
SMOKEFREE LIVING

IN APARTMENTS AND CONDOMINIUMS

Special Edition for Property Management Companies
Please Keep as a Resource



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Electronic Cigarettes: It's Not Just "Harmless Water Vapor"

When electronic cigarettes were first introduced, the word on the street was that the billowing smoke coming off the product was water vapor. The product was advertised as a safe alternative to conventional cigarettes. According to the California Department of Public Health, that has not turned out to be the case.

Electronic cigarettes (e-cigarettes) are battery operated devices, often designed to resemble a regular cigarette. The products are evolving: some are disposable, some are re-chargeable. Some have refillable "tank systems" that hold a larger amount of the e-cigarette liquid and that heat the e-liquid to higher temperatures. Scientists have shown that the heated e-liquid forms an aerosol (not a vapor) which contains high concentrations of ultrafine particles. When inhaled, these particles are trapped in the lungs.

The e-liquids contain nicotine, flavoring agents, and propylene glycol. The e-cigarette aerosol also contains toxic chemicals that can cause cancer, birth defects, and other reproductive harm.

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Secondhand Smoke OUTSIDE Triggers Condo Lawsuit in Orange County

Studies have shown that in apartments and condominiums, when people are smoking outside on balconies, patios, and in courtyards, tobacco smoke will actually be pulled into open windows and doors because of the difference in air pressure. Based on the many calls we receive about this problem, we can only conclude that tobacco smoke will be pulled into a unit, even when windows and doors are closed, probably because our buildings are not built to be air tight.

Studies have also shown that tobacco smoke outside will travel long distances, depending of course on wind and climate conditions. However, one study showed that tobacco smoke actually traveled 50 feet from one single family home to another.

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UCLA Receives \$3 Million to Help L.A. Landlords Adopt Smoke-Free Policies

The UCLA Center for Health Policy Research has been awarded a \$3 million federal grant to assist apartment owners in low income communities in the city of Los Angeles to adopt no smoking policies for their buildings. Smoke-free buildings save money by reducing maintenance costs. In addition, a 10% insurance discount is available from CIG (Capital Insurance Group) for owners of smoke-free buildings.

The non-profit organization, Smokefree Air For Everyone (S.A.F.E.) and other non-profits have been conducting surveys of tenants of low income apartments in the city of L.A. for several years. The surveys have shown that most tenants would prefer to live in a non-smoking building or at least in a non-smoking

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Scientists have also shown that people breathing the e-cigarette aerosol absorb nicotine at the same levels as breathing the secondhand smoke of conventional cigarettes. Preliminary studies show that using a nicotine-containing e-cigarette for just five minutes causes lung irritation, inflammation and effects on blood vessels similar to smoking a traditional cigarette, and may increase the risk of a heart attack. In addition, the aerosol can cause breathing problems.

There is still a lot that is not known about electronic cigarettes. The long-term effects of use or exposure to the aerosol are not known. Scientists have not yet studied whether the smoke from the e-cigarette will travel from unit to unit like secondhand smoke from a regular cigarette. Scientists have not yet studied whether the smoke from e-cigarettes will enter windows and doors in an apartment or condominium building when people use them on balconies, patios and in courtyards, like secondhand smoke from regular cigarettes.

It may be wise for apartment and condominium management to follow the Precautionary Principle in this situation. Scientific investigations have found plausible risks with regard to electronic cigarettes. If electronic cigarettes are being used in an apartment or condominium building, there may be a possibility of causing harm to residents of nearby units. Complaints from residents that they are breathing e-cigarette "smoke" should not be ignored by management.

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According to articles in the Orange County Register by reporter Marilyn Kalfus, condo owners Kim and Kai Chauncey filed a lawsuit in March 2011 against the Bella Palermo Homeowners Association in Trabuco Canyon and TSG Independent Management. The defendants also included the tenants of the condo next door and that unit's owner. The Chauncey's child had asthma and the tenants next door were smoking on their patio. Tobacco smoke is a serious irritant for adults and children with asthma. Episodes of asthma increase and the resulting inflammation of the lungs and bronchial tubes lowers immunity to viruses and other illnesses.

The renters apparently couldn't understand the effect their smoking was having on the child, who kept getting sick. The renters' landlord was not responsive to the entreaties of the parents, and the condominium board also did not understand the seriousness of the situation. When the child was hospitalized with pneumonia, the desperate parents moved out of their condo and searched for an attorney.

On March 6, 2013, Orange County Superior Court jurors awarded the family more than \$15,000, finding the condo association and the management company failed to ensure the nonsmoking family's right to the "quiet enjoyment" of their own unit.

The jury found that the homeowners association and the management company were liable for breach of contract and negligence. The homeowners association's rules did not address secondhand smoke, said the Chaunceys' lawyer, Scott Bonesteel, but "we basically said what you're doing, though it is not specifically called out in the CC&R's, is in fact a breach" of the association's anti-nuisance rules.

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Because the case was in Superior Court, but not at the appellate level, no legal precedent was set. However, it should be noted that the HOA's liability insurance was probably of no assistance. Tobacco smoke is considered a pollutant and there is a pollution exclusion in liability policies for HOA's and for individual landlords.

Approximately 40 California cities have passed laws which regulate smoking in apartments. Many of these laws also include condominiums. Also, many of these laws expressly provide the right of tenants and of condo owners to take legal action to protect themselves from exposure to tobacco smoke. Perhaps these regulations, which clearly indicate the right to be protected from tobacco smoke, will have the effect of actually preventing lawsuits.

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section. The surveys also revealed that approximately one third of the tenants said they were breathing a neighbor's tobacco smoke. According to San Francisco attorney David Wasserman, "California law requires landlords to keep their tenants safe from foreseeable harm." Tobacco smoke exposure is a foreseeable harm.

Scientists have shown that toxic tobacco smoke particles will travel from unit to unit through cracks in fixtures, electrical outlets, pipes, vents and baseboards as well as through shared ventilation systems and windows. The research proves that residents who live in apartments where smoking is permitted are at risk for tobacco-caused diseases such as cancer, heart disease and asthma.

The Centers for Disease Control and Prevention (CDC) will administer the grant which will run for three years, subject to availability of funds. Steven P. Wallace, the Center's associate director and the principal investigator for the grant says, "You shouldn't be exposed to a known health risk just because of where you live. Our project is designed to have a win-win outcome: make tenants' homes a safer and healthier place as well as improve the landlord's bottom line."

Smoking of Marijuana for Medical Purposes: Allow It? Don't Allow It?

The problem is that marijuana smoke can cause cancer. And just like cigarette smoke, which can also cause cancer, marijuana smoke will move from unit to unit through an apartment building or condominium complex.

In 2007, Canadian researchers reported that marijuana smoke contains higher levels of certain toxins than tobacco smoke, including about 50 that can cause cancer. The scientists found that "ammonia levels were 20 times higher in the marijuana smoke than in tobacco smoke, while hydrogen cyanide, nitric oxide and certain aromatic amines occurred at levels 3-5 times higher in the marijuana smoke."

In 2009, the California Office of Environmental Health Hazard Assessment added marijuana smoke to the Prop. 65 list of substances that California regulators say cause cancer. The Office found that marijuana smoke contained 33 of the same harmful chemicals as tobacco smoke.

Do landlords and condominium associations have to allow the smoking of marijuana for medical purposes? The use of marijuana for medical purposes is legal in California, but marijuana use is still considered illegal under the federal Controlled

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If your condominium is contemplating adopting no-smoking policies, consult with the Smokefree Apartment House Registry. We provide technical assistance to condominiums as well as to apartment owners and property management companies.

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Substances Act. David C. Swedelson, Esq. of Swedelson & Gottlieb, Community Association Attorneys, suggests there is also the issue of the smoke as a nuisance which affects the rights of condo owners and the rights of apartment residents to the quiet enjoyment of their unit. We suggest that as a remedy, marijuana can also be inhaled using a vaporizer or ingested using foods available in medical marijuana stores.

CNN (Cable News Network) covered marijuana and its uses as a medicine in a recent 3-hour presentation. (April 19, 2015). The series focused on research. Other nations are researching medical uses for marijuana but in different forms other than smoking: for example, a throat spray has been developed in England to relieve the pain of MS (Multiple Sclerosis). It is sold in 25 countries, but not the U.S.

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In March, 2015, three U.S. Senators introduced the Compassionate Access, Research Expansion and Respect States (CARERS) Act which would remove federal penalties and restrictions for producing, distributing and possessing marijuana for medical purposes, provided there is compliance with state law. The Bill would also reclassify marijuana from "Schedule I" to "Schedule II" thus eliminating current barriers to research, and recognizing the acceptable use of the drug. The Senators include Republican Rand Paul and Democrats Kirsten Gillibrand and Cory Booker.

HUD and CDC Agree That All Multi-Unit Housing Should be Smoke-Free

The CDC (Centers for Disease Control and Prevention) has just taken the position that smoking should not be allowed in all apartments and condominiums. The CDC's new publication, "Vital Signs- Secondhand Smoke: An Unequal Danger," makes the point that more than one in three nonsmokers who live in rental housing are exposed to secondhand smoke.

According to the CDC, every year secondhand smoke kills more than 400 infants (due to Sudden Infant Death Syndrome) and 41,000 adult non-smokers (due to secondhand smoke-related lung cancer and heart disease). About 80 million (one in four) Americans live in multi-unit housing and can be exposed to unwanted secondhand smoke in their homes. Secondhand smoke from units or

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Third-Hand Smoke: Surprisingly More Dangerous Than Anyone Realized

Units that have been "smoked in" have an unmistakable odor long after the tenants have moved out. The odor is an indication of the presence of third-hand smoke. Third-hand smoke consists of the toxic chemicals which remain in a room after the smoking has stopped. The gases and particulates from secondhand smoke will be absorbed into carpets, drapes and other fabrics including clothing and furniture. The chemicals will stain and discolor the walls, appliances, window coverings and even the windows.

Third-hand smoke can be a health risk to new residents who move into units that have been smoked in. Researchers from San Diego State University found third-hand smoke on surfaces and in the dust in the air even after the units had been

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common areas where smoking occurs can seep into smoke-free units. For years, the CDC has been encouraging smoke-free policies in subsidized and public housing, but this new document is the first time the CDC has urged states and communities to support efforts to prohibit smoking in all multi-unit housing.

Another change: Usually HUD, (U.S. Department of Housing and Urban Development) provides funding for and is concerned with Public Housing. However, in October, 2014, HUD issued a publication called, "Change is in the Air – An Action Guide for Establishing Smoke-Free Public Housing and Multifamily Properties." The purpose of the Action Guide is to educate not only public housing authorities and owner/agents of subsidized multi-family housing, but also to educate owners and agents of market rate housing about the benefits of smoke-free policies, and the steps and best practices to follow for adopting smoke-free policies.

According to the HUD memo, a smoke-free policy will reduce property maintenance costs and possibly reduce property insurance costs for owners because of reduced fire risk. California apartment owners and condominium boards can secure lower insurance costs for their smoke-free buildings from CIG (Capital Insurance Group). Also, says HUD, a smoke-free policy will protect the health and safety of tenants as well as on-site employees. For questions about HUD's new policy, contact Regina Aleksiewicz in the Office of Asset Management and Portfolio Oversight at 202-402-2600 or regina.a.aleksiewicz@hud.gov

Information about steps and best practices for adopting smoke-free policies can also be found on the web site of the Smokefree Apartment House Registry, www.smokefreeapartments.org

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vacant for two months and had been cleaned and repainted. The researchers also found levels of nicotine on the fingers of new residents who had moved into the units that had been smoked in.

People can be exposed to dangerous third-hand smoke residue through inhalation, ingestion, or skin contact. According to Lara Gundel, a scientist at the Lawrence Berkeley National Laboratory, "the cumulative effect of third-hand smoke is quite significant. The findings suggest the materials could be getting more toxic with time."

According to scientist Hugo Destaillats, also of the Berkeley Lab, "You can do some things to reduce the odors, but it's very difficult to really clean surfaces completely. The best solution is to substitute materials, such as change the carpet, wash walls, and repaint." He has also suggested that there really may be no safe way to smoke indoors.

Change is in the Air

More than 40 California cities have passed laws which regulate smoking in apartments. The ordinances of many of these cities also include condominiums. Fewer than 12% of California adults are still smoking, and according to the American Lung Association, approximately 70% of people who smoke would like to quit. Surveys show that the percentage of apartment residents who believe tobacco smoke is dangerous keeps rising and is now over 90%. Most people don't want to breathe tobacco smoke where they live.

The kinds of smoke-free housing ordinances adopted by cities vary. Some cities (South Pasadena and Baldwin Park) encourage apartment owners to make

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Change is in the Air

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their buildings entirely non-smoking including units, balconies, patios and common areas. However, the apartment owner is permitted to create a smoking-permitted section of 20% of units next to each other. Condominiums can vote to grandfather existing units where smoking is permitted or can vote to make the building or complex totally non-smoking.

Some cities (Pasadena, Berkeley) require no smoking in all apartments and condominiums and are enforcing their policies. One city, Santa Monica, has grandfathered all units of apartments and condominiums, but each time a unit is vacant or sold, it becomes a no-smoking unit. Over time, Santa Monica will become a smoke-free city.

However, many landlords and property management companies are not waiting for local laws to force policy change. More and more landlords and property management companies are transitioning their properties to non-smoking and are appreciating the reduced maintenance costs. Large apartment corporations are also adopting no-smoking policies for some or all of their buildings. It's clear that smoke-free multi-unit housing is good for business and good for health.

The Smokefree Apartment House Registry is moving. After June 30, 2015, contact us at P.O. Box 246, Newbury Park, CA 91319, 805-499-8921, or 818-427-8921. The Registry Website remains the same: www.smokefreeapartments.org and e mail is still info@smokefreeapartments.org

Visit us on the Internet — <http://www.smokefreeapartments.org>

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