

Mediating Secondhand Smoking Disputes in Housing

DO YOU WORK WITH PEOPLE WHO ARE IN DISPUTE OVER DRIFTING SMOKE IN THEIR HOMES?

Mediation over secondhand smoke may prove helpful within a number of different housing relationships, such as between:

- a non-smoking resident and a smoking resident who are in dispute over drifting secondhand smoke,
- a non-smoking resident who wants a no-smoking ban and his / her landlord or homeowners' association,
- a smoking resident and a landlord or homeowners' association that is adopting a no-smoking policy.

THINGS YOU CAN SUGGEST:

- **Get the individuals talking.** Ask those involved to express their concerns and needs openly but with an air of respect in order to inform one another of their differing perspectives. Next, suggest they brainstorm solutions that could benefit all parties.
- **Suggest the parties involved talk to the housing provider directly or within a mediation process.**
 - Is there currently a smoking policy in place; if so, what does it include? How is the current rule being enforced? How might revising or better enforcing the rule help the situation?
 - What other solutions might be helpful? For example: moving to a different unit; being let out of a lease before the end of the lease term; etc.
- **Test possible solutions with the parties involved.**
- **Develop a clear agreement between all parties, verbal or written as they see fit.**
- **Schedule a "check back" to determine how things are working for all the parties involved.**
- **Encourage everyone involved to become familiar with the laws** that govern housing transactions, smoking, etc. See page 2 for further details.
- **Consider the option of litigation.** While not the best option, legal advice should be sought if the housing provider already has a smoking policy that restricts smoking and they are not enforcing it. The resident may have claim to damages, moving expenses, etc. An interesting and relevant article on the subject can be found at www.phlpnet.org/tobacco-control/products/tenantsdriftingsmoke entitled "Legal Options for Tenants Suffering from Drifting Tobacco Smoke."



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BACKGROUND INFORMATION:

- **Although it is not illegal for adults to smoke tobacco, neither smokers nor the act of smoking is not a protected class under federal, state, or local fair housing laws.** According to the Executive Director of the Fair Housing Council, which serves both Oregon and SW Washington, "Owners and managers have every right to restrict smoking in and on their property." Smoking is a behavior, not an inherent characteristic like race or sex. All kinds of people smoke, so prohibiting smoking does not target any one protected class group as defined by fair housing laws.
<http://fhco.org/sf.htm>
- **Smoking restricted by law in multi-unit housing deemed a workplace:** Both Oregon¹ and Washington² laws prohibit smoking in almost all workplaces and within a certain distance from buildings (10' in Oregon and 25' in Washington). This includes common areas and anywhere an employee is required to enter as part of their job.
<http://www.oregon.gov/DHS/ph/smokefree/index.shtml>
- **Effective January 1, 2010, Oregon landlords must, as part of their rental agreement, disclose the smoking policy to renters.** This state law does not require landlords to restrict smoking; it simply mandates that landlords inform renters in writing if and/or where smoking is allowed on the property.³
<http://smokefreehousinginfo.com/pages/Landlord%20disclosure%20law.html>
- **Residents with certain disabilities may be protected under the federal Fair Housing Act against secondhand smoke (SHS) that aggravates an existing condition.** If a resident has a physical or mental condition made worse by the presence of SHS, s/he may request a "Reasonable Modification" or "Reasonable Accommodation" in order to make full use and enjoyment of their home as others without the condition would. Such conditions might include: severe asthma or allergies, lung cancer, chronic bronchitis or other lung disease, chemical sensitivities, heart disease or other heart conditions, etc.
<http://www.justice.gov/crt/housing/title8.php>
- **It is illegal to retaliate against a resident for complaining.** State landlord / tenant laws allow a landlord to evict on a "no cause" basis; however, it is illegal to retaliate against a renter by evicting him/her for making a complaint.
<http://www.leg.state.or.us/ors/090.html>
Similarly, retaliation is illegal under fair housing laws.
http://www.fhco.org/hs_consumer_info.htm
- **Secondhand smoke (SHS) is a toxic substance** containing over 40 cancer-causing agents. The US Surgeon General said it best in 2006, "The debate is over. The science is clear. Secondhand smoke is not a mere annoyance, but a serious health hazard."⁴
- **Secondhand smoke does not stay put.** "Tobacco smoke travels from its point of generation in a building to all other areas of the building. It has been shown to move through light fixtures, through ceiling crawl spaces and into and out of doorways," according to Cal. OSHA.
- **Many people are regularly exposed:** 21% of Oregon renters living in multi-unit properties said that secondhand smoke was drifting into their homes on a regular basis, creating a serious health risk for them and their families.⁵

¹ <http://www.oregon.gov/DHS/ph/smokefree/index.shtml>

² http://www.co.whatcom.wa.us/health/human/tobacco/smokefree_wa.jsp

³ Learn more at www.FHCO.org/pdfs/sf_landlord_fact_sheet.pdf or www.FHCO.org/pdfs/sf_renter_fact_sheet.pdf

⁴ <http://www.surgeongeneral.gov/library/secondhandsmoke>

⁵ 2008 Oregon statewide survey results: <http://www.oregon.gov/DHS/ph/tobacco/docs/08/08rentsurvey.pdf>

- **There is no effective way to vent or seal a unit** to protect from drifting secondhand smoke. The American Society of Heating, Refrigerating, and Air Conditioning Engineers says the “only way to effectively eliminate health risks associated with indoor exposure is to ban smoking activity.”⁶
- **70% of Oregon renters would choose a smokefree rental unit.** 40% would even be willing to pay a little more to live in a smokefree community. All groups, even those in the lowest income brackets desire smokefree living.²
- **81% of renters have prohibited smoking in their own homes;** even 25% of smokers don’t allow smoking in their homes.²
- **More and more Oregon Landlords are adopting no-smoking policies.** A recent survey conducted in the Portland Metro area shows the growing trend of no-smoking policies in multi-unit housing.⁷
- **No-smoking rules make good business sense for housing providers.** Both the Metro Multifamily Housing Assn. and the Oregon Rental Housing Assn. agree that such policies protect the property from damage, excessive wear and tear, and reduce the risk of fires and potential liability.

RESOURCES:

- **Smokefreehousinginfo.com:** Information specifically for landlords including sample lease language and resident survey, tips on enforcing no-smoking policies, and much more.
- **SmokefreeHousingNW.com:** A wealth of information for landlords, tenants, condo and homeowner’s associations, and for those buying or selling homes. Includes a renters’ toolkit, sample letters and neighbor survey, and tips on how to talk to a housing provider.
- **HousingConnections.org:** Housing consumers may search for a new home with the smoking policies they prefer for free. Housing providers may also post available housing for free on this site.
- **Direct Assistance:**
 - For further assistance with smoking policy issues residents and housing providers may contact their County Health Department (FHCO.org/pdfs/sf_tpeps.pdf) statewide, or the American Lung Association (503/924-4094 or healthinfo@lungoregon.org) within the Portland area.
 - Renters may contact Legal Aid Services (www.oregonlawhelp.org) the Community Alliance of Tenants (<http://oregoncat.org>) for assistance with landlord / tenant law issues.
 - Those with a disability affected by secondhand smoke or smoking policies may contact the Fair Housing Council for assistance in requesting a Reasonable Modification or Reasonable Accommodation (800/424-3247 Ext. 2; FHCO.org/disability.htm).

⁶ http://www.ashrae.org/content/ASHRAE/ASHRAE/ArticleAltFormat/20058211239_347.pdf

⁷ http://smokefreeoregon.com/housing/whats_new/2009%20Benchmark%20Portland-Vancouver%20Renter%20Survey.pdf