and interested in joining with you to find a solution. Find out if any of the other tenants have health problems that make them particularly susceptible to the hazards of secondhand smoke. When discussing the problem of seeping secondhand smoke with the landlord, owner, or management association, you are likely to have greater success with many voices instead of one. As if fellow residents are willing to sign a petition, co-sign a letter, or even help host a meeting for all residents and management in support of making the building smokefree.

• Other good allies may include voluntary health groups such as the American Cancer Society, the American Lung Association, and the American Heart Association, local tobacco control coalitions, and your local health department.

Get a note from your doctor and keep documentation.

• A letter from your physician lends credibility to your complaint that you are being negatively impacted by drifting secondhand smoke. If your first informal complaint to management is not
addressed to your satisfaction, send a formal complaint, together with your physician’s letter, both to the property owner and the offending neighbor. Again, indicate that you wish to resolve the situation amicably.

- Document your situation. Keep a dated record in a notebook of when smoke infiltrates into your apartment, as well as all interactions and communication with your landlord, neighbors and others about the issue. Keep copies of any written or emailed correspondence. It’s always smart to send paperwork Certified Mail, Return Receipt Requested. A paper trail is important to demonstrate the seriousness of the issue and what you’ve done to try to resolve it, especially if you eventually pursue a legal remedy.

There are always last resorts.

- Consult an attorney before seeking a legal remedy. If nothing else has worked, don’t be afraid to resort to the threat of a lawsuit. No one wants to be sued. Advise management of its potential liability in this matter. Tenants have sued on the basis of nuisance, 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. A body of case law is building that holds management responsible for exposing tenants to secondhand smoke. However, you are dealing in a “gray area” of the law, and cases about drifting smoke in housing have had mixed results over the years.

Help protect both yourself and others: Pass a local ordinance.

- You are not alone. More and more people are complaining of secondhand smoke in multi-unit dwellings. Working together, you can make a difference. The best protection comes from enacting a local law that protects people, such as yourself, from the hazards of secondhand smoke. A local ordinance can:
  
  - Require all multi-family buildings, including private units, be smokefree.
  - Require a certain percentage of units in all multi-family buildings be smokefree.
  - Require multi-family building complexes with two or more buildings to designate at least one building as smokefree.
  - Require the declaration of secondhand smoke as a legally actionable nuisance.
  - Require the disclosure to potential new tenants of a) whether smoking is allowed in the building and if so, b) whether smoking occurred in the specific unit in question, c) in which units smoking currently takes place, and d) how drifting smoke disputes are addressed.

This information is not intended to serve as legal advice by American Nonsmokers’ Rights Foundation; the law varies from jurisdiction to jurisdiction. If you intend to file a lawsuit, please consult an attorney who is familiar with the laws in your community.

Secondhand smoke exposure in multi-unit dwellings such as apartments and condominiums is unfortunately both a common problem and also dangerous for you and your family. Exposure to secondhand smoke can lead to serious health problems including lung cancer, heart disease and stroke, and can make asthma worse in adults and children. It is especially dangerous for children as it can result in permanent damage to growing lungs, and cause respiratory illnesses like bronchitis and pneumonia, ear infections and sudden infant death syndrome (SIDS).1

Secondhand smoke can seep into multi-unit dwellings from many places, including vents and cracks in walls or floors.

You are not alone in being exposed to secondhand smoke in your multi-unit dwelling. Based on several studies, an estimated 44 percent to 53 percent of multi-unit housing residents that do not allow smoking in their home, have experienced secondhand smoke infiltration in their home from elsewhere in or around the building.2 The steps below can help you if you find yourself facing this difficult situation.

Steps to Take to Protect You and Your Family from Secondhand Smoke Exposure

1. Check your lease for your apartment or rules for your condominium to see if smoking is addressed or even allowed

2. See if there are laws in your community that apply to secondhand smoke in multi-unit housing
   - In Maine and Oregon and some local jurisdictions in other states, owners/managers of apartments are required to disclose to renters where smoking is allowed or not before they rent an apartment to a tenant.
   - Some local communities in California prohibit smoking in all or a certain percentage of units of multi-unit housing.

3. Talk with your neighbors about your exposure to secondhand smoke.
   - If you know where the smoke is coming from and feel comfortable talking with your neighbor about it, see if an agreement can be reached about where and when they smoke. Try to be calm, polite and offer solutions.
   - Engage and connect with other neighbors about how secondhand smoke may be affecting them and their families, and work together.

4. Talk with your doctor if secondhand smoke is affecting your health and get a note from them that exposure to secondhand smoke is or may be contributing to your illness.

www.lung.org/smokefreehousing
Steps to Take to Protect You and Your Family From Secondhand Smoke Exposure Continued...

5. Talk with your landlord/property manager about the secondhand smoke problem in your apartment.
   - An in person meeting or written communication is better, keep a record of all communications in case it is needed later.
   - Be calm, polite, stick to the issue, and ask what solutions might be available.
   - Bring with you or include your doctor’s note about exposure to secondhand smoke if applicable.
   - Ask other neighbors who are being affected by secondhand smoke to attend the meeting with you or send letters too.
   - If your building does not have an indoor smokefree policy, including in living units, ask them about adopting one.
   - Ask them to conduct a tenant survey to gauge the views of residents about a policy prohibiting smoking in all indoor areas. Generally, the majority of residents will be supportive of a voluntary smokefree housing policy.

6. If and when the landlord/property manager gets back in contact with you, they may try to fix the problem by plugging underneath your door or sealing cracks in your walls. This may solve the problem temporarily, but most likely not permanently.
   - Eliminating secondhand smoke exposure indoors is the only permanent solution.

7. You have additional options if the landlord/property manager can’t or won’t fix the problem.
   - The Federal Fair Housing Act could be used if secondhand smoke is causing breathing difficulties, for more information go to, http://www.mdsmokefreeapartments.org/tenants/fair_housing_act.html.
   - There are also other legal options, although a lawsuit should be your last resort after other options have been tried. For more information: http://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-condos-2009_0.pdf.
   - If possible, consider moving to another property. If it comes to that, you should ask your landlord/property manager to waive any penalties for breaking your lease.

Additional Resources
There are many additional resources that can provide more information on secondhand smoke in multi-unit housing, here are a few of them:

- The American Lung Association has several nationwide resources available, including its online course and an issue brief in English and Spanish, all available at www.lung.org/smokefreehousing.
- The U.S. Department of Housing and Urban Development (HUD) has created an online toolkit, http://portal.hud.gov/hudportal/documents/huddoc?id=pdfresidents.pdf that provides materials to residents of public housing authorities looking to adopt smokefree buildings.
- There are a number of state and local level websites focused on secondhand smoke in multi-unit housing that may be able to provide more individual assistance in your state or community.

Adopting a Building Wide Smokefree Policy is the Best Way to Protect All Residents from Exposure to Secondhand Smoke

It is perfectly legal for landlords/property owners to adopt policies prohibiting smoking in all indoor areas of their buildings, including in living units or even on their property. There is no legal or constitutional right to smoke.

You can learn more about how to help adopt a smokefree policy in your building through the American Lung Association’s free online course, Smokefree Policies in Multi-Unit Housing: Steps for Success. You can register to take the course at www.lung.org/smokefreehousing.

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Secondhand smoke in Housing

There is no safe level of exposure to secondhand smoke. Secondhand smoke drifts through multi-unit buildings and can enter common areas and units occupied by non-smokers.

Secondhand smoke harms children by increasing the risk of asthma attacks, ear infections, respiratory infections, sudden infant death syndrome (SIDS), and behavioral problems.

Secondhand smoke drifts through doors, windows, hallways, and ventilation ducts, and through gaps around outlets, fixtures, and walls. Ventilation systems, air purifiers, and sealing up cracks cannot prevent secondhand smoke from drifting throughout buildings.

Up to 65% of the air in an apartment can come from other units in the building.

The only way to protect health is for buildings to be completely smokefree.

Residents NEED and WANT smokefree housing. Up to 65% of the air in an apartment can come from other units in the building.

1 in 3 nonsmokers living in rental housing are exposed to secondhand smoke.

Only 30% of multi-unit residents live in smokefree buildings, but the majority would prefer their building to be smokefree.

Everyone deserves to breathe smokefree air at home.

A smokefree building is legal and is not discriminatory. Residents have the right to speak up and ask for the building to be smokefree.

Healthier
- Reduce health risks

Cleaner
- Reduce smoke damage

Safer
- Reduce fire risk

Resources for residents & housing providers are available at no-smoke.org/at-risk-places/homes/
WHAT IS THIRDHAND SMOKE?

Thirdhand smoke is the residue from tobacco smoke that remains in the environment after smoking has occurred. In the home, thirdhand smoke can settle on walls, carpets, countertops, tile, upholstery, and other surfaces.\(^1\) Thirdhand smoke can be ingested, absorbed, or inhaled as the chemicals get released back into the air.\(^2\) In multi-unit housing, it can be found in units where smoking occurred, as well as units into which smoke drifted from another unit.

Thirdhand smoke cannot be completely eliminated with normal household cleaning or by airing out rooms, opening windows, using fans or air conditioners, or confining smoking to only certain indoor areas.\(^1\) It builds up over time and remains in the home long after the smoking occurred.

IS THIRDHAND SMOKE HARMFUL?

Exposure to thirdhand smoke can have harmful health effects, including:

- Higher risk of heart disease, stroke, and other smoking-related diseases\(^1\)
- Release of particles that could contribute to cancer and respiratory problems\(^4\)
- Linked to diabetes, lung and liver damage, slow healing of wounds, and hyperactivity in mice\(^5\)

Children have a higher risk of exposure because they are often in close contact with contaminated surfaces and are more likely to put their hands or other objects in their mouths. The risks of youth exposure to thirdhand smoke include:

- Increased likelihood of Sudden Infant Death Syndrome (SIDS)\(^3\)
- Increased likelihood of asthma\(^3\)

DOES THIRDHAND SMOKE CAUSE DAMAGE?

Property damage caused by thirdhand smoke can increase turnover costs and decrease property value. Restoring an apartment damaged by thirdhand smoke can cost on average 2-3 times more than a non-smoking unit. Moreover, thirdhand smoke can lead to reduced renter appeal.

HOW DO YOU KNOW IF AN APARTMENT IS CONTAMINATED?

Smell: You can smell cigarette smoke in the apartment.

See: You can see staining or discoloration of surfaces such as walls, countertops, and tiles.

Test: Even in the absence of stains or odor, thirdhand smoke may still be present. Several test kits are available (see examples below), although, Live Smoke Free cannot attest to their efficacy or recommend a particular brand.

- Nicotine test kit from EMSL Analytical: http://www.emsltestkits.com/nicotine
- Tobacco smoke test kit from Home Air Check: http://homeaircheck.com/products/
HOW CAN YOU PREVENT EXPOSURE?

RENTERS
If you smoke:
- Always smoke outside to protect your family, friends, and neighbors
- After smoking, change your clothes before coming in close contact with others, especially children

If you are moving to a new apartment:
- Make sure the building has a smoke-free policy before you sign the lease
- If the building recently went smoke free, ask if the unit was thoroughly painted and cleaned

If you live in an apartment with thirdhand smoke contamination:
- Ask the property owner or manager to restore the apartment by painting, deep-cleaning, and replacing fixtures
- Ask to move to a different unit

MANAGERS
- Adopt a smoke-free policy for your building
- Clean and restore apartments after the building goes smoke free
  - Mitigation may require painting, deep-cleaning, and replacing fixtures such as carpet, counter tops, and tile
  - Cleaning and restoring apartments helps smokers quit because it eliminates the smell of cigarette smoke, which can be a trigger for some smokers

FREE RESOURCES FROM LIVE SMOKE FREE
- Consultations and Presentations
- Promotions (Press Releases, Signage, Listing in a Statewide Housing Directory)
- Implementation Tools (Surveys, Notification letters, Lease language, Translated documents)
- Educational Resources (Tailored for Management, Staff, and Residents)
- Linkages to cessation resources

References

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