

# SECONDHAND SMOKE RESIDENTS' RIGHTS

## SECONDHAND SMOKE IN APARTMENT BUILDINGS

Secondhand smoke causes heart disease, lung cancer, respiratory infections, decreased respiratory function, worsens asthma, and can lead to other health problems. The U.S. Surgeon General reported that "scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke."

Secondhand smoke can travel through gaps along baseboards, electrical outlets, shared heating and ventilation systems, through light fixtures, and in and out of doorways and windows. The path smoke takes through buildings is hard to predict and difficult to stop.

Air cleaners and ventilation systems do not protect against the chemicals in secondhand smoke. The only effective protection is to eliminate smoking.

## SMOKE-FREE POLICIES ARE LEGAL

It is legal for property managers to adopt no-smoking policies and it helps protect the health of their residents. U.S. law does not protect smokers' right to smoke; however, laws do exist to protect rights of individuals to a smoke-free apartment.

Even if your lease does not include a smoke-free provision, it may contain provisions such as a "nuisance clause" to protect residents from secondhand smoke exposure. Other potential provisions could be "Covenant of Quiet Enjoyment" or "Warranty of Habitability". [ChangeLab Solutions](#) in California has created a document that includes strategies that can be used in any state.

## WISCONSIN LAW

Wisconsin law already prohibits smoking in the "common areas of multiple-unit residential properties." Wis. Stat. § 101.123(2)(a)(8d). Smoking is not allowed in enclosed places of employment and public places, including, but not limited to, management offices, maintenance rooms, stairways, basements, lobbies, community rooms, laundry rooms, fitness rooms, or swimming pool rooms. Signs should be posted in common areas.

If you notice someone smoking in a common area, you can:

- 1) Let them know of the restriction
- 2) Inform the property manager

If either of these steps does not resolve the matter, you can report the violation to local law enforcement and the Wisconsin Department of Health Services at [www.wibettersmokefree.com/violation](http://www.wibettersmokefree.com/violation).

For more information on smoke-free housing visit  
[www.wismokefreehousing.com](http://www.wismokefreehousing.com)



## WHAT RESIDENTS CAN DO

*Below are a few strategies to help you eliminate exposure to secondhand smoke in your home.*

### Document

If smoke is coming into your home from another unit, you should write down what you are experiencing. Keep track of things such as:

- Where the smoke is coming from and how it is getting into your unit
- Dates and times when the smoke is most noticeable
- Any steps you've taken to keep the secondhand smoke out
- Any health problems and illnesses you experience as a result of the secondhand smoke

### Communicate

**Contact the smoker directly.** Express your concern and ask them to stop smoking in their unit.

**Contact your property manager.** You may want to discuss the problem with your property manager informally at first, but putting your complaint in writing is a good idea. Also keep copies of any letters sent and notes from conversations. These will be useful as a record of the steps you took to work with your property manager.

- There are resources on [www.wismokefreehousing.com](http://www.wismokefreehousing.com) for property managers that will help you make the case for smoke-free housing and will guide them through the implementation process if they are interested.

### Reach Out

**Seek assistance from a third party.** You can talk with or survey your neighbors to determine if they are experiencing the same problem and enlist their support. There is a template survey on [www.wismokefreehousing.com](http://www.wismokefreehousing.com). The building owner, if different from the person managing the building, is also a possible contact. They may be more open to the idea of making the building entirely smoke-free.

## LEGAL OPTIONS FOR TENANTS

*Consulting an attorney is an option, but can be costly and should be considered a last resort. Depending on your circumstances, a variety of legal claims could be a possibility.*

### Federal Disability Law

The federal Fair Housing Act and the Americans with Disabilities Act require property managers to make reasonable accommodations so that individuals with a handicap or disability can use and enjoy their unit. If you have a serious health condition that is affected by secondhand smoke, these federal laws may help.

For more information on housing and disabilities or to submit a complaint, contact the Department of Housing and Urban Development (HUD)'s [website](#).

### Federally Assisted Housing (HUD and Section 8)

The U.S. Department of Housing and Urban Development (HUD) promotes smoke-free multi-unit housing. HUD has created an [action plan](#) for creating policies.