

The Smoker Next Door ... Handling Unwanted Tobacco Smoke in Apartments and Condominiums January 2002

Secondhand smoke seeping into apartments or condominiums from neighboring units poses both a health risk and a significant nuisance. Unfortunately, there are no fail-proof solutions to this problem. Since personal dwellings are not considered public spaces, they are generally not covered under existing legislation regulating smoking in public places, though some municipalities may restrict or prohibit smoking in common areas of multi-unit dwellings. The record of resolving such 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.

However, there are still a number of steps that you can take to protect yourself from secondhand smoke. The following suggestions may prove useful.

☐ Clarify your goals.

☞ Your main goal is clear—you want to breathe smokefree air. But 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 modifications to be made to the ventilation system or the physical structure of the building? Do you want cracks sealed? Do you want one or more buildings of a multi-building complex designated as completely nonsmoking? Do you want all common areas, both inside and out, designated nonsmoking? Do you want the owner or manager to add a no smoking clause to all future rental agreements? The more you can clarify just what it is you want from the neighbor or the manager, owner, or owner's association, the better your position. This leads to the next point.

☞ Come up with as many possible solutions as you can. While you may not be able to stop a person from smoking in their apartment, for example, you may be able to get them to agree to smoke near an open window. Other possible solutions include checking on the ventilation system—the filters may need to be changed, cleaned, or upgraded. (Improved ventilation may reduce, *but will not eliminate*, your exposure to secondhand smoke.) Also, try to ensure that the building itself is up to all state and local building codes. Structural defects can cause an excess amount of smoke to travel between apartments.

☞ If you live in a condominium, one solution that you might pursue is changing the conditions, covenants and restrictions so that the condo is declared smokefree. If you live in an apartment, you can encourage the management to gradually create a smokefree environment by adding

smokefree language to the leases of new tenants. We have a model policy for a smokefree condominium or apartment that can be used for these purposes.

☐ Do your homework.

☞ Read the enclosed materials carefully. They will provide you with well documented information about the dangers associated with exposure to secondhand smoke, and will acquaint you with strategies that others have used to deal with similar problems.

☞ Check to see if there are any applicable municipal or state laws that regulate or prohibit smoking in common areas of multi-unit dwellings. Your city or county health department or a local chapter of one of the voluntary health associations (e.g. American Lung Association, American Cancer Society or American Heart Association) can assist you. You can also contact the city or county clerk's office to obtain a copy of any applicable law.

☞ Read your lease or condominium agreement. Most leases contain a “nuisance clause” that prohibits tenants from engaging in any activity that interferes with another tenant's peace and well being. Typically, it is designed to protect tenants from loud music, noxious odors, noisy late-night parties, etc. Arguably, it also includes protection from undue exposure to secondhand smoke.

☐ Try to resolve the situation amicably.

☞ Approach the situation positively. Begin with the assumption that your neighbor and manager are interested in your comfort 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. Secondhand smoke causes a host of ailments, and exacerbates pre-existing conditions, in nonsmokers – lung cancer, heart disease, asthma, ear infections in children, sudden infant death syndrome (SIDS) just to name a few. Try posting information about secondhand smoke on apartment bulletin boards, in laundry rooms, or in condominium newsletters.

☐ Share information with Property Management.

☞ Your management company or owner's association may be unaware that it is perfectly legal to designate an apartment building or condominium smoke-free. People often mistakenly believe that there is a legally protected “right to smoke.” However, there is no such legal right, and 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 (Sweda, 1997). A smoke-free policy, however, is best accomplished gradually. The Park Tower Apartments in Loves Park, Illinois, for example, 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. You may want to share with your manager the enclosed *Guide for Owners and Managers*.

☞ 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. Sharing what you have learned about the laws protecting you can empower your landlord to take a more active stance in the situation. Keep in mind, however, that there are no clear-cut legal protections against secondhand smoke for tenants. You are dealing in a “gray area” of the law. Avoid becoming belligerent. Your goal is to win voluntary assistance.

☞ You may also want to remind management of the significant economic costs associated with smoking. Smoking increases the risk of fire, requires more frequent painting, increases maintenance costs, and hikes insurance rates (Carlson, 1997).

☐ 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.

☞ Other good allies may include voluntary health groups such as the American Cancer Society, the American Lung Association, and the American Heart Association. These groups may be able to advise you about specific nuisance or tenant-rights laws in your area, and to recommend how to go about getting your complaint heard and heeded.

☐ Get a note from your doctor.

☞ A letter from your physician lends credibility to your complaint. If you have greater than average sensitivities to tobacco smoke, get them documented. Possible smoke-related conditions include sore throat, asthma, pulmonary or cardiac disease, hay fever, headache, and allergies. 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. It’s always smart to send such paperwork Certified Mail, Return Receipt Requested.

☐ 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. A body of case law is building that holds management responsible for exposing tenants to ETS. 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

(Sweda, 1997). Send your letter of intent to sue Certified Mail, Return Receipt Requested. If you think you may need to resort to legal action, be sure to keep a paper-trail. Make dated notes of all interactions; keep copies of correspondence.

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

☞ You are not alone. More and more people are complaining of secondhand smoke in multiunit 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 could do one or more of the following:

- Prohibit smoking in all public areas of apartment or condominium complexes. Many communities in numerous states have such a law. Similarly, Minnesota has a state law that restricts smoking in all common areas of apartment buildings, such as rental offices, entrances, hallways, exercise and swimming pool areas, and laundry rooms.
- Require apartment and condominium complexes with two or more buildings to designate at least one building as smokefree.
- Require owners to disclose to potential new tenants when either (a) an apartment or condo unit was rented to people who smoked within the past year, or (b) a previous tenant moved because of tobacco smoke drifting into the unit.

☞ A guidebook is available from ANR detailing how to pass a local ordinance. You can order a copy by calling us at 510-841-3032 and requesting *Clearing the Air*.

This information is not intended to serve as legal advice by the ANR 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.

REFERENCES

- Carlson, R. *Smokefree Air Everywhere*. New Jersey Group Against Smoking Pollution (GASP), 1997.
- Sweda, E. *Summary of Legal Cases Regarding Smoking in the Workplace and Other Places*. Boston, MA: Tobacco Control Resource Center, Inc., December 1997.