

Secondhand Smoke

Secondhand smoke is the combination of “sidestream” smoke (the smoke given off by a burning tobacco product) and “mainstream” smoke (the smoke exhaled by a smoker). Tobacco smoke contains more than 7,000 chemicals, including hundreds that are toxic and about 70 that can cause cancer. People can be exposed to secondhand smoke in homes, cars, at work, and in public places, such as bars, restaurants, and recreational settings, depending on how your state regulates smoking in these areas. This handout provides a general explanation of secondhand smoke and an overview of the rights that you may be entitled to as a nonsmoker.

INFORMATION ABOUT SECONDHAND SMOKE

Secondhand smoke can have the following adverse health effects in both children and adults:

Health Effects in Children

- Ear infections
- More frequent and severe asthma attacks
- Respiratory symptoms (e.g. coughing, sneezing, shortness of breath)
- Increased risk for sudden infant death syndrome (SIDS)
- Respiratory infections (e.g. bronchitis and pneumonia)

Health Effects in Adults

- Heart disease
- Lung Cancer
- Stroke
- Increased risk of a heart attack
- Breathing problems (e.g. coughing, wheezing, shortness of breath)
- (Pregnant women) Increased likelihood of having babies with low birth weight

Does exposure to secondhand smoke really cause cancer?

Yes. According to the U.S. Environmental Protection Agency, the U.S. National Toxicology Program, the U.S. Surgeon General, and the International Agency for Research on Cancer, secondhand smoke is classified as a known human carcinogen (a cancer-causing agent).

At what point does exposure to secondhand smoke become harmful?

There is no “safe” level of exposure. Even low levels of secondhand smoke can be harmful.

How long does secondhand smoke stay in the air?

Many factors affect how long secondhand smoke stays in the air; however, it can stay in the air as much as several hours after someone smokes.

In addition, studies show that limiting smoking to specific rooms, opening a window, or using air fresheners or fans is not enough to fully protect individuals in an enclosed space, such as your home. This is important to note for individuals who live in multi-unit housing such as apartments or condominiums.

What is thirdhand smoke?

Thirdhand smoke is the nicotine and other tobacco residue that accumulates on various surfaces (e.g. clothes, furniture, walls, and vehicles). It contains several toxic compounds that have been shown to have harmful effects on cells and animals in laboratory studies. However, the health effects of thirdhand smoke in humans is still unknown and needs further investigation.

How long does thirdhand smoke residue stay on surfaces?

Nicotine and other tobacco compounds residue can stay on certain surfaces for several months, sometimes even after the surfaces have been washed.

What are some steps that I can take to decrease the likelihood of exposure to secondhand or thirdhand smoke?

- Not allowing anyone to smoke anywhere in or near your home;
- Not allowing anyone to smoke in your car, even with the windows down;
- Seeking out restaurants and other places that do not allow smoking (if your state still allows smoking in public areas); or
- Consider getting involved with various anti-smoking agencies.

APARTMENTS, CONDOMINIUMS, NEIGHBORHOODS, AND PUBLIC HOUSING

Unfortunately, many people are exposed to secondhand smoke in multi-family units or apartment buildings. Based on several studies, an estimated 44-53% of multi-unit housing residents that do not allow smoking in their own homes have experienced secondhand smoke infiltration in their home from elsewhere in or around their building. Secondhand smoke can seep into multi-unit dwellings from many places, including vents and cracks in walls or floors or can drift from adjacent units.

What steps can I take to protect myself and my family from secondhand smoke exposure in our home?

1. Talk with your neighbors about your exposure to secondhand smoke.
2. Check your lease for your apartment or rules to see if smoking is addressed or even allowed.
3. See if there are laws in your community that apply to secondhand smoke in multi-unit housing.
4. Talk with your landlord, property manager, or homeowners association about the smoke problem in your apartment, condominium, or home.
 - Your landlord/property manager 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.
 - You may want to ask to move to another unit or ask your landlord to implement a non-smoking policy in common areas.

What if my neighbors and landlord/homeowners association do not respond to my requests?

There are several possible solutions if your neighbors and landlord or homeowners association are not responding to your requests about secondhand smoke solutions. The following are laws that may protect you. Each of these laws is explained in more detail below.

- If you are having serious breathing difficulties, you may be protected under the Federal Fair Housing Act.

- If you have a disability, you may also be entitled to “reasonable accommodations” under the Americans with Disabilities Act (ADA). Under the ADA, cancer can be considered a “disability.”
- If you have exhausted all other solutions and the smoke is seriously affecting your health, you may want to consider moving to another property. You could ask your landlord or property manager to waive any penalties for breaking your lease.
- Consult with an attorney who specializes in housing or landlord/tenant issues. You could consider taking legal action against the landlord, manager, or your neighbors.

For more information about housing rights, visit:

<http://www.lung.org/our-initiatives/tobacco/smokefree-environments/multi-unit-housing/secondhand-smoke.html>

FEDERAL FAIR HOUSING ACT

What are my rights under the Fair Housing Act (FHA)?

The FHA prohibits discrimination against people with disabilities, including those with severe breathing problems. It applies to owners and operators of most housing, including apartments and Section 8 and other HUD-assisted housing. Discrimination under the FHA includes the refusal to make necessary, reasonable modifications or accommodations that will allow the tenant to make full use and enjoyment of his/her property. Therefore, if secondhand smoke is causing your serious breathing condition to worsen, you may be protected under the FHA.

For more information about the Federal Fair Housing Act, you may visit:

<https://www.justice.gov/crt/fair-housing-act-2>

AMERICANS WITH DISABILITIES ACT

If you have a disability, you may be entitled to a “reasonable accommodation” under the Americans with Disabilities Act (ADA).

What is a “reasonable accommodation?”

A “reasonable accommodation” is a change in rules, policies, practices, or services so that a person with a disability has an equal opportunity to use and enjoy a dwelling unit or common space. Under the Fair Housing Act, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act, it is illegal for your landlord to refuse to make reasonable accommodations.

How should I make the request for reasonable accommodations to my landlord?

You should submit the request in writing to your landlord which explains the accommodation and/or modification that you need.

Is there anything I can do in preparation of asking for a reasonable accommodation?

Your landlord may ask you for medical proof of your need for a reasonable accommodation; however, you are not required to tell him or her your specific diagnosis. You do need to let your

landlord know that your disability requires the reasonable accommodation you are requesting. You can ask your doctor to help you by writing a note stating that exposure to secondhand smoke is or may be contributing to your illness.

What are some examples of reasonable accommodations?

What is considered “reasonable” can vary; however, some examples of what might be considered a “reasonable accommodation” are:

- Asking your landlord to implement a no-smoking rule in common areas.
- Asking your landlord to move you to another apartment.

For more information about housing rights, see the CLRC’s “National Housing Rights” handout:

For additional information, visit the U.S. Department of Housing and Urban Development: https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/ReasonableAccommodations15

YOUR RIGHT TO POTENTIALLY FILE A LAWSUIT

If you have exhausted all other solutions and the smoke is seriously affecting your health, you have the right to potentially file a lawsuit. There are different causes of action that you may claim, depending on your state law:

- Nuisance
- Trespass
- Battery

What is a “nuisance?”

There are two types of nuisance:

1. Public Nuisance: An act or omission that obstructs, damages, or inconveniences the rights of the community.
2. Private Nuisance: The unreasonable, unwarranted, or unlawful use of one’s property in a manner that substantially interferes with the enjoyment or use of another’s property.

Secondhand smoke can sometimes be considered a private nuisance.

What does “trespass” mean by law?

Trespass is an unlawful entry on another’s property.

What is considered a “battery?”

An intentional act that results in a harmful or offensive touching.

It is a good idea to talk to an attorney who specializes in property or real estate to see whether any of these types of lawsuits are appropriate for your situation.

SMOKING RIGHTS IN PUBLIC PLACES AND BUSINESSES

Usually, state law governs smoking rules in public places and businesses. Currently, 28 states and the District of Columbia have passed comprehensive smoke-free laws.

States such as Arizona, Hawaii, New York, Michigan, and Oregon have state laws that prohibit smoking in state and local government buildings, private workplaces, stand-alone bars, and restaurants.

You can view your state's tobacco's control laws by visiting:

<http://www.lungusa2.org/slati/states.php>

For a more comprehensive list of states that prohibit smoking in public places and workplaces, visit: <http://www.lungusa2.org/slati/reports/state-laws-smoking-places-092014.pdf>

For further information, visit:

<http://www.lungusa2.org/slati/>

ADDITIONAL RESOURCES

For more information about secondhand smoke, please visit:

The American Lung Association

<http://www.lung.org/stop-smoking/smoking-facts/health-effects-of-secondhand-smoke.html>

The U.S. National Library of Medicine

https://medlineplus.gov/secondhandsmoke.html#cat_51

Centers for Disease Control and Prevention

https://www.cdc.gov/tobacco/basic_information/secondhand_smoke/index.htm

Americans for Nonsmoker's Rights (ANR)

<http://www.no-smoke.org/>

The Office of Disease Prevention and Health Promotion

<https://www.healthypeople.gov/>

The U.S. Department of Health and Human Services

“Your Guide to the 50th Anniversary Surgeon General’s Report on Smoking and Health”

<https://www.surgeongeneral.gov/library/reports/50-years-of-progress/consumer-guide.pdf>

The Tobacco Atlas

<http://www.tobaccoatlas.org/topic/secondhand-smoke/>

The U.S. Environmental Protection Agency (EPA)

<https://www.epa.gov/indoor-air-quality-iaq/secondhand-tobacco-smoke-and-smoke-free-homes>

Action on Smoking and Health (ASH)

<http://ash.org/>

Tobacco Control Resource Center & Tobacco Products Liability Project

<http://www.phaionline.org/category/tobacco/>

ChangeLab Solutions – Tobacco Control

<http://www.changelabsolutions.org/tobacco-control/tobacco-control-request>

“Legal Options for Tenants Suffering from Drifting Tobacco Smoke”

http://changelabsolutions.org/sites/default/files/Legal-Options-for-Tenants_FINAL_20130205.pdf

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