

Secondhand Smoke and Multi-Unit Housing

Tenant Information

What do I need to know about secondhand smoke?

- Secondhand smoke is both a significant cause of illness in the home and a major cause of preventable death in the United States.
- Non-smokers with serious breathing problems such as asthma or allergies have legal protection under federal and state law.
- No United States court has held that there is a fundamental right to smoke.
- A smoke-free policy is NOT discriminatory. As long as the policy is not used to target a protected class or minority, a building manager or owner is legally free to restrict or prohibit smoking. Smokers are not a protected class. In addition, prohibiting smoking in apartments is different than prohibiting smokers in apartments.

Is there a fundamental right to smoke?

There is no constitutional or other legal right to smoke. People who smoke are not a protected legal class.

Does the Massachusetts Smoke-Free Workplace Law apply to private residences?

The Massachusetts Smoke-Free Workplace Law was not designed to stop smoking in private residences. Rather, the law was enacted to protect workers from secondhand smoke in the workplace. A residence must be smoke free, however, when the home is being used to operate a group childcare center, school age day care center, school age day or overnight camp, a health care related office or a facility licensed by the office of child care services.

I'm bothered by the smoke in my building. What can be done?

- (1) **Landlords and apartment managers can voluntarily make their entire building(s) smoke-free.** Some choose to apply the policy to portions of the building, or if there is more than one building, to some buildings and not to others. Usually they also apply smoke-free policies in specific areas other than living units, such as laundry rooms, recreation rooms, or areas where children play. Although they are not required to do so, some landlords choose to allow existing tenants to continue smoking as long as they live there, with the smoke-free policy taking effect in a unit when a new tenant moves in. Another option is to allow existing tenants who smoke to continue smoking until the smoking policy can be legally changed under the terms of their lease/rental agreement (usually at the time of renewal).¹
- (2) **Tenants can bring legal action under what are referred to as “common law theories”** against a landlord or against a tenant who smokes. These theories include nuisance, negligence, breach of quiet enjoyment or breach of the warranty of habitability.
- (3) **Tenants with qualifying disabilities can bring legal action under the Americans with Disabilities Act and the Fair Housing Act.** These can be used to take action against a landlord

if he fails to make “reasonable accommodations” to protect disabled tenants from secondhand smoke. The disability must qualify under the ADA standards and exposure to secondhand smoke must directly impact or worsen that disability.

I live in Public or Subsidized housing. Can my building go smoke-free?

Yes! The U.S. Department of Housing and Urban Development has no policy that restricts landlords from making a building smoke-free. “Owners may devise reasonable no smoking rules at their properties that express legitimate concerns for the safety of residents and the condition of individual units and the building as a whole.”ⁱⁱ

If I complain to my landlord about the smoke in my building could I be evicted?

If you are evicted from your apartment for making a complaint, you have rights. Your landlord must follow proper legal procedures for evicting you.ⁱⁱⁱ Landlords are not allowed to make “retaliatory evictions.” Further information can be obtained from the Massachusetts Office of Consumer Affairs.

What are some temporary fixes?

- Have your landlord improve the air filtration system by:
 - Adding more fresh air intakes into the ventilation system
 - Cleaning, changing or installing better filters in the ventilation system
 - Restricting the amount of air exhausted through the ventilation system from the residences of tenants who smoke
- Speak with tenants who smoke and request that they smoke only near open windows and with enhanced air filtration (fans, etc.)
- Have your landlord install door sweeps to keep out drifting smoke
- Request that all cracks be filled or patched, including those around plumbing pipes and inside of cabinets on common walls
- If possible, request that the landlords allow smoking in units on the top floor only

Resources

Massachusetts Tobacco Control Program (Department of Public Health) – <http://www.mass.gov/dph/mtcp/home.htm>

Massachusetts Association of Health Boards – <http://www.mahb.org/>

Fair Housing Act: <http://www.usdoj.gov/crt/housing/title8.htm>

Smoke Free Apartments – www.smokefreeapartments.org

Smoke-free housing site from Maine - <http://www.smokefreeforme.org/landlord.php>

Americans for non-smokers’ rights smoke-free housing page. - www.no-smoke.org/htmlpage.php?id=181

ⁱ Smoke-free Housing. Smoke-free Housing Coalition, www.smokefreeforme.org

ⁱⁱ No Smoking Policies at HUD Assisted Housing Developments. Smoke-free Environments Law Project, <http://mismokefreeapartment.org/hudletter.pdf>

ⁱⁱⁱ www.smokefreeforme.org