

Steps to Smoke Free Housing NY: Tenants

Secondhand Smoke Exposure

While New York's smoke free workplace laws protect workers from secondhand smoke exposure, no laws protect people from secondhand smoke (SHS) where they live. SHS drifts from smokers' apartments to those of non-smokers, forcing many apartment, coop, condo, and public housing residents to breathe secondhand smoke.

If you or your family is exposed to unwanted SHS from a neighboring tenant, try these tips to help combat the problem.

1 Know the Facts

- ☼ Smoke drifting from lit tobacco products and/or exhaled by smokers seeps into the living spaces of other tenants and common areas of the building. SHS travels through: lighting fixtures, cracks in walls, around plumbing, under doors and shared heating/ventilation.¹
- ☼ More than a nuisance or bad smell, secondhand smoke is a class 'A' carcinogen, like radon or asbestos. Its toxicity warranted a 2006 report from the U.S. Surgeon General, which included a section on secondhand smoke exposure in the home.²
- ☼ Among the many illnesses caused or made worse by SHS are: lung cancer, asthma, sinus infections, ear infections, chronic cough, sudden infant death syndrome and heart disease.³
- ☼ Smoking is not a right guaranteed under the Constitution. You have a right to ask landlords/management companies to protect you from unwanted SHS and to expect reasonable action.⁴
- ☼ It's legal for landlords/management companies of private and public housing to adopt smoke free building policies which protect your health and their property.^{*1}

*indicates a definition or exception

2 Document the Problem

- ☼ Write down how often SHS enters your home, when it's noticeable, where it seems to come from and how it affects your family.
- ☼ Obtain a letter from a physician stating how the SHS is impacting you/your family's health.

- ✿ Find other neighbors also affected by the smoke who will join you to address the problem.

*****SPECIAL NOTE: If you have a serious, pre-existing condition made worse by secondhand smoke, like heart disease, Chronic Obstructive Pulmonary Disease, asthma, or lung cancer, you may be eligible to file a Fair Housing Act (FHA) complaint, requiring landlords to provide you with 'reasonable accommodations.' (See "Fair Housing Act" fact sheet).**

3 Talk it Out

- ✿ Consider friendly ways to talk to the smoker. Offer solutions. Smokers are not always aware of their impact on neighbors.
- ✿ Phone, write or meet with your landlord/building management.
- ✿ If necessary, make an appointment. Provide documentation on health and SHS.
- ✿ List how the smoke is affecting you and ask the landlord for solutions. Offer solutions, like asking the smoker to smoke outside or reduce smoking.
- ✿ Follow-up with a letter documenting conversations with the landlord. Thank him/her/them for their time and ask for notification when something is done.

4 Explore Legal Solutions

- ✿ Last resort: find an attorney who knows tenant law.
- ✿ Tenants are beginning to bring lawsuits regarding secondhand smoke, and some are winning.⁵
- ✿ The basis for a lawsuit could include: nuisance, quiet enjoyment breach and breach of habitability.
- ✿ Some cases can be filed by disabled persons under the Fairness in Housing Act.

- ✿ Caution: Law suits are costly, with no guarantee of winning and the results can be minor, like, 'you can break your lease and move without penalty.'

5 Advocate for Smoke Free Housing

- ✿ Gather support from neighbors to urge your landlord/building management to write a smoke free policy into the lease (See "Making Your Building Smokefree").

References and Resources

References

¹ MI Smoke-Free Apartments: <http://mismokefreeapartment.org>
A Smoke-Free Apartment Policy is Legal and Protects Health While Saving Money

^{2,3} *2006 U.S. Surgeon General's Report on Secondhand Smoke Exposure in the Home.*
United States Department of Health and Human Services

⁴ *There is No Constitutional Right to Smoke*, Technical Assistance Legal Center

⁵ *Smoke Signals.* Report by Susan Schoenmarklin and Jacque Petterson, December 2007 – www.naahg.org

*¹ Exception: Rent-controlled and rent-stabilized units operate under a different set of regulations.

Resources

Coops, Condos & Secondhand Smoke, New York Times, August 8, 2006

New York State Housing Law: www.dhcr.state.ny.us/ora.ora.htm

Smoke Free Maine: www.smokefreeforme.org

The NYS Attorney General and Tenant Rights:
www.oag.state.ny.us/realestate/tenants_rights_guide.html

The Smoker Next Door: Handling Unwanted Tobacco Smoke in Apartments And Condominiums, Americans for Non-Smokers' Rights Foundation, July 2004

What's That Smell?, New York Times, August 8, 2006

www.smokefreehousingny.org
