



CHAPTER 8

WORKING WITH RENTERS EXPOSED TO SECONDHAND SMOKE

PURPOSE

Empowering renters suffering from second-hand smoke exposure

OUTCOMES

- Educate renters on their legal rights
- Encourage renters to talk with their manager and reach out to the manager when appropriate
- Contact renters to local legal services and other resources

WHY TARGET OUTREACH TOWARD RENTERS?

Renters who are being exposed to secondhand smoke are the motivation for the smoke-free housing movement. If the health of renters wasn't at stake, it's unlikely that so many public health professionals would work toward smoke-free policy adoption in multi-unit housing. However, renters are not the primary targets for outreach. Working directly with the housing industry is the most efficient way to policy adoption since property owners and managers are the decision makers. In other words, renters are the reason why policies need to be implemented and working with managers is the way policies are implemented.

There's nothing wrong with conducting some outreach to renters, but organizing coalitions of renters can be difficult and time consuming. Keep in mind that not all renters have a good rapport with their building manager. Certain renters may regularly make complaints and requests to managers. Unfortunately, managers may see those renters as people who simply complain about everything, so when a problem like secondhand smoke arises, managers may doubt the severity of the situation.

THE PROBLEM

Secondhand smoke is dangerous

Renters dealing with secondhand smoke infiltration into their apartment unit are being exposed to many health hazards. Renters can develop health problems such as eye and throat irritations, lung infections and asthma. Secondhand smoke exposure also can severely exacerbate existing chronic health conditions. Secondhand smoke is especially dangerous for children and seniors because their immune systems are more vulnerable to the toxins. To learn more about the dangers of secondhand smoke, read Chapter 1 "The Case for Smoke-Free Housing."

Secondhand smoke drifts

The human nose can easily detect small amounts of smoke, even in large areas. Smoke can travel through an apartment building by moving up, down, side-to-side, and in ways we can't predict. Apartment buildings are filled with small gaps between units, and smoke can leak through those openings and move to other areas of the buildings. All of those small gaps add up to an average of about nine square inches per apartment unit. This can lead to up to 65% of air being shared among apartment units and common areas throughout

KEY TERMS:

RENT ESCROW: *When a manager will not respond to requests for repairs in an apartment unit, a renter can file a complaint with the local housing court and place his/her rent into a third-party account. The manager will not receive the money until steps are taken to solve the problem, but the renter is not penalized for non-payment of rent. Details on how to file a rent escrow claim can be found by contacting your local housing court office.*

WARRANTY OF HABITABILITY: *In a residential lease, a warranty from the landlord to the tenant that the leased property is fit to live in and that it will remain so during the term of the lease; also termed covenant of habitability.*

NUISANCE: *A condition or situation (such as a loud noise or foul odor) that interferes with the use or enjoyment of property.*

TRESPASS: *An unlawful act committed against the person or property of another.*

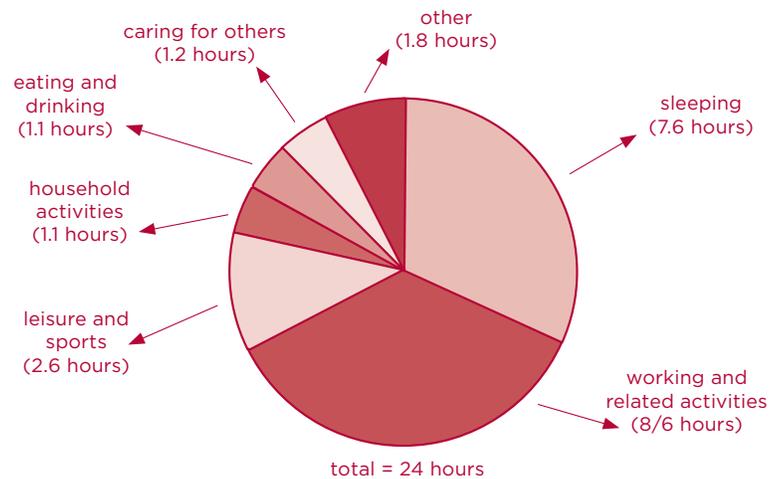
DISABILITY: *A physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such impairment; or being regarded as having such an impairment.*

MEDIATION: *A method of non-binding dispute resolution involving a third party who tries to help the disputing parties reach a mutually agreeable solution.*

apartment buildings.⁵ To learn more about how smoke moves through a building, read Chapter 1 "The Case for Smoke-Free Housing."



Time use on an average work day for employed persons ages 35 to 54 with children



People are often at home

An apartment unit is, and should be, a place where renters spend a lot of time. Unfortunately, if secondhand smoke is drifting into their unit, the more time a renter spends at home, the more time that they are exposed to smoke. The Bureau of Labor Statistics studies how Americans spend their time. They have found that, on average, people spend at least eight hours at home per day (time spent sleeping and doing household activities). That time is likely increased for most people if time from other categories, such as “Leisure and sports,” “Eating and drinking,” and “Caring for others” is spent in their home.⁶

Many “fixes” don’t work

Renters suffering from secondhand smoke often want a quick fix to their problem, especially if the management doesn’t offer a satisfying solution. Unfortunately, opening windows and running ventilation fans may increase air flow and might actually pull smoke into a unit.⁵ Candles, sprays, and “plug-ins” will only mask the smoke smell and won’t eliminate the health hazards associated with smoke exposure.

Avoid giving renters recommendations on air purifiers and ozone machines. Experts agree that these devices are not proven to solve the problem and might give renters and building managers a false sense of security.

PREVENTING THE PROBLEM BEFORE IT BEGINS

The best way to avoid renters being exposed to secondhand smoke is to prevent the situation entirely. Of course, the best way to prevent the problem is to work with the property manager to make the whole building smoke free. Working with managers should be 80-90% of your program’s efforts, but you may want to reserve some time for working with renters. As you educate renters in your area about the potential for secondhand smoke exposure in multi-unit buildings, you will empower them to demand that their living space be smoke free.

Unfortunately, renters are a difficult population to reach. Conducting mailings to renters would be very costly and compiling a mailing list would be time intensive. Meeting renters at community events is less expensive, easier, and likely just as effective. However, there aren’t many events aimed at bringing renters together, so you may have to be creative and instead consider some of the other demographic categories in which renters in your area may fall. General community events may not be worth your time because you are looking for a small segment of the population who will hear your message. One of the best ways to reach renters is to focus on educating new renters.

Community events that might offer a connection to renters

- Immigrant resource fairs;
- Senior fairs;

- College fairs;
- Community health fairs/clinics;
- Women, Infants, and Children (WIC) events;
- Ethnic/cultural festivals; and
- County fairs and city festivals.

Educating new renters

Many college students and young adults are first-time apartment renters. Similarly, there is an expanding population of older adults and seniors who may be returning to the rental market after downsizing from a single-family home. There may be community events targeted toward these populations that will give you a more direct audience for your message. Try to exhibit at or work with college fairs, senior fairs, college housing offices, and senior service agencies.

Most renters do not realize that drifting secondhand smoke can be a problem in an apartment until they experience it firsthand. Young adults who are first-time renters and seniors who are re-entering the rental market may be especially unaware of the problem. As you educate renters, warn them about secondhand smoke exposure and encourage them to look for a smoke-free apartment. Show them how to access your local listing of smoke-free buildings.

If you don't have a listing of smoke-free buildings, or if you want to offer renters a way to supplement the listing you have, let renters know that they can search newspapers, apartment magazines, or online services for key words such as "smoke free," "non-smoking," "no smk," or "NS." Encourage them to ask the property manager if the building is smoke free when they take a tour of the property. If it is, renters should ask to see the policy in writing in order to confirm that a smoke-free policy is in place. Renters should also inspect the building and the specific unit they are renting to confirm it is smoke free. They can also ask if the previous renter smoked in the unit.

Things to remember

When a renter contacts your office, he or she might be very emotional and frustrated. He or

she may have been suffering with this problem for a long time, and has an urgent desire to find a solution. This, coupled with the relief of finding your program, can leave a renter feeling relieved. On the other hand, the renter may place unrealistic expectations on you to "force" the manager to make the building smoke free and may be extremely frustrated when they learn that the

RENTER SCENARIO:

BETSY²

Betsy smelled smoke throughout her apartment unit, but particularly in her bedroom at night. She had a good relationship with her manager, so she mentioned the problem to him. Betsy also contacted her local smoke-free housing program to learn about the resources available. The smoke-free housing program connected with Betsy's manager to discuss adopting a smoke-free policy.

The manager felt that Betsy was a good renter (she paid her rent on time, was friendly to other renters, and never caused any trouble), so he wanted to come up with a solution that would prevent her from moving out. He also liked the idea of making the building healthier by going smoke free. Once he realized that adopting a smoke-free policy was an option, the manager was so committed to adopting a policy that the building went smoke free within 60 days of connecting with the local smoke-free housing program.

solution isn't that easy.

As discussed at the opening of this chapter, some renters do not have a lot of credibility with their manager. Some renters complain about a lot of things and are labeled as troublemakers. A renter who continually files complaints about the building may have already damaged his/her relationship with the manager. These renters certainly

deserve to be protected from secondhand smoke, but it may make your work a little tougher since you will have to navigate the complexities of the manager/renter relationship.

You might want to remind renters that your program provides educational information on legal issues related to secondhand smoke and smoke-free policies, but you do not legally represent the

TYPICAL RENTER SCENARIOS

Every renter's story will differ in the details, but there are many similarities that emerge:

Common types of renters that you might encounter:

- Renter who recently moved into the unit and wasn't shown the actual unit prior to move-in;
- Established renter with a new neighbor who recently moved into the building;
- A family with small children;
- Elderly renter;
- Disabled renter; and
- Renter with chronic health issues, especially lung conditions.

Common types of situations that you might hear about:

- Renter was assured that the unit and/or building was smoke free, but didn't receive anything in writing;
- Renter smells smoke coming in through vents, walls, outlets, windows, etc.
- Renter is experiencing health problems from the secondhand smoke entering the unit and is concerned about his or her family's health;
- Renter may have tried talking with the manager about the problem;
- Renter likely has not tried talking with the neighbor;
- Manager's response is that nothing can be done;
- Renter may have tried some home remedies such as putting towels under doors, running fans, or purchasing an air purifier;
- Renter is very frustrated that the problem is not being solved; and
- Renter may take drastic steps such as sleeping in the living room or staying with a friend.

“DESPITE PRODUCT CLAIMS, THERE’S LITTLE DEFINITIVE MEDICAL EVIDENCE THAT PURIFIERS HELP RELIEVE RESPIRATORY SYMPTOMS. SOME MAY POSE A THREAT EVEN TO HEALTHY USERS.”

– Consumer Reports, December 2007⁷

renter or the manager. Some renters forget that offering educational information is not the same as offering legal advice, so you will need to be clear that you are not entering in to any sort of attorney/client relationship with them.

Suggestions for renters

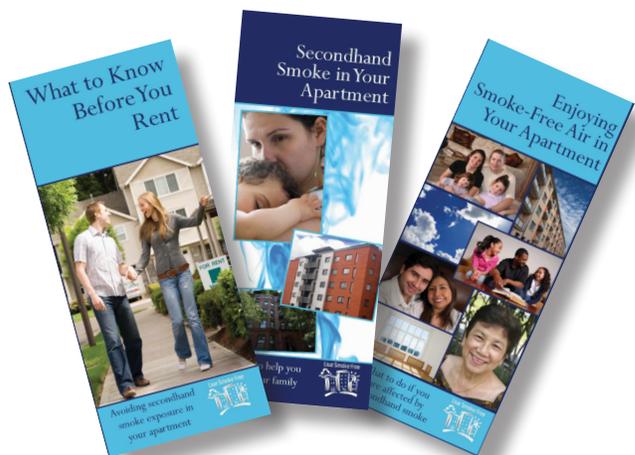
After listening to a renter’s story, you can suggest a few simple actions that the renter can take in order to collect evidence of the problem and begin to work toward a solution.

- *Keep a log/record documenting when smoke enters the unit:*
 - Where is the smoke coming from? (The bathroom, the bedroom, the front door, etc.)
 - How bad is it? (Try using a scale from 1-5)
 - Are there any health effects noticed? (A coughing fit, watery eyes, an asthma attack, etc.)
 - How long does the exposure last? (One hour, five hours, eight hours, etc.)
- *Create a list of any attempted solutions such as running fans or blocking gaps in order to show that these strategies have been tried and are failing to solve the problem:*
 - Trying some temporary solutions may help to illustrate the severity of the problem.
 - This will preempt the manager from suggesting those kinds of solutions.
- *Talk with neighbors:*
 - Talking with the smoking neighbor may not always be comfortable or safe, but if it is a close community, it is worth seeing if the smoking neighbor will start smoking outside; many smoking residents don’t realize that their smoke will migrate to other units.
 - Other neighbors may be experiencing the drifting smoke and may be willing to share their stories with the manager.
- *Write a letter to the property manager:*
 - Explain the problem and offer solutions (a release from the lease, to be moved to another unit, a smoke-free policy for the building, etc.).
 - Try including letters from doctors explaining that the smoke has a health impact on the renter.
 - Provide information on how to adopt a smoke-free policy (renters can get this information from your office).
 - A similar letter can be sent to the owner or management company if appropriate.
 - Renters should keep copies of all correspondence.
- *Follow up with a visit or phone call.*
 - A casual follow up will ensure that the request is considered and not ignored.

Renters working together

Can a coalition of renters be effective at convincing the manager to adopt a smoke-free policy? That depends on the culture of the building. In some buildings, the manager may appreciate hearing from renters and may view a coalition as a sign that the problem needs a solution. In other buildings, the manager may be overwhelmed (or embarrassed) by several renters complaining about a health risk in the building.

Some buildings have a Residents’ Association that could be mobilized to action. The true power of a Residents’ Association varies from building to building, but in general a Residents’ Associa-



CASE STUDY:

LIVE SMOKE FREE'S BROCHURES FOR RENTERS

Live Smoke Free has created three short brochures targeted at educating renters:

What to Know Before You Rent

This tri-fold brochure was designed to educate new renters about the potential for secondhand smoke to migrate in buildings and how renters can find a smoke-free building. This brochure is primarily distributed at community events such as college and senior fairs.

Secondhand Smoke in Your Apartment

This tri-fold brochure offers a first look at the problem of secondhand smoke and steps that renters can take if they are exposed. This brochure can be placed in community settings such as clinic waiting rooms or at other social service agencies. Live Smoke Free produces this brochure in English, Spanish, Somali, Hmong, and Oromo.

Enjoying Smoke-Free Air in Your Apartment

This four-paneled brochure is an in-depth discussion about the steps that renters can take if they are exposed to smoke. This brochure is sent to renters after a phone consultation to summarize the suggestions that Live Smoke Free staff give.

tion exists to help guide the management on decision making in order to keep the best interest of the residents in mind. The Residents' Association might be willing to create a petition or survey to give to residents, talk with the manager about the problem, or write a resolution to urge the manager to find a solution. You might have to give several presentations to a Residents' Association in order to gain support.

Organizing a coalition of renters has the potential to take a lot of your time. Since you will likely be working with several other managers to adopt policies, you may not be able to devote a lot of time to organizing renters. You may also be seen as an unwelcome third-party to the residents, or you might not even be able to enter the building if it is securely locked. In those instances, you can encourage a renter to take the lead on organizing his/her fellow residents. You might also be able to develop a strategy to partner with a local non-profit or community health workers to assist in organizing renters (to learn more about developing a strategy to partner with community health workers, read Chapter 3 "Building a Smoke-Free Multi-Unit Housing Program").

Third-party agencies that may be able to help renters

- Local advocacy groups:
 - Smoke-free housing organizations;
 - Renter advocacy organizations; and
 - Health advocacy organizations.
- Government organizations:
 - Health departments;
 - Housing services;
 - Attorney general; and
 - HUD's multifamily complaint line (1-800-685-8470).
- Elected officials.
- Media outlets.
- Legal assistance.

WHAT CAN YOUR ORGANIZATION OFFER?

Your budget and project goals will dictate the kinds of assistance that you can offer renters, but there are a few things that you can do that don't require a lot of money. You can choose to put as much staff time into these suggestions as you see fit.

Simple activities

- A sympathetic ear can help calm a situation. Many renters just want someone to listen to their problems; once they have spoken with you they may feel empowered to move forward on their own.
- Be sure to track contacts that you have with renters so that you can monitor if several renters have contacted you about the same building.
- Write a letter to the manager or management company to offer your assistance in helping them adopt a smoke-free policy. Be sure not to mention any names of renters who have contacted you, but let the manager know that you have received complaints.
- Provide the renter with sample documents and educational materials:
 - Provide secondhand smoke factsheets, a sample letter from a doctor to a manager, and a sample petition for renters to sign.

RENTER SCENARIO: ALICE³

Alice explained her problem with secondhand smoke exposure to her manager several times. The situation became so bad that she wanted to move out of the building as quickly as possible — before her lease was up. Her manager refused to let her out of her lease early, and Alice could not afford to hire legal services. Alice contacted her local smoke-free housing program and asked that a staff member come to a meeting with both Alice and her manager. Alice hoped that the manager would understand the importance of the situation with an expert present. During the meeting, Alice's manager did decide to release Alice from her lease.

Alice moved to another building, but that building also allowed smoking. Alice knew the risks of moving into another building where secondhand smoke exposure was a possibility, but she liked the building and it was a building that accepted her affordable housing subsidy. Alice talked with her new manager about adopting a smoke-free policy. The manager was interested, so Alice connected the manager with her local smoke-free housing program. After speaking with the smoke-free housing program, Alice's manager decided to adopt a smoke-free policy.

Unfortunately, Alice felt that the policy adoption process was moving too slowly, and decided to take it upon herself to organize other residents into a coalition to convince the manager to move more quickly through the policy steps. The other residents felt that Alice was too pushy, and some complained that Alice was harassing them. In order to address the other residents' perception of a hostile environment caused by Alice, the manager eventually decided against adopting the smoke-free policy.

The local smoke-free multi-unit housing program has continued discussions with the manager and is hopeful that a smoke-free policy can be achieved someday.

- Give renters a few of the materials that you have created for the housing industry and encourage the renter to give the information to his or her manager.

Advanced activities

- Coordinate a meeting with multiple renters to discuss the issue. Hold these meetings in a public place rather than in the apartment building; this avoids suspicion and provides a safe, neutral environment for all attendees.
- Offer to meet with the renter and the manager to discuss a solution. Remember that you are not the renter's legal representative; you are there to provide information that can help the renter and manager come to an agreement.

CASE STUDY:

MAKING TIME TO WORK WITH RENTERS

Conducting outreach to renters can take a lot of time and energy since renters are not easily reached through mass mailings or media. Once a renter becomes interested in smoke-free multi-unit housing work, it can still take a lot of time and energy to develop a strategy on how to involve the renter in policy work successfully. Since working with property managers is the most direct and effective route to policy adoption, Live Smoke Free has developed some internal parameters to guide our work.

- ***Approximately 80% of staff time should be spent working with the housing industry and 20% of time can be spent working with renters.***
 - We never turn away a renter who contacts us, but we have found that we usually spend less than 20% of our time working with renters so this guideline is not unreasonable.
- ***Our work with renters is usually reactive rather than proactive.***
 - With the exception of a few community events during the year and/or some work with renter-serving agencies, we reserve our time working with renters for those who contact us with problems.
 - This allows us to continue to help renters without the investment of developing outreach campaigns geared toward renters; we can focus our outreach efforts on managers.
 - We want to continue to educate renters and provide them with resources about solving their problems with secondhand smoke exposure. We put materials, tips, research, and other information on our web site. We also make a concerted effort to optimize the web site so that renters can find our information if they search the web looking for information on secondhand smoke in multi-unit housing.



- Refer the renter to legal and mediation services (read *Renters and Legal Options* in this chapter).

If you decide to move forward with advanced activities, be careful not to ruin a potential relationship with the manager or management company. If a manager feels that you are vilifying him or her, you may lose the opportunity to get a policy passed in the building. That manager may also tell his or her peers about the interactions with you, so make sure those interactions are positive.

Possible outcomes

Hopefully your efforts will lead to discussions with the manager and a solution that will alleviate the renter's exposure to secondhand smoke.

There is a range of potential solutions that could occur:

- Manager could adopt a smoke-free policy;
- Manager could conduct a survey of renters to gauge experiences with secondhand smoke and interest in going smoke free;
- Manager could hold a community meeting with renters;
- Renter could be relocated to another unit in the building/complex;
- Renter might be allowed to break the lease early with no penalties so that he or she can move; or
- If discussions fail or do not occur, renter can initiate legal action.



BE SURE TO SET SOME PARAMETERS ABOUT WHAT SERVICES YOU WILL PROVIDE TO RENTERS.

Some renters may request that you help with moving costs and legal fees. Other renters may push you to continue to contact the manager beyond the point with which you are comfortable.

Keep in mind that any services you are offering are great resources for renters and you do not have to offer anything that would be bad for your budget, your principles, or your program's goals.

SPECIAL SECTION: Renters and Legal Options

When residents of multi-unit properties encounter secondhand smoke intrusion, they may be tempted to pursue a legal approach to solve the problem. Let renters know that while legal actions have been used, they are not very common, and these approaches may not be the best alternative for a number of reasons:

- *Legal actions are not uniformly successful.*
Claims based on nuisance or a breach of the warranty of habitability have been met with varied success. Decisions in some recent cases have found that exposure to secondhand smoke is simply something residents of multi-unit properties are expected to tolerate due to their choice in living arrangements.
- *Legal actions can be lengthy.*
Because of required procedures for bringing a

claim, an action to stop intrusion of secondhand smoke may take longer than just waiting for a lease to expire.

- *Legal actions can be costly.*
Many of the legal options that are available to attempt to alleviate exposure to secondhand smoke require the assistance of an attorney. Attorney fees to pursue a claim are generally more than most renters can afford.

Suggest to renters that prior to resorting to the legal approach, they should exhaust the non-legal options that they feel comfortable taking. For example, renters could try to:

- *Talk with the smoking neighbor.*
The neighbor may not be aware that their activity is causing a problem. Once they become aware, they may be willing to adjust their behavior by taking their activity outside or off the property.
- *Talk with the property owner or manager.*
The property owner may not be aware that secondhand smoke is traveling between units and is causing a problem. He or she may be willing to consider solutions such as offering a unit in another building. The manager also may not be aware of the financial benefits of smoke-free policies and that they are legal. Giving the manager an opportunity to work with the resident is a good first step to avoid the hard feelings that may accompany legal action.
- *Talk with other neighbors.*
If other neighbors are experiencing secondhand smoke intrusion, they may be willing to form a group to talk with the person who is smoking or with the property owner. If enough residents are opposed to permitting smoking, the property manager may be convinced to investigate and perhaps adopt a smoke-free policy.

If attempts at non-legal options are not successful in alleviating the exposure to secondhand smoke, then the use of legal alternatives may be necessary. This section presents an overview of

LEGAL SYNOPSES

Prepared by the Tobacco Control Legal Consortium related to smoke-free multi-unit housing:

- *Secondhand Smoke Seepage into Multi-Unit Affordable Housing;*
- *Infiltration of Secondhand Smoke into Condominiums, Apartments and Other Multi-Unit Dwellings;*
- *Legal Options for Condominium Owners Exposed to Secondhand Smoke;*
- *There is No Constitutional Right to Smoke; and*
- *The Americans with Disabilities Act: Effective Legal Protection against Secondhand Smoke Exposure.*

See Resources Section for URLs.

written by Warren Ortland, JD, staff attorney with the Public Health Law Center

the types of claims that can be brought and legal options that may not involve the use of an attorney. Legal resources and alternatives to assist low-income residents are also reviewed.

LEGAL CLAIMS

Common law claims

Most of the claims that have been used to address issues with secondhand smoke intrusion are “common law claims.” Common law claims are types of legal actions that result from a series of court decisions and are not based on state or local laws. The most common claims that have been used by residents to try to stop the infiltration of secondhand smoke are:

- Nuisance – “A condition or situation (such as a loud noise or foul odor) that interferes with the use or enjoyment of property.”⁹
- Warranty of habitability – “In a residential lease, a warranty from the landlord to the tenant that the leased property is fit to live in and that it will remain so during the term of the lease.” Also known as the “covenant of habitability.”¹⁰
- Trespass – “An unlawful act committed against the person or property of another.”¹¹

Bringing an action based on a common law claim will generally require the assistance of an attorney, which will cost the resident money. It is a good idea to have a basic awareness of the types of claims that a renter might be able to bring to court so that you can help renters understand their rights, but don’t feel you need to be extremely knowledgeable on legal actions. You can get more information from a local attorney, or by reading legal synopses on smoke-free multi-unit housing written by the Tobacco Control Legal Consortium.

DISABILITY CLAIMS - FEDERAL LAW

If a resident has a health condition that affects

their ability to participate in major life activities, he or she may be classified as having a disability or a handicap. The standard definition for a disability that is used by federal disability statutes is:

“The term ‘disability’ means, with respect to an individual – (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such impairment; or (C) being regarded as having such an impairment.”

The three statutes that address disability in housing are:

- *Rehabilitation Act of 1973*
“No otherwise qualified individual with a disability may be discriminated against in any program or activity receiving federal financial assistance.”¹² This provision has been interpreted to include federally subsidized housing.
- *Americans with Disabilities Act (ADA)*
“Title II of the ADA applies to all programs, services, and activities provided or made available by public entities. With respect to housing, this includes, for example, public housing and housing provided for state colleges and universities.”¹³
- *Fair Housing Act of 1968*
“The Fair Housing Act provides equal opportunities for people in the housing market regardless of disability, race, color, sex, religion, familial status or national origin, regardless of whether the housing is publicly funded or not.”¹⁴

These federal statutes have been used to provide relief to residents affected by exposure to secondhand smoke.¹⁵ The determination on whether an individual is disabled and the choice of the reasonable accommodation to be granted are decided on a case-by-case basis.

The Department of Housing and Urban Development offers a website with information on discrimination in housing, and an on-line form to file a complaint.¹⁶

SPECIAL SECTION: Renters and Legal Options (con't)

DISABILITY CLAIMS – STATE LAW

Many states include a prohibition against discrimination in housing based on a disability in their human rights act. For example, the Minnesota Human Rights Act states:

“...discrimination includes...a refusal to make reasonable accommodations in rules, practices, or services, when accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling...”¹⁷

The necessary level of severity of the health condition in order to get relief under a state statute may be different than the level required for federal relief, so a resident pursuing this option should consult with an attorney familiar with the state law.

A renter who wishes to use disability laws to solve their secondhand smoke problem should be made aware that, in order for this to work, the disability has to be one that is directly affected by exposure to secondhand smoke. Conditions such as emphysema or asthma may qualify, but a mobility disability would most likely not qualify.

AFFORDABLE LEGAL RESOURCE OPTIONS

Legal aid services

Free legal services are available in most communities, but eligibility to access the services is generally based on income guidelines, which is usually a percentage of the federal poverty guidelines.¹⁸ If an individual qualifies for assistance, a legal aid attorney may be able to help draft letters to the property owner asking the owner to address the problem, to request supporting documentation from medical providers for disability claims, or to explain the benefits and drawbacks of various legal actions.

Turning to legal aid for help may not resolve the problem of secondhand smoke intrusion for

several reasons. Attorneys in legal aid offices generally have large case loads, and legal aid organizations have experienced funding cuts in recent years, so a secondhand smoke case may not be given priority. The issue of secondhand smoke may be new to some legal aid attorneys, so they may not be familiar with the severity of the health issues, or the legal remedies that are available. Some attorneys may view smoke-free policies as a means to evict smoking residents, so they may not be sympathetic to the issues of non-smoking residents.

Attorney referral services

State and county bar associations frequently provide a service to assist individuals find a private attorney to help them with a legal question. Attorney referral services offered by bar associations offer free or very low cost initial, brief consultations with attorneys specializing in select topic areas.

A resident of low or moderate income may be able to get some advice or other assistance to help inform the property owner or manager of the secondhand smoke issue. Sometimes the receipt of a letter from an attorney may be enough leverage to convince the owner of the legality of smoke-free policies and the potential legal implications of not addressing the issue.

Similar to legal aid attorneys, private attorneys working with state or local referral services may not be familiar with the issue of secondhand smoke and the legal options that are available to help residents.

Pro bono attorney programs

Many private attorneys participate in pro bono (from Latin pro bono public - “for the public good”) programs at their firms or in their communities. These programs are similar to legal aid services in that they offer access to legal services for free, usually based on income qualifications or other eligibility criteria. Attorneys active in pro bono programs are usually able to provide more

assistance than the private attorneys that a resident might engage through an attorney referral program. Given the greater amount of time available to pro bono attorneys, they are more likely to have the time to familiarize themselves with the topic of secondhand smoke intrusion in multi-unit properties and the various legal approaches to addressing the issue.

Law school clinics

Another option that may be available for residents with limited financial resources is a law school clinical program. Many law schools offer clinical programs to provide their students with experience working with clients on a variety of legal issues. If a resident who is experiencing secondhand smoke intrusion is located near a law school, he or she may want to check to see if the school offers support for legal issues related to housing. If the law school does have a housing clinic, the services will usually be available for free, but the resident may need to meet some eligibility criteria. As with pro bono attorneys, students providing assistance through a clinical program will generally have more time to investigate an issue than a private attorney charging a fee. As a relatively new issue in housing, secondhand smoke may be a topic of interest to a student or law school.

Mediation services

An alternative to traditional legal services is mediation. Mediation has been defined as “a method of nonbinding dispute resolution involving a third party who tries to help the disputing parties reach a mutually agreeable solution.”¹⁹ Mediation services are frequently offered for free or on a sliding fee basis. Generally, the services do not require any special knowledge on the part of the mediator, and a resolution is usually reached much more quickly than through traditional legal avenues. A limitation of mediation is that it requires the voluntary participation of both parties; a smoking resident or property owner cannot be forced to participate.

Online legal assistance

Several states provide a variety of legal resources online. The available information ranges from legal aid organization contact information to legal topic fact sheets and forms.

OFFERING LEGAL ADVICE TO RENTERS

Be aware that offering legal advice to renters can be tricky. Unless you work for a legal organization, try to avoid telling renters what they *should do* legally and instead focus on what their options are. A renter who chooses to enter into legal action should not feel pressured or manipulated into doing so.

Helping a renter through the legal process, even if it is just providing continued educational assistance, can also require large amounts of time. You might find yourself answering repeated phone calls or attending several meetings and spending a lot of time helping one renter. You certainly want to be a resource for renters, but you would be well-served to have a few handouts about renters' legal rights that were written or vetted by an attorney.

You may also decide that you need to refer renters to non-profit legal organizations rather than trying to answer legal questions yourself (to learn more about legal organizations that you can refer renters to, read the section “Affordable Legal Resource

i Options” later in this chapter).

CONDUCTING OUTREACH TO RENTERS

Even if renters are not the primary focus of your work, they can help to further your movement. Collecting renters' stories will help you make the case for receiving future funding. You may also meet renters who can participate in presentations that you give to the housing industry. Conducting outreach to renters also allows you to educate the public about smoke-free multi-unit housing options and helps to grow the demand for smoke-free housing.

Community events

i As discussed earlier in this chapter (“Preventing the Problem Before it Begins”), there aren't many renter-specific events so you will have to look for renters at general public events. Focus your efforts on events that may have a high level of renters in attendance. Those events may include health fairs, senior living expos, and resource fairs on college campuses.

Since you may not have the time or budget to attend many events, partner with other programs in your office or collaborating organizations. Ask if those programs will hand out your information when they attend events.

Advertising and media

i In chapter 5, “Strategies to Reach the Housing Industry,” the benefits and challenges of using paid and earned media targeted at property managers are discussed. Many of those points hold true when using media to reach renters. Earned media is free and may be seen as more credible than paid

media precisely because organizations cannot pay for the coverage. You can attempt to get earned media through press releases, editorials, and letters to the editor.

Paid media can be costly and its impact can be hard to measure. While paid media may be seen by a lot of people, it may not generate any leads for your project. Paid media can be beneficial in getting the attention of the public and in educating people on the problem of secondhand smoke in multi-unit housing.

If you decide to create paid media targeted toward renters, think carefully about the purpose of your ad. Will your ad:

- Encourage renters to call your office if they experience secondhand smoke in their unit? If so, this may lead to a lot of calls from renters; you will want to make sure you are prepared to take those calls.
- Educate renters on the issue without a push to call your office? This might be a good strategy if you do not have much staff time to devote to renter calls.
- Advertise your online smoke-free multi-unit housing directory? This is a win for both renters and property managers.
- Celebrate and thank the smoke-free buildings in the area? This will both help renters identify smoke-free buildings and help managers fill their vacancies.
- Refer renters to smoke-free buildings in the area? This will help renters prevent future secondhand smoke problems.

“AT PRESENT, THE ONLY MEANS OF EFFECTIVELY ELIMINATING HEALTH RISKS ASSOCIATED WITH INDOOR [SMOKE] EXPOSURE IS TO BAN SMOKING ACTIVITY.”

– American Society of Heating, Refrigerating, & Air Conditioning Engineers (ASHRAE)⁸

- ⊗ Print ads can be placed in the “Homes” and “Rentals” section of newspapers or in rental search magazines (newspapers and rental search services may also have web sites on which ads can be placed; to learn more about advertising, read Chapter 5 “Reaching Out to the Multi-Unit Housing Industry”). You can also create radio and TV ads. The Centers for Disease Control and Prevention Media Campaign Resource Center offers several ads about secondhand smoke in apartments. These ads can be purchased and customized for your region.

Online presence

- ⊗ Fifty-eight percent (58%) of Americans perform online research of products and services,²⁰ so renters in your area will be looking for solutions to a secondhand smoke incursion online. You should have an online presence for your program, but it doesn’t have to be a complex web site. If you can’t afford to manage a web site dedicated solely to your smoke-free housing program, be sure to at least have a page on your organization’s web site that explains the resources that your smoke-free housing program offers. Provide a listing of smoke-free buildings in your area. This smoke-free housing directory can be a simple list or have extensive interactive search functions. Regardless, the directory will likely be one of the most-visited pages on your website. Having an online presence is an easy way to reach renters and provide resources that will help them as they seek solutions to secondhand smoke problems.

Partner with other agencies

Social service agencies and health care facilities can distribute your information and connect you with renters. There may be renter advocacy organizations in your area that may not only distribute your information, but also allow you to hold presentations to educate renters. Rental search services can offer “smoke free” as a search option in their magazines and web sites (for more information on working with rental search services, see chapter 5 “Reaching Out to the Multi-Unit Housing Industry”). Partnering with organizations such as these can make your outreach efforts to renters easier and more effective.



RENTER SCENARIO:

LYNETTE⁴

After suffering from secondhand smoke exposure and not receiving any solutions from her building’s owner, Lynnette went through her county’s housing court to file a rent escrow claim. When Lynnette and her owner arrived for their court appearance, the owner requested to speak with Lynnette in front of a court mediator rather than the judge in order to settle the problem. Lynnette requested to be released from her fixed-term lease. The owner agreed to allow Lynnette to have a month-to-month lease until she could find a new place to live.

Unfortunately, the new building that Lynnette moved into also allowed smoking. Lynnette brought secondhand smoke information that she received from her local smoke-free housing program to her manager. Lynnette explained the benefits of a smoke-free policy to her manager and successfully convinced the manager to make the entire building smoke free.

CHAPTER CONCLUSIONS:

- Renters are the reason that smoke-free housing advocates do their work; however, they may not be the most effective messengers for change.
- Utilize renters' stories to serve as "leads" to follow up with a multi-unit housing manager and ask for policy change.
- Help renters advocate for themselves by informing them of their rights and offering them a range of practical solutions to their problem with secondhand smoke in their housing unit.
- Determine the amount of time you are able to allocate to assisting individual renters; you will likely make more impact on policy change by reaching out to the housing industry directly.

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PRACTITIONER'S CHECKLIST:

ARE YOU READY TO WORK WITH RENTERS EXPOSED TO SECONDHAND SMOKE?

- Are you knowledgeable about the dangers of secondhand smoke?
- Have you decided how much time and resources will be devoted to tenant assistance?
- Do you have legal resources or third party agencies that you can refer tenants to?
- How could/can your organization help a renter find a smoke-free apartment?
- Have you developed some talking points for talking with renters who are being exposed to secondhand smoke?
- Do you know how you will outreach to renters?
- Have you developed ads to promote your information and services?

SAMPLE TOOLS

- *Fact Sheets and Brochures for Renters*
- *Educational Ads for Renters*
- *Smoke-Free Multi-Unit Housing Online Directory*

RESOURCES

- *Centers for Disease Control and Prevention Media Campaign Resource Center (MCRC): www.cdc.gov/tobacco/media_campaigns/index.htm*
- *LawHelp.org*
- *Tobacco Control Legal Consortium (TCLC): www.publichealthlawcenter.org/programs/tobacco-control-legal-consortium*