



Regulating Tobacco Use in Apartments and Condominiums

Prepared by Esther Schiller, Director

S.A.F.E. Smokefree Air For Everyone

and the Smokefree Apartment House Registry

esther@smokefreeapartments.org

www.smokefreeapartments.org

818-363-4220

Background Information re Multi-Unit Housing (Apts. and Condos)

- Landlords have always had the legal authority to make their buildings non-smoking. Most of them just didn't know it. Or they considered cleaning up a "smoked in" apt. was just part of the job.
- Some cities have a rent control law. The law does not permit the landlord to change the conditions of tenancy once a tenant moves in. The advantage for the tenant is the landlord can only raise the rent by a few percentages each year. The goal of rent control is to keep people from having to move.
- There is no remedy if smoke is coming into your unit except to move. That is expensive, kids have to change schools, it's time consuming to try to find another place to live that you can afford. Moving because of tobacco smoke infiltration is really "constructive eviction."

Can Fair Housing Laws Protect Adults and Children with Asthma?

- Fair Housing Laws, both state and federal, are designed to protect vulnerable populations from discrimination by housing providers.
- For example, Fair Housing Laws protect people of color, people of different ethnicities, people with disabilities and people with chronic illnesses like asthma.
- A tenant can request a “reasonable accommodation” under Fair Housing Laws and the landlord must consider it. A reasonable accommodation for a person with asthma who is breathing a neighbor’s tobacco smoke can be a move to another unit if one is available, or a release from a lease.

Why be Concerned About a Little Bit of Secondhand Smoke?

- According to the U.S. Surgeon General, cigarette smoke contains more than 7,000 chemicals and compounds. Hundreds are toxic and more than 70 cause cancer. The Surgeon General says there is no safe level of exposure to tobacco smoke.
- Children who breathe secondhand smoke are more likely to suffer from pneumonia, bronchitis and ear infections. Children with asthma will have more asthma episodes and they can be more severe. Secondhand smoke can cause asthma in children and adults.
- A pediatrician, Jonathan Winickoff says, “We protect the bartenders in the bars from secondhand smoke, but not the babies in their cribs.”

Current Information About Drifting Tobacco Smoke in Apts. and Condos

- Scientists have proven that tobacco smoke can drift from unit to unit and can enter a unit's windows and doors when people are smoking outside on balconies, patios, and in courtyards.
- Our Smokefree Apartment House Registry lists the vacancies of over 400 landlords who have made their properties non-smoking.
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- Other organizations in CA and in the nation are educating about the problem.
- HUD (U.S. Dept. of Housing and Urban Development) is strongly encouraging providers of affordable housing to make some or all of their units non-smoking.

Current Information (page 2)

- Many housing authorities (these are providers of affordable housing) in CA and the nation have adopted no smoking policies for their units and even for their entire premises.
- The L.A. County Housing Authority is in process of adopting a no smoking policy for all of their over 2000 units. The policy will begin in July, 2013 with one year set aside for education about the policy.
- More than 25 CA cities have adopted ordinances which regulate smoking in apartments. Some ordinances include condos.
- The City of Pasadena will require no smoking on the entire premises of apartments and condos beginning July, 2013.

How S.A.F.E. Works in Communities

- Since the year 2000, we have had thousands of people call us for help because of the problem of tobacco smoke drifting into their apt. or condo home.
- We have conducted thousands of surveys in cities in Los Angeles County. The surveys show that approximately 1/3 of apartment residents know they are breathing a neighbor's tobacco smoke. But most people don't complain to management or to their neighbor who smokes
- We will bring people together in a city, provide them with information, and help them to take their stories to the leaders of the community and the policy makers.

What the Santa Monica Smoke-Free Housing Ordinance Requires

- All new residential buildings are required to open as non-smoking. All new vacancies in apartments and condos are required to become non-smoking.
- Balconies, patios and common areas are required to be non-smoking.
- Landlords, Condo Boards, and Property Management Companies are required to disclose to prospective residents the locations of smoking-permitted and non-smoking units.
- Management is required to conduct a survey of all current residents and ask: Do you want your unit to be considered a smoking-permitted or a non-smoking unit? If residents do not respond, that unit is indicated as non-designated. (Code perhaps for “smoking unit.”)

Santa Monica's Housing Law

Plus and Minus

- The new law grandfathers current residents who smoke. The law also states that landlords cannot evict a tenant for smoking.
- The city does not enforce the law. If an apt. or condo resident is being made ill by someone smoking in a non-smoking unit, the person suffering would need to take legal action either in Small Claims Court or in Superior Court.
- Landlords are not required to give new residents no smoking leases. However, if they do provide a no smoking lease, and then the new resident smokes in the unit, the landlord could evict for breaking the lease.

What About Lawsuits?

- Most residents will not take legal action against a neighbor who is smoking in a non-smoking area or unit.
- Small Claims Court is really not set up for this kind of legal action. It is possible to seek a Restraining Order in Superior Court and people have done that. It does cost several hundred dollars but you don't need an attorney and violating a Restraining Order does have consequences.
- Recently, a family living in a condo in Orange County with an asthmatic child sued their HOA, the renters who were smoking and the landlord of the renters and won. They found an attorney who took their case "pro bono."
- There are devices which can measure whether there is tobacco smoke in a unit. They are not yet in common use.

Discussion

- What should a family with an asthmatic child do when smoke is coming into their unit in the city of Los Angeles? Los Angeles has rent control and no law about smoking in apartments and condos.
- Why do you think most people don't complain when smoke is drifting into their unit?
- The percentage of CA adults still smoking is under 12%. The percentage of people who smoke who want to quit is 70% according to the American Lung Association. Will smokefree housing help people to quit smoking?



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