


Tenants Q & As about secondhand smoke

Q. Is it legal to ban smoking in an apartment building or condominium?

A. Yes. It is completely legal for a landlord or condominium association to make their units and buildings smoke-free. There is nothing under Federal or New York law that prohibits the establishment of smoke-free policies in multi-unit dwellings.

Q. Does this mean that smokers can't live there?

A. No. Smoke-free housing policies restrict smoking – not smokers. Residents and their guests must refrain from smoking in the designated smoke free areas (such as inside the entire building), but a smoke-free policy does not limit who can live in or visit an apartment or condominium.

Q. What can I do about secondhand smoke that enters my living space? 

A. If secondhand smoke is drifting into your apartment, your health may be at risk. Talk to your neighbors and express your desire for smoke-free housing; if they share your views, urge them to work with you to advocate for a smoke free policy. Many landlords and property managers would like to make their buildings smoke-free but worry about whether residents will be supportive.

Here are some suggestions for working on a smoke free housing policy:

- Document the problem carefully. Write down from where and when smoke is coming into your apartment.
- Circulate a petition among the tenants and ask for their support of a smoke free policy.
- If you have a medical condition made worse by exposure to second hand smoke, ask your doctor to document this in writing and give you a copy.
- Put all of your requests to your landlord in writing, and keep copies of everything. Include the medical note, if applicable.

Note that the only way to avoid the health hazards of secondhand smoke is by living in a completely smoke-free building.

Q. I have health problems. Can I request a Reasonable Accommodation?

A. In most types of housing, the federal Fair Housing Act prohibits discrimination against people with disabilities, which is defined as having a physical or mental impairment that substantially limits one or more of a person's major life activities; having a record of such an impairment; or being regarded as having such an impairment.

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Breathing is a major life activity. If you have special sensitivities to smoke, severe allergies, respiratory ailments or chronic heart disease, you may have a qualifying disability and you may be able to ask for "reasonable accommodations" to allow you to use your housing like everyone else. An example of a reasonable accommodation is the installation of a ramp for a person in a wheelchair.

If you have a disability that is affected by secondhand smoke, and secondhand smoke is preventing you from having equal access to your housing, you might be able to request a reasonable accommodation, such as smoking restrictions for your building, being moved to a smoking-restricted building, a separate ventilation system or sealing off your apartment.

Q. My landlord says that as long as I don't smoke in my apartment I should not worry about the small amount of secondhand smoke that comes in from other units. Is that true?

A. The Surgeon General has stated that there is no safe level of second hand smoke. Secondhand smoke can pass from one unit to another. Existing ventilation and air filtration systems are largely ineffective in preventing the seepage of secondhand smoke or removing the toxins from it. Recent research has shown that children who live in an apartment building where smoking is allowed have higher levels of cotinine, a byproduct of second hand smoke.

Q. Are there any other advantages to smoke free apartment policies?

A. Yes! Smoke-free policies save money and make buildings safer for property owners and tenants alike.

A smoke free policy dramatically reduces damage caused by burning tobacco products and saves on cleaning and repainting costs. In addition, it will greatly reduce the risk of fire in your building. Smoking is one of the leading causes of household fires and the #1 cause of fire deaths in the United States.

Q. How are smoke-free policies enforced?

A. "No Smoking" rules are enforced just as any other lease or condominium rule. They are largely self-enforcing. Landlords and property managers need to respond promptly to reports of violations, especially when the policy is newly enacted. Violations, should they occur, are handled like any other lease or rule violation such as noise or pets.

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Q7. What can I do if my landlord or condominium association will not establish a smoke-free policy?

A. Despite the fact that there is no way to completely protect yourself and your family from secondhand smoke exposure if smoking is allowed in your building, you can take an important step by making your own home smoke-free. You will need to determine if you wish to relocate to a building that has a no smoking policy in effect.