

# Reducing Exposure to Secondhand Smoke in Multi-Unit Housing

## Introduction

While “good fences make good neighbors,” more than 30 percent of Americans live in multi-unit housing and cannot rely on fences to ensure their health and well-being.<sup>1</sup> Tobacco and cigarette use cause adverse health outcomes and pose risks to the individuals using the products, as well as those around them.<sup>2</sup>

Cigarette smoking accounts for more than 480,000 deaths in the United States, eight percent of which are caused by exposure to secondhand smoke.<sup>3</sup> Secondhand smoke also leads to a variety of poor health outcomes for both adults and children.<sup>4</sup> These health consequences also have severe economic costs. In 2005, the American Academy of Actuaries estimated that it costs \$2.6 billion to care for and treat nonsmokers for lung cancer or heart disease caused by exposure to secondhand smoke, not including the costs associated with diseases that affect children, such as asthma and low birthweight.<sup>5</sup> In addition to the health costs, combustible tobacco products can create public safety threats. The National Fire Protection Association estimates smoking materials—lighted tobacco products, excluding lighting implements like matches or lighters—caused almost 100,000 fires, 500 deaths, and over \$500 million in property damage.<sup>6</sup>

Recognizing the costs and consequences of tobacco use, especially in shared environments, states and the federal government have enacted a variety of policies to address exposure to secondhand smoke in multi-unit housing. Broadly, these initiatives focus on restricting locations where residents can smoke, requiring lease disclosures, and in one case, codifying a common law right of action in statute to explicitly provide that environmental exposure to tobacco smoke is an actionable harm in the court system.

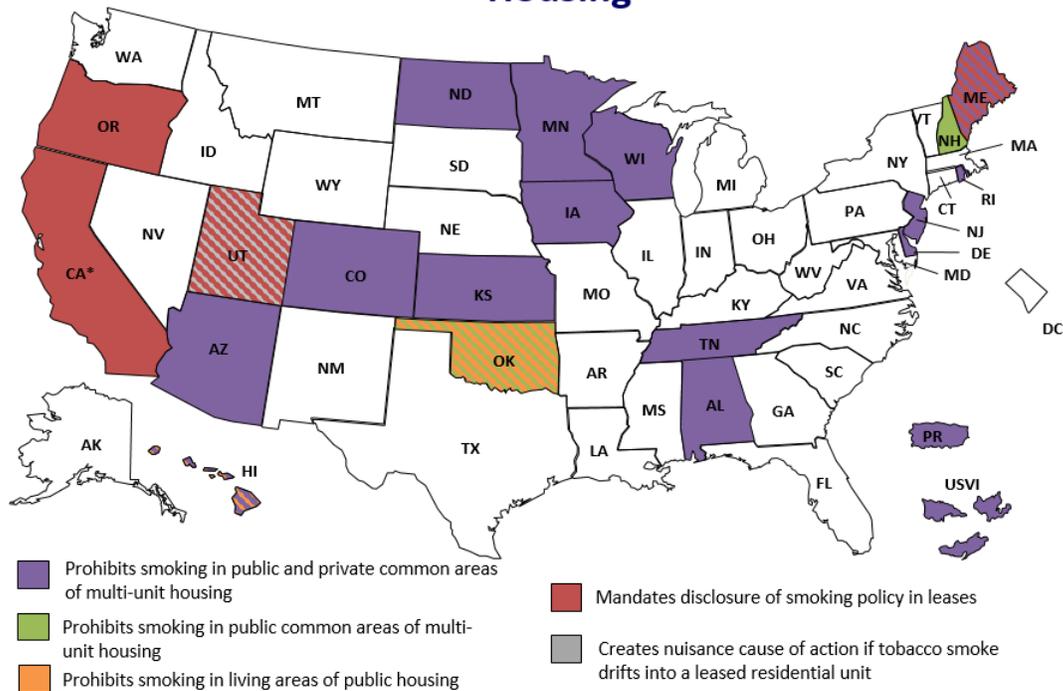
## Federal Policies to Prohibit Smoking in Multi-Unit Housing

In 2016, the U.S. Department of Housing and Urban Development (HUD) issued a final rule banning the use of combustible cigarettes and water pipes in public housing.<sup>7</sup> This rule builds on activities that HUD began in 2009 to encourage public housing authorities (PHAs) to voluntarily adopt smoke-free policies.<sup>8</sup> Under the new rule, PHAs will have 18 months to adopt smoke-free policies that prohibit use of combustible tobacco products, including water pipes, in common spaces, living areas, and within 25 feet of a building. The smoke-free restrictions must be included in leases. HUD estimated that PHAs would save between \$16 and \$38 million in reduced maintenance costs as a result of smoke-free bans.<sup>9</sup>

## State Approaches to Restricting Smoking in Multi-Unit Housing

While the HUD rule is an important step, its reach is limited to public housing stock, and excludes other multi-unit housing. This provides an opportunity for states to fill the gap.

## State-Level Policies Impacting Smoking in Multi-Unit Housing



\*Introduced bill in 2017 to restrict smoking in common and living areas of public housing

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### Prohibiting Smoking in Certain Areas of Public or Private Multi-Unit Housing

Through their air quality laws, 16 states, Puerto Rico, and the U.S. Virgin Islands restrict smoking in the common areas, such as lobbies, elevators, and hallways, of both public and commercial multi-unit housing. New Hampshire and Oklahoma restrict smoking only in the common areas of public housing stock. Although restricting smoking in common areas is an important first step, most residential ventilation systems do not remove all smoke, and without a smoke-free policy, residents and tenants that live in buildings where smoking is allowed in living areas are still at risk.<sup>10</sup> Hawaii and Oklahoma prohibit smoking in the living areas of public housing, as well as the common areas. This is an area where states may take additional action—California AB 62, introduced for the 2017 legislative session, would ban smoking in all areas of public housing.<sup>11</sup>

### Requiring Smoking Policies to Be Disclosed in Leases

In addition to state laws that restrict smoking in certain areas, California, Maine, Oregon, and Utah have provisions requiring all landlords to disclose in the lease agreement whether smoking is permitted in a unit. While the laws do not require landlords to adopt a smoke-free policy, these laws can facilitate a market approach to smoke-free policies. A majority of tenants would prefer to live in

a building with a smoke-free policy, and lease disclosure requirements ensure that individuals have the information they need to make housing choices based on their preferences and about the risks that they and their families may be exposed to in their home.<sup>12</sup> In addition, explicit lease disclosures can provide some protection from liability for common law remedies discussed in the next section.<sup>13</sup>

## Common Law Remedies

Over the past 25 years, individuals and tenants have had some success in making the legal case that secondhand smoke constitutes a violation or breach of traditional common law legal doctrines, including nuisance, battery, and warranties of habitability and quiet enjoyment.<sup>14</sup> In 1997, Utah explicitly included secondhand smoke exposure in rental units in the definition of a nuisance.<sup>15</sup> This law defines when drifting smoke rises to the level of a nuisance (smoke drifting “more than once in each of two or more consecutive seven-day periods” and “is injurious to health, indecent, offensive to the senses...so as to interfere with the comfortable enjoyment of life or property”).<sup>16</sup> The law also clarifies that there can be no cause of action if the lease discloses that smoking is allowed in some units and that tobacco smoke may drift into another apartment.<sup>17</sup> Although common law legal remedies can provide some benefit for individuals, the costs associated with filing and pursuing cases through the court system, as well as the limited impact, means that these approaches are not as effective as other strategies.

## Conclusion

States have advanced a variety of policy solutions to address the dangers of environmental exposures to tobacco smoke in multi-unit housing. Key strategies include restricting or prohibiting smoking in certain areas of multi-unit housing. The majority of states that have adopted these policies target common areas and have laws that apply to both private and public residences. However, a few states have begun to enact policies that apply to living spaces as well. States have also required disclosure of smoking policies in leases, so renters are informed about the potential risks to which they may be exposed. Finally, common law remedies remain available to individuals who experience the negative health effects from secondhand smoke. Utah has made it easier for individuals to pursue these cases by explicitly defining tobacco smoke as a nuisance. However, these individual approaches have less reach and impact than other policy approaches with wider applicability.

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<sup>1</sup> American Lung Association. “Smoke-free Multi-Unit Housing.” Available at <http://www.lung.org/assets/documents/tobacco/smuh-policy-brief-update.pdf>. Accessed 12-19-16.

<sup>2</sup> *Ibid.*

<sup>3</sup> CDC. “Smoking and Tobacco Use: Fast Facts.” Available at [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/fast\\_facts/](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/). Accessed 12-19-16.

- <sup>4</sup> CDC. "Health Effects of Secondhand Smoke." Available at [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/health\\_effects/](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/). Accessed 12-19-16.
- <sup>5</sup> Behan, DF, Eriksen, MP, and Lin Y "Economic Effects of Environmental Tobacco Smoke" Available at [http://www.actuary.org/pdf/health/smoking\\_oct06.pdf](http://www.actuary.org/pdf/health/smoking_oct06.pdf). Accessed 12-19-16.
- <sup>6</sup> National Fire Protection Association. "The Smoking-Material Fire Problem." Available at <http://www.nfpa.org/news-and-research/fire-statistics-and-reports/fire-statistics/fire-causes/smoking-materials>. Accessed 12-19-16.
- <sup>7</sup> Department of Housing and Urban Development; Instituting Smoke-Free Public Housing, 24 CFR Parts 965 and 966.
- <sup>8</sup> Department of Housing and Urban Development. "Regulatory Impact Analysis." Available at <https://www.regulations.gov/document?D=HUD-2015-0101-1014>. Accessed 12-19-16.
- <sup>9</sup> *Ibid.*
- <sup>10</sup> U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.
- <sup>11</sup> California. Legislature. Assembly. *Public Housing—Smoke Free Policy*. (AB 62). 2017-2018 Reg. Sess. (December 12, 2016).
- <sup>12</sup> National Center for Health Housing. "Reasons to Explore Smoke-Free Housing." Available at [http://www.nchh.org/portals/0/contents/nchh\\_green\\_factsheet\\_smokefree.pdf](http://www.nchh.org/portals/0/contents/nchh_green_factsheet_smokefree.pdf). Accessed 12-19-16.
- <sup>13</sup> For examples of legal claims a tenant may bring against a landlord, see ChangeLab Solutions. "Legal Options for Tenants Suffering from Drifting Tobacco Smoke." Available at [http://www.changelabsolutions.org/sites/default/files/Legal-Options-for-Tenants\\_FINAL\\_20130205.pdf](http://www.changelabsolutions.org/sites/default/files/Legal-Options-for-Tenants_FINAL_20130205.pdf). Accessed 12-19-16.
- <sup>14</sup> Tobacco Control Legal Consortium. "Infiltration of Secondhand Smoke into Condominiums, Apartments, and other Multi-Unit Dwellings: 2009." Available at <http://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-condos-2009.pdf>. Accessed 12-19-2016.
- <sup>15</sup> Utah Code § 78B-6-1101 (3).
- <sup>16</sup> *Ibid.*
- <sup>17</sup> Utah Code § 78B-6-1105.