

Smoke-Free Multi-Unit Housing

Enforcement and Other Legal Topics

June 21, 2016

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Tobacco Control
Legal Consortium

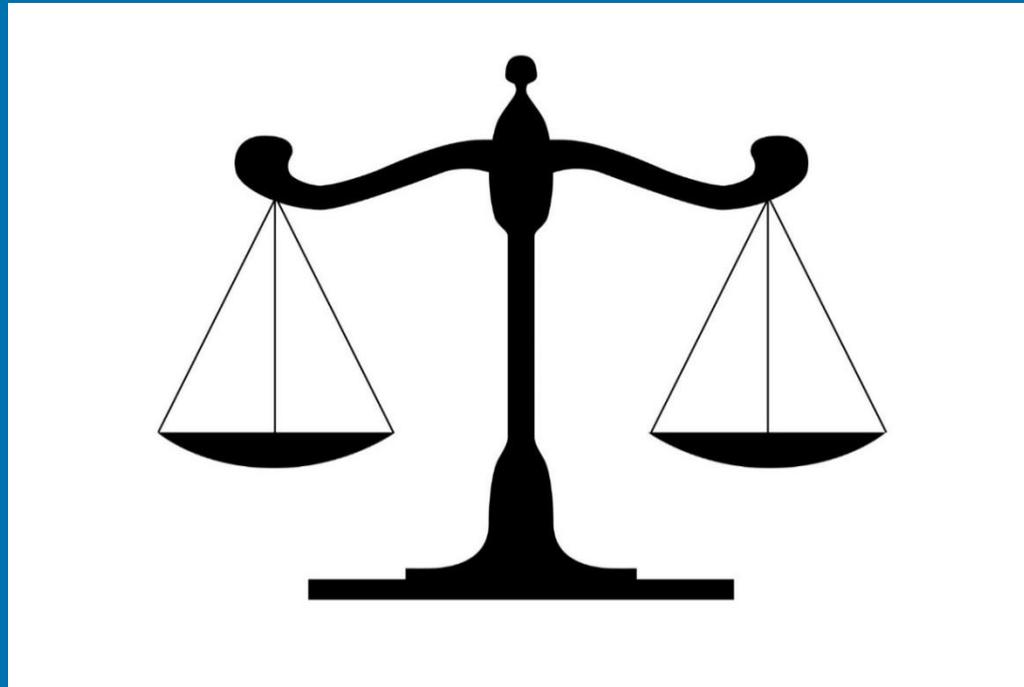
Road Map for this Presentation

- My Organization(s)
- Why Go Smoke-Free
- State and National Landscape
- Enforcement
- Resources
- Q & A



Tobacco Control Legal Consortium

Attorneys supporting tobacco control policy change.



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Helping public health leaders use the law to improve America's health.

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- Active Living
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FEATURED RESOURCE

E-Cigarette Regulation

A state-by-state snapshot of e-cigarette regulation across the U.S. in 2015

Announcements

Improving Website Navigation

In an effort to improve the efficiency and usability of publichealthlawcenter.org, we are currently upgrading the navigation structure of the website. We have made an effort to ensure all pages and content have carried through to the new design. If you experience any difficulty finding a page or resource, please use the search function at the top of the page or [contact us](#).

Maggie Mahoney Named 2015 C. Everett Koop Unsung Hero Award Winner

The American Lung Association and the C. Everett Koop Institute are awarding the 2015 C. Everett Koop Unsung Hero Award to Maggie Mahoney for her outstanding contributions to tobacco control. Ms. Mahoney is the Deputy Director of the Tobacco Control Legal Consortium at the Public Health Law Center.

Who We Serve:

- Public health advocacy organizations and community coalitions
- Public health officials
- City and county attorneys
- Elected officials
- Tribal officials
- Private attorneys and individual citizens

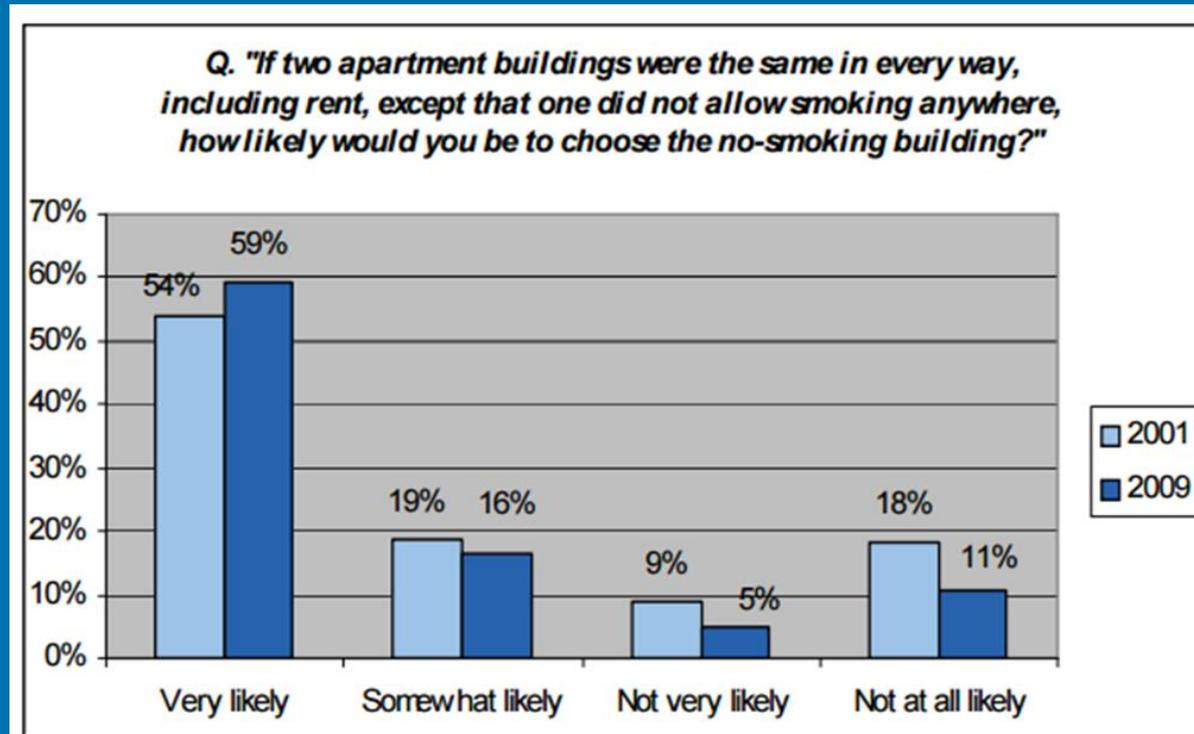


What is Legal Technical Assistance?

- Education
- Legal Interpretation and Research
- Develop Policy
- Litigation Support
- It's free and call early!
- We don't represent clients or lobby.

Why Go Smoke-Free?

- Public Health
- Ventilation doesn't work
- Air moves between units
- Restoration costs
- Fire risk
- Resident demand



Is there a right to smoke?

- No Constitutional right to smoke
- Smoking is not a protected activity or right
- Smokers are not a protected category of people



What about discrimination?

- Smokers are not a protected category of people
- Nicotine addiction is not a disability
- It's about the smoke, not the smoker



Legal Risks to Allowing Smoking

Tenant
Actions
Lawsuits

Americans
with Disabilities
Act

Trespass

WARRANTY OF
HABITABILITY

RENT
ABATEMENT

Tenants' Bill of Rights

Habitability
The landlord has a duty to maintain your dwelling in good repair...
The landlord will repair your roof, pipes and apartments walls, floor, gas, water, electricity, sewer, heating, fireplaces, other pipes, and shut with any other facilities that are necessary for health and safety.

Seniors and Tenants With Disabilities
Persons 62 years of age or older, and persons with disabilities...
If you are 62 years of age or older or have a disability, you may be eligible for special housing programs...
You may be eligible for special programs...
You may be eligible for special programs...
You may be eligible for special programs...

Heat and Hot Water
Every tenant has the right to...
Every tenant has the right to...
Every tenant has the right to...
Every tenant has the right to...

Reasonable Accommodations
You have the right to have family members...
You have the right to have family members...
You have the right to have family members...
You have the right to have family members...

Lease renewals and riders

Human Rights
Act

ATTORNEY
FEES

Reasonable
Accommodations

Nuisances

Nuisance Abatement

Disabilities

Fair Housing Act

Wisconsin Law

- Smoking prohibited in “common areas of multiple-unit residential properties” if enclosed.
 - *Wisc. Stat. Sec. 101.123(2)(a)(8d)*
- Smoking prohibited in “enclosed places that employees normally frequent during the course of employment, including an office, ... a hallway, a stairway, a lobby, a common area.”
 - *Wisc. Stat. Sec. 101.123(1)(dj)*
- “Enclosed place” means a structure or area that has all of the following: (1) a roof. (2) More than 2 substantial walls.
 - *Wisc. Stat. Sec. 101.123(1)(ak)*
- State law does not prohibit smoking in “a private residence.”
 - *Wisc. Stat. Sec. 101.123(3)(h)*



Proposed HUD Rule

- Public housing
- “Lit tobacco products”
- All indoor areas
- No grandfathering
- 25-foot setback
- Minimum requirements
- Amend PHA plans and tenant leases
- 18-month implementation period



Enforcement

Prepare everyone

- Distribute information
- Have presentations and/or meetings
- Conduct a survey
- Provide generous notice



Document Everything

- **Use written lease addendum**
 - Regardless of size of property
 - Prohibit smoking
 - Specify it is a violation of lease to smoke
 - Breach of lease could result in eviction
 - Graduated enforcement
- **Make it comprehensive**
 - Include all provisions
 - Make it clear and easy to understand
 - Document exceptions / grandfathering
 - Include enforcement steps
 - Include list of evidence



Model Smoke-Free Lease Addendum



Attorney Douglas J. Carney, of Hanbery, Neumeier & Carney, P.A., prepared the initial version of this Model Lease Addendum. He received ongoing advice, consultation, and recommendations from a legal advisory committee that included attorneys who regularly advise property owners and managers, who serve as tenant attorneys and advocates, or who advise public housing agencies. Representatives from Center for Energy and Environment and Association for Nonsmokers-Minnesota were also on the committee. The modification about where smoking is allowed (Section 3) was included by Initiative for Smoke-Free Apartments. The addition of language addressing electronic cigarettes was added by Warren Ortland of the Public Health Law Center.

Tenant and all members of Tenant's family or household are parties to a written lease with Landlord (the Lease). This Addendum states the following additional terms, conditions and rules which are hereby incorporated into the Lease. A breach of this Lease Addendum shall give each party all the rights contained herein, as well as the rights in the Lease.

1. Purpose of No-Smoking Policy. The parties desire to mitigate (i) the irritation and known health effects of secondhand smoke; (ii) the increased maintenance, cleaning, and redecorating costs from smoking; (iii) the increased risk of fire from smoking; and (iv) the higher costs of fire insurance for a non-smoke-free building;

2. Definitions:

Smoking. The term "smoking" means inhaling, exhaling, breathing, or carrying any lighted or heated cigar, cigarette, or other tobacco product or plant product in any manner or in any form. Smoking also includes use of an electronic cigarette.

Electronic Cigarette. The term "electronic cigarette" means any electronic device that provides a vapor of liquid nicotine and/or other substances to the user as she or he simulates smoking. The term shall include such devices whether they are manufactured or referred to as e-cigarettes, e-cigars, e-pipes or under any product name.

3. Smoke-Free Complex. Tenant agrees and acknowledges that the premises to be occupied by Tenant and members of Tenant's household have been designated as a smoke-free living environment. Tenant and members of Tenant's household shall not smoke anywhere in the unit rented by Tenant, or the building where the Tenant's dwelling is located or in any of the common areas or adjoining grounds of such building or other parts of the rental community, nor shall Tenant permit any guests or visitors under the control of Tenant to do so. *[If you provide an outdoor smoking area, specify where it is here.]*

4. Tenant to Promote No-Smoking Policy and to Alert Landlord of Violations. Tenant shall inform Tenant's guests of the no-smoking policy. Further, Tenant shall promptly give Landlord a written statement of any incident where tobacco smoke is migrating into the Tenant's unit from sources outside of the Tenant's apartment unit.

5. Landlord to Promote No-Smoking Policy. Landlord shall post no-smoking signs at entrances and exits, common areas, hallways, and in conspicuous places adjoining the grounds of the apartment complex.

6. Landlord Not a Guarantor of Smoke-Free Environment. Tenant acknowledges that Landlord's adoption of a smoke-free living environment, and the efforts to designate the rental

Enforce every violation

Promptly –

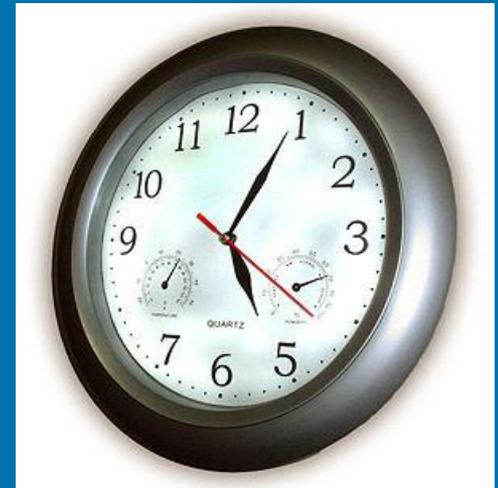
- Enforce in a timely manner

Uniformly

- Impose the same penalties on everyone

Consistently

- Always enforce the penalties



Evidence

A resident household will be determined to be in violation of the policies if:

- Staff witnesses a tenant, tenant's guest, or family member, service provider, or other person smoking inside an LDCHA owned house or apartment.
- Staff witnesses a lighted smoking product in an ashtray or other receptacle inside an LDCHA owned house or apartment.
- Damages to the interior of LDCHA owned property that are the result of burns caused by smoking products including burns to tenant owned property.
- Evidence of smoking in a unit such as cigarette or other smoking product smells, smoke clogged filters, smoke film including smoke damage to walls.
- Repeated reports to staff of violations of this policy by third parties.
- Clogged plumbing caused by a smoking product or products.
- Evidence of ashes on any surface in a house or apartment owned by the LDCHA.

Enforcement

If a violation occurs...gather the evidence

- Identify willing witnesses
- Document violations
- Follow legal notice requirements and inspect the apartment



NOTICE OF INFRACTION

PROPERTY: _____ DATE: _____

RESIDENT: _____ UNIT NO: _____

Please be advised that we have recorded one of the following incidents in your tenant record:

1. Infraction of property regulations described in Rules & Regulations
2. Violation of term(s) of your lease

One of the above was committed on _____ (date) by:
_____ You, _____ Your children, or _____ a visitor or guest to your apartment.

Description of incident:

- _____ 1. Destruction of property
- _____ 2. Disturbing or harassing other residents
- _____ 3. Excessive noise from your unit
- _____ 4. Drunk and disorderly
- _____ 5. Illegal activities on the premises
- _____ 6. Failure to maintain unit in clean and sanitary condition
- _____ 7. Smoking in unit
- _____ 8. Smoking in common areas
- _____ 9. Leaving garbage, trash or other obstruction in public areas
- _____ 10. Allowing unauthorized persons to live in the unit
- _____ 11. Failure to allow landlord or his agent to enter the unit
- _____ 12. Alteration or addition to property not authorized by landlord or his agent in writing
- _____ 13. Installation of appliance without written consent of management
- _____ 14. Breach of building security
- _____ 15. Other:

Enforcement Steps

1st offence: Staff will send the resident a gentle reminder of the smoking ban, including a copy of Resolution 2010-20, and inform the resident of the smoking cessation resources the agency has available.

2nd offence: Staff will send the resident a second reminder of the smoking ban, including a second copy of Resolution 2010-20 and refer the resident to the Resident Services office for assistance in complying with the smoking ban.

3rd offence: Staff will send the resident a notice of a mandatory conference to discuss the policy and repeated violations. Property management and resident services staff will be present to assist the resident in developing strategies to help them comply with the policy in order to safeguard their housing. If the resident fails to attend the conference, they will receive a lease violation notice in conformance with existing LDCHA policy.

4th offence: the resident will be issued a remedial lease violation.

5th offence: the resident will be issued another lease violation.

6th offence: An eviction notice to terminate the lease will be issued.

General Recommendations

- Try to avoid grandfathering current smokers
- Implement policy on activity of smoking
- Document policy and enforcement steps
- Enforce smoke-free policy consistently

Resources

www.PublicHealthLawCenter.org

The screenshot shows the Public Health Law Center website. At the top left is the logo, a stylized flame inside a circle, followed by the text "PUBLIC HEALTH LAW CENTER at Mitchell Hamline School of Law". To the right are social media icons for Facebook, Twitter, and LinkedIn, with the text "E-newsletters". Further right is a search bar with a "GO" button and the text "Advanced Search". Below the header is a navigation menu with the following items: "Tobacco Control", "Healthy Eating", "Active Living", "Other Public Health Law", "About Us", and "Webinars". A red box highlights the breadcrumb trail: "Home » Topics » Tobacco Control » Smoke Free Tobacco Free Places » Housing". The main content area features a "Housing" section with a "no smoking" icon. The text discusses the regulation of secondhand smoke in public places and private multi-unit residences. It mentions that recent efforts have focused on reducing exposure in employment and public places, and that policies aimed at controlling exposure in private multi-unit residences can significantly contribute to the improvement of residents' health. It also notes that initial efforts at assessing and controlling exposure to secondhand smoke in private residences have focused on multi-unit rental apartment buildings, and that problems with secondhand smoke exposure in common interest communities – condominiums, cooperatives and planned communities – have not received as much attention as rental buildings. Because of the different legal arrangements involved in a landlord and tenant transaction compared with an owner-occupant, the approaches to solutions, legal options, and legislative policy choices differ between the two situations. A significant subset of multi-unit residences within the rental category is housing that is subsidized by the federal government or owned by state or local public entities. Receipt of public funds subjects this category of housing to additional regulations, so a separate section is included under rental apartments for issues and resources related to subsidized or public housing. At the bottom, it says "Check out our [Housing](#) resource archive." On the right side, there are two sections: "Related Topics" with links to "Public & Subsidized Housing", "Common Interest Communities", and "Housing for Special Populations"; and "Related Publications" with links to "Thirdhand Smoke: A Select Bibliography of Recent Studies (2013)", "Disclosure of Smoking Policies in Multi-Unit Housing (2015)", "Tobacco in Adult Correctional Facilities: A Policy Overview (2012)", and "Smoke-free Common Interest Communities: Legal Fact Sheet (2010)".

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Housing

Recent regulation of secondhand smoke has focused primarily on reducing or eliminating exposure in places of employment or in public places. This effort has proved successful in significantly reducing the incidence of smoking-related health conditions. Since people spend more time in their homes than in any other location, policies aimed at controlling exposure to tobacco smoke in private multi-unit residences can significantly contribute to the improvement of residents' health.

Initial efforts at assessing and controlling exposure to secondhand smoke in private residences have focused on multi-unit rental apartment buildings. Problems with secondhand smoke exposure in common interest communities – condominiums, cooperatives and planned communities – have not received as much attention as rental buildings. Because of the different legal arrangements involved in a landlord and tenant transaction compared with an owner-occupant, the approaches to solutions, legal options, and legislative policy choices differ between the two situations.

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Check out our [Housing](#) resource archive.

Related Topics

- Public & Subsidized Housing
- Common Interest Communities
- Housing for Special Populations

Related Publications

- Thirdhand Smoke: A Select Bibliography of Recent Studies (2013)
- Disclosure of Smoking Policies in Multi-Unit Housing (2015)
- Tobacco in Adult Correctional Facilities: A Policy Overview (2012)
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Questions?

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