

Secondhand Smoke in Apartments and Condominiums: A Guide for Owners and Managers

Secondhand smoke is the third leading cause of preventable death in the United States. Approximately 53,000 people die annually from diseases caused by secondhand smoke, with hundreds of thousands more suffering ill effects from exposure. Multi-unit dwellings present a particular challenge for dealing with this significant health and nuisance problem. Tobacco smoke from one unit may seep through cracks, be circulated by a shared ventilation system, or otherwise enter the living space of another. You may wonder what you can do to mitigate some of these problems. The following information should help guide you to an informed decision about what corrective actions to take.

Work Creatively With Tenants toward a Mutually Satisfying Solution

Many disputes over secondhand smoke can be resolved amicably, if both parties remain open and flexible. Creative solutions may relate to when and where smoking is to occur, as well as improvements to the actual physical structure. Keep in mind that air filtration and other ventilation systems do not eliminate the health hazards caused by secondhand smoke. Ventilation is not a viable alternative to creating safer and healthier smokefree living environments for your tenants.

Some smokers adopt the attitude that no one can tell them what to do in their own homes. In such cases, you may need to point out that their lease or condominium agreement contains covenants, conditions, or terms prohibiting persons living in the building from engaging in behaviors that unreasonably interfere with the enjoyment of another (assuming such a nuisance clause does, in fact, exist). Let the smoker know that you are willing, if necessary, to restrict or outright prohibit smoking in the building if he or she cannot voluntarily solve the problem.

You may wish to consider separating the units of smokers and nonsmokers (through voluntary relocations), or designating some buildings of a multi-building complex as smokefree. By advertising that you offer a smokefree environment, you may find that there is a sizable market for such accommodations.

At a minimum, it is a good idea to implement *and enforce* a “no smoking” policy in all common areas of the apartment or condominium. Such areas include rental or sales offices, entrances, hallways, exercise and swimming pool areas, and laundry rooms.

To Completely Solve the Problem, Eliminate Smoking

There is no constitutional or other legal right to smoke. Like other activities that cause annoyance, irritation, or health problems, smoking—even in private dwellings—can be regulated or prohibited outright. The property manager, owner, or owner’s association can implement a smokefree policy. Often these policies are phased in gradually with new leases containing a clause that prohibits smoking both indoors and on all grounds. For example, the Park Tower Apartments in Loves Park, Illinois implemented a policy that bars new tenants from smoking anywhere in the building, including inside their individual dwellings, but the policy did not affect those who were already tenants when the policy went into effect.

Allowing a smoking conflict to continue unresolved may expose you to legal liability. For example, in 1991, a Massachusetts woman sued her landlord because she was constantly exposed to a neighbor's secondhand smoke. The case was settled for an undisclosed amount (*Donath v. Dadah*; see Sweda, 1997). Similarly, a year later a tenant who was suffering from smoke coming from a lower apartment sued their landlord in Oregon. A jury, finding the landlord guilty, reduced the tenant's rent by 50 percent, and awarded her payment to cover her doctor's bills (*Fox Point Apts. v. Kippes*; see Sweda, 1997). These are illustrations of a growing body of case law that holds landlords responsible for exposing tenants to secondhand smoke. 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 (Carlson, 1997).

There are a number of benefits to implementing a smokefree policy, in addition to the avoidance of legal liability. These include:

- A complex-wide policy relieves individual tenants from the burden of trying to persuade smokers not to endanger others with their smoke. Since most tenants do not smoke, they will appreciate the smokefree environment.
- There are sound economic reasons to implement a smoke-free policy. Smoking significantly increases fire hazard, and boosts cleaning and maintenance costs. Also, many property insurance companies offer a discount for buildings with no-smoking policies.

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REFERENCES

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