



Tenant's toolkit for a smoke-free multi-use housing policy

*Tenant's Toolkit for a Smoke-Free
Multi-Unit Housing Policy*

There is growing awareness that smoke-free multi-unit housing is in the best interest of both tenants and landlords. These policies serve to protect the health and well-being of residents while improving the profitability of the residence. Advocates can learn more about implementing these policies in this toolkit.

It is well known that smoking is the leading cause of preventable death and studies have shown smoke-free laws that prohibit smoking in public places improve the health of the population.



North Dakota's smoke-free law protects individuals by prohibiting smoking in all enclosed public places and places of employment. Smoking is also prohibited within twenty feet of entrances, exits, operable windows, air intakes and ventilation systems of enclosed areas in which smoking is prohibited.

Unfortunately, the state law does not apply to the individual units in a multi-unit housing complex, only the enclosed common areas. Adopting a smoke-free multi-unit housing policy is legal and provides the best solution to cover these excluded areas.

Why implement a smoke-free policy?

- *Eliminate the risk of Secondhand Smoke:* Secondhand smoke contains dangerous elements and harmful chemical compounds. Exposure to secondhand smoke has been proven to cause numerous health problems. There is no safe level of exposure to secondhand smoke. Implementing comprehensive smoke-free policies is effective at eliminating tobacco-related air pollution and saving lives.
- *Improve Safety:* Smoking related fires are the leading cause of fire deaths.
- *Encourage Healthy Behaviors in Residents and Employees:* Smoke-free policies create healthy environments that encourage people to quit smoking



This toolkit contains resources to assist tenants to advocate for a smoke-free policy including:

Frequently Asked Questions
Working with Neighbors and Landlords to go Smoke-Free
Secondhand Smoke Communication Record
Tips for Writing a Letter to a Landlord or Owner
Sample Letter to Landlord/Property Owner
Smoke-free Policy Petition

Frequently Asked Questions from Tenants about Smoke-Free Policies

Tenants in multi-unit housing are starting to feel more comfortable speaking up about not wanting to be exposed to secondhand smoke that is drifting into their unit from a neighbor who is smoking in or around the building.

Below are a few frequently asked questions from tenants, along with responses that can help to successfully address the situation. When it comes to multi-unit housing, it is important to note that there is not always one specific answer to solve a tenant's problem. This information is provided to help educate and empower tenants to speak up as their own best advocate.



Q. I'm being exposed to secondhand smoke in my building. What are my rights?

A. It is against the law to smoke in enclosed workplaces and public places, so why is it okay for tenants to breathe other people's secondhand smoke when living in an apartment, duplex, condominium or townhouse? North Dakota's smoke-free air law prohibits smoking in indoor common areas of multi-unit housing, including hallways, lobbies, laundry rooms, recreation/common rooms and similar types of areas. Smoking is also prohibited within twenty feet of entrances, exits, operable windows, air intakes and ventilation systems of enclosed areas in which smoking is prohibited. This law, however, does not apply to individual units in multi-unit housing including patios or balconies. The policies in those units are decided by the building owner or landlord.

You may advocate for and encourage your landlord to adopt a smoke-free building policy. One tenant's drifting smoke can significantly impact the health and quality of life of other tenants. Smoking is also a fire risk and can damage the property, all of which are justifications for prohibiting smoking in multi-unit buildings. Buildings have rules relating to nuisances, and smoking is not just bothersome, but also a serious health hazard. Your landlord has the ability to adopt a smoke-free policy in the same manner that he/she adopts other rules that regulate activities that present a risk to the building or impact other tenants, such as rules that address pets, grilling or loud music. Even if your lease does not specifically mention smoking, there may be terms and conditions in your lease, or other applicable building rules, that reference the right to quiet and safe premises, warrant of habitability and restriction of nuisances. Language relating to behaviors that impact the quality of life and safe enjoyment of the premises for tenants can be used to make a case that your landlord should take action to

prevent tenants from being unwillingly exposed to a neighbor's smoke. North Dakota state law contains a provision about private nuisance, which affects individuals (versus a public nuisance which impacts a community) in the enjoyment of a private right. Seek a legal opinion to determine your best course of action: [Legal Services of North Dakota](#)¹.

Q. What can I do to protect myself and my family from secondhand smoke exposure in our building?

A. The only way to prevent secondhand smoke from drifting throughout a building is to eliminate the smoke at its source. This means that the only truly effective way to protect the health of non-smoking tenants is for the property owner or manager to prohibit smoking inside the building (common areas as well as everyone's private unit). It is also recommended that smoking not be allowed near balconies, decks, patios, entrances, windows and air intake vents. A smoke-free building is only effective if smoke doesn't drift right back into the building. A comprehensive smoke-free policy in the building is the only effective way to protect the health of tenants. Ideally, your property owner or manager will be open to discussing the possibility of adopting a smoke-free policy for the building. Housing providers often have incorrect information about drifting smoke in their buildings and about their ability to do anything about the problem. Educating your housing provider about the benefits of smoke-free housing and their ability to adopt a smoke-free policy is an essential step.

Tips to encourage a smoke-free building policy:

- Keep a detailed written record of secondhand smoke exposure. (*Secondhand Smoke Communication Record*)
- Get a note from your doctor to document how your health is being impacted by the exposure and that you should not be exposed to secondhand smoke. Doctors are usually very willing to write a note—not only for people with health conditions, but also for children and pregnant women.
- Write a letter to your landlord, including a doctor's note, to inform them that you are exposed to secondhand smoke that is coming into your unit (describe other relevant details), what you have done so far (spoken with neighbors, etc.) and how you would like them to address the problem. (*Tips for Writing a Letter to a Landlord, Sample Letter to a Landlord/Property Owner*)
- In your letter, you can also put the landlord on notice that drifting secondhand smoke coming into your unit may violate lease terms (warrant of habitability, safe and quiet enjoyment, or nuisance). Pointing out their potential liability for not enforcing lease terms might provide them with an incentive to take action to address the problem.

- Along with your letter, include the following educational information from [Smoke-Free Housing ND²](#) to help your housing provider understand why they should make the building smoke-free:
 - Frequently Asked Questions from Landlords about Smoke-free Policies
 - Smoke-free Policy Implementation
- You may also include facts about secondhand and thirdhand smoke. [Smoke-Free Housing ND²](#)
- Determine if any neighbors are also affected by drifting secondhand smoke. Are they willing to speak with the management, co-sign a letter or sign a petition asking for a smoke-free policy? There is strength in numbers.
- Encourage the housing provider to conduct a survey of the tenants to learn if they allow smoking in their unit, if they are bothered by drifting smoke, if they understand the dangers of breathing secondhand smoke and if they would support a smoke-free building policy.
- Record any of your communications with your neighbors and management in writing so that you have a paper trail of the steps you take.

Q. I talked to my building manager about the cigarette smoke drifting into my apartment. He said there was nothing he could do about it. Is this true?

A. No. It is completely within the rights of property owners and managers to amend the existing lease or other rules that govern the building in order to prohibit smoking in the building. A smoke-free policy may include all indoor common areas and individual apartment units, as well as outdoor spaces such as balconies, decks and patios. To adopt rules about smoking, the building owner or management company needs to follow the same process that is required to change any other building rules and lease terms, such as having tenants sign a smoke-free lease addendum and providing adequate notice of the policy change. The first step is to educate your building manager that he/she in fact can do something about the drifting smoke by adopting a smoke-free policy, and that it is in their best interest to do so.

NOTE: With an EXISTING lease, the terms for changes are usually in the lease and almost always indicate changes must be in writing and agreed to by both parties. Therefore, if all tenants agree to sign a smoke-free lease addendum, the entire building can go smoke-free when the last addendum is signed. If all tenants do not agree to sign the addendum prior to the expiration of their lease, the landlord could not enforce a 100% smoke-free policy. To make the building 100% smoke free, the landlord would need to wait until the existing tenants choosing not to sign a smoke-free addendum in mid-contract, would sign a new contract with the smoke-free addendum upon contract renewal.

Q. Will an air purifier help protect my health? What about sealing up cracks and holes to help prevent smoke from coming into my home?

A. No. Unfortunately, air purifiers and sealants cannot completely protect your health or prevent smoke from entering your home. Air purifiers might help reduce the odor of smoke, but do not protect health. Secondhand smoke can drift into non-smoking units of buildings through windows, doorways and the ventilation system as well as through small gaps between electrical outlets, pipe fixtures and walls. Sealing up cracks and holes may reduce the odor of smoke, but it cannot eliminate drifting secondhand smoke. The only way to prevent drifting smoke and to effectively protect health is to eliminate smoking inside the building.

Q. I have a child with asthma. Secondhand hand smoke regularly drifts into our home from the neighbor below us. Is there anything I can do to protect my family's health?

A. The Federal Fair Housing Act and Americans with Disabilities Act say that tenants cannot be discriminated against in housing due to a disability. These laws provide legal protections for people with breathing conditions that are considered disabilities, such as asthma, COPD or emphysema. Likewise, the North Dakota Human Rights Act prohibits discrimination based on disabilities. People with nicotine addictions are not considered to have a disability. Since your child has a breathing disability that is affected by secondhand smoke exposure, you can request a Reasonable Accommodation from your landlord, who is required to allow reasonable changes to accommodate the disability. This law requires the building management to make sure a tenant's need for protection from secondhand smoke exposure is reasonably accommodated. What constitutes a reasonable accommodation is determined on a case-by-case basis. Examples of reasonable accommodation requests include: adopting a policy that prohibits smoking throughout the building, not allowing smoking under a tenant's window (if that's the source of exposure), requiring an existing smoke-free requirement be enforced, moving a tenant to an available unit that is located in a different building in the complex that does not have tenants who smoke indoors or allowing a tenant to break their lease without financial penalties so that he can move to another building.

Tips to assist tenants with a breathing disability:

- The breathing disability must be documented by a doctor. Make an appointment with a doctor and ask for a letter detailing the particular health issue, including that there should be no exposure to any secondhand smoke.
- Follow the tips to encourage a smoke-free building policy, including writing a letter to the landlord to inform him that you are exposed to secondhand smoke that is coming into your unit, what you have done so far and how you would like them to address the problem.
- If your initial request to resolve the problem is denied, send a letter to the landlord requesting a reasonable accommodation (and specifying what that accommodation would be) with background information about the specific issue. The reasonable

accommodation could be requested under the North Dakota Human Rights Act or under the Federal Fair Housing Act.

- If the reasonable accommodation request is denied, contact [North Dakota Department of Labor and Human Rights](#)³.
- Detailed information about filing a Reasonable Accommodation Request can be found at [Change Lab Solutions](#)⁴.

Q. I live in a condominium and am being exposed to secondhand smoke from a neighbor. Can our condo board or Homeowners Association (HOA) do anything about this situation, including adopting a smoke-free policy?

A. Yes. Sometimes the condo board and/or HOA say they cannot do anything about the problem of drifting smoke because they mistakenly believe it is illegal or discriminatory to do so, or because they are concerned about creating a stir. However, it is completely within their rights to amend the Covenants, Conditions and Restrictions (CC&Rs), bylaws or other applicable rules and regulations that govern the condominium association in order to prohibit smoking in the buildings, balconies, patios and in any other desired areas. When living in a common interest community, like a condominium association, it is understood that there are rules and regulations in place for the benefit of the common good of the community, and that these regulations maybe be changed to address an issue affecting the community.

Condominium resources:

- [Legal Options for Condominium Owners Exposed to Secondhand Smoke](#)⁵
- [How to Make a Condo Complex Smoke-free](#)⁶
- [A Smoke-Free Condominium Policy Is Legal and Protects Health While Saving Money](#)⁷

Q. I live in public housing and our building has several people who smoke indoors. Breathing in the smoke every day is impacting my health, but I can't afford to move and I'm worried about retaliation for speaking up. Can I say anything to the management?

A. Yes. The Department of Housing and Urban Development (HUD) implemented a smoke-free policy July 2018. You should speak with the management to let them know that drifting smoke is coming into your apartment. Public housing authorities are charged with providing "safe and decent" housing and they need to hear from tenants when the building's living conditions are not adequate. Writing a letter to your building manager as well as the Housing Authority can be helpful so that both parties know about your situation, and to ensure that they are aware of the HUD smoke-free policy to protect the health and safety of all tenants.

Public Housing Resources: [HUD Smoke-free Housing](#)⁸

Q. I'm a senior citizen and I live in a subsidized building for people 55 and older. Smoke started coming into my apartment when a new tenant moved in next door last month. Can our building do anything to address the drifting smoke?

A. Yes. HUD now strongly recommends that that owners and managers of affordable housing adopt smoke-free policies for buildings participating in multi-family housing rental assistance programs, including Section 8 and building for the elderly and people with disabilities. As with other tenants, the best course of action is to follow the tips to encourage a smoke-free building policy. Writing a letter to your building manager is an important step so that they know about your situation, and to ensure that they are aware that HUD recommends that managers of affordable housing adopt a smoke-free policy to protect the health and safety of all tenants. In addition to the landlord education resources from [Smoke-free Housing ND](#)², the following HUD resources may be useful to share with the building manager, [HUD Smoke-free Housing](#)⁸.

References:

1. Legal Services of North Dakota: <http://www.legalassist.org>
2. Smoke-Free Housing ND: www.breathend.com/TobaccosHarm/smokefreehousing
3. North Dakota Department of Labor and Human Rights: <https://www.nd.gov/labor/human-rights/housing>
4. Change Lab Solutions: <http://changelabsolutions.org/publications/disability-laws-tobacco-smoke>
5. Legal Options for Condominium Owners Exposed to Secondhand Smoke: <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-condos-2006.pdf>
6. How to Make a Condo Complex Smoke-free: http://changelabsolutions.org/sites/default/files/CLS_Condo_FactSheet_FINAL_20120517_0.pdf
7. A Smoke-Free Condominium Policy Is Legal and Protects Health While Saving Money: <http://www.tcsg.org/sfelp/SFCondofacts.doc.pdf>
8. Housing and Urban Development (HUD) smoke free housing: https://www.hud.gov/program_offices/healthy_homes/smokefree
https://www.hud.gov/states/north_dakota/offices

Working with Neighbors and Landlords to go Smoke-Free

The key to getting a landlord to adopt a smoke-free policy is to talk to him/her and show the mutual benefits. Landlords are particularly interested in keeping their costs low and lowering conflict among tenants. Here are some things you can do:

1. Document the problem. Identify when you notice the secondhand smoke, where it is coming from and how it enters your apartment. Make a list of any health affects you feel from the smoke—headaches, sore throat, coughing or any illnesses that the smoke makes worse, such as asthma, allergies, COPD or emphysema. Use the *Secondhand Smoke Communication Record* to keep a written record with dates and times. Just mentioning to your landlord that you smell secondhand smoke makes it seem like a simple complaint instead of a serious problem.

2. Examine the rent (lease) agreement. Most agreements do not allow people to take part in activities in an apartment that keep other residents from enjoying the building or grounds. Some activities that can bother people that live in the building are pets, strong odors or creating loud noises. Smoking should be added to the list of things that could bother other residents, especially when the smoke drifts from one apartment to the other, causing illness or discomfort.

3. Write a letter to your landlord. Explain that you are being exposed to secondhand smoke, what steps you have taken and how you would like the problem addressed. Use the *Tips for Writing a Letter to a Landlord or Owner* and/or *Sample Letter to Landlord/Property Owner* to assist in this process.

4. Get testimonials. Other people in your building may also be experiencing problems with tobacco smoke coming into their units or they can help you prove that smoke comes into your apartment. Talk to other neighbors, join in resident meetings, write an article for an apartment newsletter or post notices in elevators and on building bulletin boards. You may find other residents with similar concerns.

5. Build consensus among the other tenants and get their support. If you find that others are having the same problem, have them document the problem just as you did. Talk to them about the benefits of a smoke-free building and the dangers of secondhand smoke. Collect signatures of support on the *Smoke-free Policy Petition* to help convince management that residents support a smoke-free policy. Send letters to other residents asking them to get involved.

6. Share the petition with the landlord. Show that there is support for a change and recommend going smoke-free as a solution. Explain the many benefits of going smoke-free. When a landlord makes a property smoke-free, it will:

- Attract more tenants. There is a demand for smoke-free housing. Many smokers do not smoke inside their homes and want smoke-free housing.

- Increase interest in the property. Surveys have shown that most people are less interested in an apartment when they smell secondhand smoke. Non-smoking units are easy to fill because most tenants want to live in a non-smoking building. In North Dakota, as in the nation, an increasing number of families have a smoke free rule in their home. Secondhand smoke complaints and requests for unit transfers drop following the implementation of a smoke free policy.
- Save money. The cost of cleaning a unit after a smoking tenant can be significant. This can involve repainting the walls, replacing carpeting, drapes and appliances to eliminate smoking odors as well as refurbishing floors or countertops that have cigarette burns. Smoking units also tend to remain on the market longer. Smoke-free policies can reduce cleaning costs and the time spent cleaning up a unit where people were allowed to smoke.
- Reduce the leading cause of residential fires. Smoking-related residential fires cause more deaths than any other type of fire. A smoke-free policy reduces the possibility of a fire caused from smoking and increases the safety of residents and their property.
- Keep tenants happy. Tenants may choose to move out instead of being around secondhand smoke.

7. Respond to your landlord's concerns. Keep the following facts in mind if your landlord brings up concerns about making a change:

- Smoke free policies are legal. Many apartment buildings are already smoke-free. Smokers are welcome in these properties, they just need to know where they are not allowed to smoke.
- There are landlord resources for implementing a smoke-free policy available at [Smoke-Free Housing ND](http://www.breathend.com/TobaccosHarm/smokefreehousing) (www.breathend.com/TobaccosHarm/smokefreehousing).
- Smoke-free policies are largely self-enforcing. They attract tenants who support smoke-free policies.
- Smoke-free policies should not increase liability. With a properly drafted smoke-free policy, landlords can be flexible and take the time they need for enforcement. The real threat of liability comes from ignoring the problems and allowing secondhand smoke to continue.

Secondhand Smoke Communication Record

This form can be used to track everything you say and do to resolve problems with secondhand tobacco smoke. Be as specific as possible – include dates, times, locations, types of communication, what was communicated and the result of the communication. Keep copies of any correspondence (letters, emails, etc.).

[illegible]

Tips for Writing a Letter to a Landlord or Owner for a Smoke-free Policy

A series of written communications are recommended to begin the process of requesting a smoke-free policy. The first letter should have a friendly and helpful tone, followed by your concerns about tobacco smoke drifting into a unit. It may help to include a letter from a doctor, facts about secondhand smoke and how smoke-free policies are legal. Be sure to provide your contact information as most landlords are unable to act upon an anonymous tip.

Steps You Should Consider	Examples You May Borrow From (be original and use your own words)
Start on a positive note. Landlords get a lot of different complaints, start by explaining why you like your unit, the building and any special services.	Dear _____, The <u>(name)</u> apartment building is located very near my job, is affordable, has lots of storage space and is well designed. Parking is convenient, the area is quiet and the clubhouse helps me get regular exercise. In short, I like living here.
What is the problem? Explain the problem, but do not go into detail yet. If others are affected, be sure to mention that too. Let them know you need their help. Keep the letter as factual as possible and avoid emotional statements.	However, as much as I like this apartment, I and other residents are experiencing serious health problems due to tobacco smoke seeping into our apartments from adjoining apartments. The situation has become intolerable and we need your assistance to resolve this problem.
What's in it for them? The costs of refurbishing a smoking apartment can be a huge incentive for making policy changes. Write about the benefits of a smoke-free policy and reassure them that they will not lose business – one of the reasons landlords permit smoking. You may want to provide a fact sheet or letter indicating that: 1) many residential buildings already have smoke-free policies; 2) it is legal to prohibit smoking in a residential building; 3) surveys indicate most residents prefer smoke-free housing.	This building and the health of all its residents could benefit from instituting a no-smoking policy because: 1) A smoke-free building saves money by reducing the costs of cleaning and repairing carpets, fixtures and window treatments; priming and painting walls; and general maintenance. Lower insurance premiums are possible as well. On the average, it costs 2-3 times more to clean a unit that has been smoked in compared to one that is smoke-free. 2) You will likely attract and retain residents. In North Dakota, over 80% of all adults do not smoke. This means you should be able to attract plenty of nonsmoking renters. 3) Surveys prove that there is strong support for smoke-free policies. Enforcement generally is not a problem. "Few owners experience backlash from residents after implementing and enforcing a no-smoking policy," according to the National Apartment Association.

Steps You Should Consider	Examples You May Borrow From (be original and use your own words)
<p>Explain your health symptoms. Let the landlord know how secondhand smoke affects you, when you first noticed it, and what your doctor has told you. Attach a letter from your physician.</p>	<p>The fumes from tobacco smoke give me headaches, cause nausea and dizziness, aggravate my breathing and affect my weak heart. I began noticing the fumes shortly after a new resident moved into the unit directly below me in October. My doctor has prescribed some medications to reduce the pain, but has told me to avoid exposure to tobacco smoke because it affects my health. A letter from my doctor is attached.</p>
<p>Are other residents affected? If you have contacted other residents, mention how it affects them. Some may not want their names mentioned, so check with them first.</p>	<p>Other residents are experiencing health problems as well due to tobacco smoke coming into their units. For instance, the resident in unit 12 has chronic obstructive pulmonary disease (COPD), asthma and allergic reactions to tobacco smoke. The resident in unit 33 is nearly blind from macular degeneration – which tobacco smoke irritates severely.</p>
<p>Propose a solution that benefits everyone.</p>	<p>I/We understand your desire to be sensitive to the wishes and concerns of all residents who live here. Therefore, I (and several other residents) ask that you consider conducting a survey to determine resident attitudes toward tobacco smoke exposure, how many people smoke in their units and the level of support for a smoke-free policy. You might also consider holding a meeting to discuss this issue.</p>
<p>Ask for a response and offer your assistance. Find resources at: Smoke-Free Housing ND</p>	<p>Please let me know in writing how you plan to address this issue. Let me also know if I can be of any assistance. If you would like to review samples of materials that other housing complexes have used to survey residents and to institute smoke-free policies, I would be happy to provide these resources.</p>
<p>End on a positive note. * Have others review the letter before you send it.</p>	<p>Working together, we can make this building a better place for us all! I look forward to hearing from you. Sincerely,</p>
<p>Send copies to your local health department and other health groups. Your letters may be taken more seriously.</p>	<p>At the bottom of the letter, indicate where copies are being sent. CC: <u>local public health unit</u></p>

Steps you Should Consider	Examples You May Borrow From (be original and use your own words)
Delivering the letter.	To obtain proof that your letter was received, use certified mail with a return receipt through the post office.
Response	If the response is positive, be sure to thank the landlord either by phone or by mail. If there is no response within 30 days or if it is negative, then a second letter may be appropriate.

Sample Letter to Landlord/Property Owner

Renter
1234 Street, Apt. A
My Town, ND 12345

Date

Property Manager/Owner
Property Management Co.
567 Street
Your Town, ND 12345

Dear Property Manager,

I am writing this letter to request your help in dealing with secondhand smoke in my apartment. Secondhand smoke has been getting into my unit from (neighboring units, common areas, outside my window, doorway, other). Although North Dakota's smoke-free law does not allow smoking in common areas of apartment buildings, I am still concerned about secondhand smoke within our building. As you may be aware, the Surgeon General declared that secondhand smoke is a proven air toxin. [option: I am enclosing a copy of a letter from my physician documenting the medical condition that is being caused or worsened by secondhand smoke.]

So far, I have tried: (sealing my apartment, running a fan, asking my neighbors to smoke outside, other) to fix this situation. I would like to request that you (customize these options to fit your needs.)

- Enforce the building's smoke-free policy (if it already exists)
- Conduct a survey to see how many residents would rather have a smoke-free policy.
- Allow me to break my lease without penalty so I can move to a non-smoking building.
- Relocate me to a non-smoking building that you own or manage
- Consider a smoke-free policy for the building

A smoke-free policy is entirely legal and can help save you money. Please visit [Smoke-Free Housing ND](http://breathend.com) at breathend.com for more information on adopting a smoke-free policy. Thank you for your consideration. I would appreciate a written response to this letter.

Sincerely,

Renter

Cc: Local Public Health Unit

Smoke-Free Policy Petition

As a resident of _____, I am concerned about the impact of secondhand smoke on our residents.
(apartment name)

- Any amount of exposure to secondhand smoke is unsafe.
- There is NO legal “right to smoke”.
- If our building continues to allow smoking, all residents are being exposed to the potential risk of serious health problems.

I would like our property to amend the lease agreements to include the following language: “Due to the increased risk of fire and the known adverse health effects of secondhand smoke, smoking is prohibited in any area of the property, both private and common, whether enclosed or outdoors. This policy applies to all owners, tenants, guests, employees and servicepersons.”

[illegible]

[illegible]