Title
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Publication Date
2004-04-01

A Law Synopsis by the Tobacco Control Legal Consortium

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April 2004

FUNDED BY:
ttac
Tobacco Technical
Assistance Consortium

Suggested citation:

Susan Schoenmarklin, Tobacco Control Legal Consortium, *Infiltration of Secondhand Smoke into Condominiums, Apartments and Other Multi-Unit Dwellings* (2004).

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Infiltration of Secondhand Smoke into Condominiums, Apartments and Other Multi-Unit Dwellings

Susan Schoenmarklin

The death toll from secondhand tobacco smoke is staggering. The National Cancer Institute has determined secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually.[1] For every eight smokers who die from smoking, one nonsmoker dies.[2] Secondhand smoke contains more than 4,000 chemicals and 43 carcinogens, including formaldehyde, cyanide, arsenic, carbon monoxide, benzene, and radioactive polonium-210.[3] The Environmental Protection Agency classifies secondhand smoke as a Group A carcinogen, for which there is no safe level of human exposure.

As public knowledge about secondhand smoke increases, renters and condominium owners are becoming increasingly concerned about the health threat of secondhand smoke infiltration. Section I of this law synopsis makes it clear that landlords, condominium associations, and the like may prohibit smoking in individual units. Section II provides solutions for private individuals if secondhand smoke is seeping into their dwellings from neighboring units. Section III discusses enforcement concerns expressed by landlords and the advantages of specifically addressing smoking in the lease. The last section also provides specific smoke-free language for use in a lease or in condominium bylaws. A committee of attorneys who represent landlords and tenants developed this model language for the Center for Energy and Environment in Minneapolis, Minnesota.

Section I — Prohibiting Smoking and Smokers in Private and Public Housing

The law is clear that a landlord may choose to rent only to nonsmokers and may prohibit smoking in individual units, as well as in common areas. The law pertains both to private landlords and public housing authorities.

According to a 1992 Opinion of Michigan's Attorney General, "neither state nor federal law prohibits a privately-owned apartment complex from renting only to non-smokers, or in the alternative, restricting smokers to certain buildings within an apartment complex."[4] This conclusion is still relevant; an extensive search of federal and state laws and regulations did not identify any laws or cases preventing landlords from prohibiting smoking.[5] Under common law, a landlord has a right to place certain restrictions on tenants, including restrictions on smoking, as long as the landlord does not violate constitutional or other laws.[6] There is no state or federal constitutional right to smoke.[7]

On July 23, 2003, the Chief Counsel of a Housing and Urban Development (HUD) field office in Detroit issued an opinion stating that nothing in federal law, including the federal Fair Housing Act, prevents landlords from making some or all of their apartment units smoke-free. The opinion states, "Federal law does not prohibit the separation of smoking and nonsmoking tenants in privately owned apartment complexes and in fact, does not prohibit a private owner of an apartment complex from refusing to rent to smokers."

Key Points

- Landlords, condominium associations and the like may prohibit smoking or refuse to allow smoking for new, and in many cases existing, occupants. There is no judicially recognized "right to smoke" in a multi-unit dwelling, whether the dwelling is privately owned or is public housing.
- Residents of multi-unit dwellings have a variety of common law remedies for stopping secondhand smoke infiltration.
- Residents of multi-unit dwellings may seek enforcement of local safety and health codes, ordinances or regulations to stop secondhand smoke infiltration.
- A resident of a multi-unit dwelling who can show secondhand smoke exposure limits a major life activity can use the federal Fair Housing Act to end the secondhand smoke infiltration.
- Landlords, condominium associations and the like should explicitly address smoking in their leases, bylaws, etc., although they may be able to take action without such language.

According to the opinion, no HUD policy restricts landlords from prohibiting smoking in common areas or in individual units of HUD housing. However, the opinion also states that if owners seek to make their complexes smoke-free, they must "grandfather in" (or exempt) those smoking residents currently residing at the complex. In addition, a HUD owner who wishes to make nonsmoking a condition of a lease must obtain HUD approval to the extent the owner must utilize the HUD model lease.

In addition to this recent opinion, three other HUD rulings permit a public housing authority to restrict or prohibit smoking in properties subject to HUD authority.[8] In one of these rulings, HUD stated that the right to smoke is not protected under the Civil Rights Act of 1964, or any other HUD-enforced civil rights authorities.[9]

While administrative authorities and judicial case law recognize the right to prohibit smoking, only one state expressly creates such a right by statute. Utah's state law permits landlords to prohibit smoking within an apartment unit by incorporating such a clause in the lease.[10] Similarly, the Utah Condominium Act allows a condominium association to develop covenants and restrictions that prohibit smoking on the site.[11] Whether a condominium association that had previously permitted smoking in individual units could subsequently vote to prohibit smoking in the entire condominium complex without any special "grandfather" exclusions for the units of smokers is unclear. Such an amendment could arguably constitute an unconstitutional taking of private property because of the magnitude of change in the living conditions of the smoker.

Section II — Remedies for Residents of Multi-Unit Dwellings Adversely Affected by Secondhand Smoke

Landlords not only have the right to prohibit smoking, but in fact may also be liable under a variety of legal theories for failure to prohibit smoking when a tenant is affected by secondhand smoke. A tenant may take action against a landlord using common law remedies, state or local health and safety codes, or the federal Fair Housing Act.

Voluntary Strategies

The first step in any dispute, of course, is to try to resolve the issue without legal action. A tenant or condominium owner adversely affected by secondhand smoke should first document the problem, including health effects. A letter from the attending physician attesting to the effect of the secondhand smoke on the resident's health is very helpful. In addition, the resident should review the lease to determine whether there is a "nuisance clause" that prohibits activities that "unreasonably interfere" with other residents' enjoyment of the premises. Most leases contain such a provision, which arguably would apply to smoking if the resulting secondhand smoke causes others discomfort or health problems.

If the problem cannot be resolved in informal discussions with the smoker, the tenant should approach the landlord with the lease language and the physician's letter. The tenant may request a prohibition against smoking in the offending unit or may want to consider options in lieu of a smoking prohibition, such as venting the smoker's unit separately.[12] The tenant should emphasize that the landlord has the authority to prohibit or restrict smoking in an individual unit to protect the well-being of another resident. If the landlord declines to take action, the tenant could suggest mediation to avoid the more cumbersome process of a lawsuit.

Common Law Remedies

The traditional approach in a tenant or condominium owner dispute over secondhand smoke infiltration is court action or the threat of court action. Most cases are settled, with only a handful of court cases reported nationally in which a decision was reached on the merits. Only two cases have reached the appellate level, and one of these cases concluded the issue was moot as the plaintiff and defendant (both tenants) moved out of the condominium building.[13] While ascertaining trends from the limited number of reported cases is difficult, tenants have been most successful using the following common law remedies: breach of warranty of habitability and breach of covenant of quiet enjoyment.

In all states, even if landlords are not at fault for a problem, they are responsible for ensuring that

residential rental properties are fit for human occupancy. The landlord in effect makes a "warranty of habitability" to the tenant for the life of the lease. The plaintiff in a secondhand smoke case would argue that the presence of secondhand smoke renders his or her residence unfit for habitation and constitutes a breach of the lease. The more secondhand smoke exposure affects the plaintiff, the stronger the argument that secondhand smoke is a breach of the warranty of habitability.[14]

In the 1992 Oregon case *Fox Point Apt. v. Kipples*,[15] a tenant who was sensitive to secondhand smoke successfully argued that her landlord breached his duty to make her apartment habitable by allowing a smoking tenant to move into the apartment below her. The plaintiff suffered swollen membranes and respiratory problems as a result of the secondhand smoke. A jury unanimously found a breach of habitability, reduced the plaintiff's rent by 50 percent and awarded damages for the plaintiff's medical bills.

In another case, a court held that a landlord breached the covenants of both habitability and quiet enjoyment. The covenant of quiet enjoyment protects a tenant from serious intrusions that impair the character or value of the leased premises. In the 1998 Massachusetts case *50-58 Gainsborough St. Realty Trust v. Haile*,[16] the Boston Housing Court held that secondhand smoke was a serious enough intrusion to breach both the covenant of quiet enjoyment and the covenant of habitability. The plaintiff, whose apartment was situated above a bar, withheld rent for three months because of the drifting secondhand smoke in her apartment. The judge ruled that the amount of smoke from the bar made the apartment "unfit for smokers and nonsmokers alike."

An appellate court also ruled that exposure to secondhand smoke can constitute a breach of the covenant of quiet enjoyment. In the 1994 Ohio case *Dworkin v. Paley*,[17] the court reversed a summary judgment in favor of a landlord who smoked in a two-family dwelling that shared common heating and cooling systems. The tenant alleged that smoke from the landlord's unit caused her physical discomfort and was annoying. In reversing the dismissal, the appellate court said there was an "issue of material fact concerning the amount of smoke or noxious odors being transmitted into appellant's rental unit." While the court did not rule that a breach of quiet enjoyment occurred, the tenant was given the opportunity to demonstrate at trial that the amount of secondhand smoke was sufficient to qualify as a breach.

Nuisance law can also be applied to the issue of secondhand smoke infiltration. Under common law, a nuisance is anything that substantially interferes with the enjoyment of life or property. In Utah, secondhand smoke is explicitly listed as a nuisance by statute.[18] The statute defines nuisance as "anything which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property." This includes tobacco smoke that drifts into an apartment or condominium more than once in each of two or more consecutive seven-day periods. There are no reported opinions in Utah under this statute. However, in February 1999, a nonsmoking condominium owner filed suit against a smoker renting from another owner on a month-to-month lease. The case was settled when the smoker's lease was not renewed.[19]

In all states other than Utah, the issue of whether secondhand smoke constitutes a nuisance is decided on a case-by-case basis. In the 1991 Massachusetts case *Lipsman v. McPherson*,[20] the court ruled the "annoyance" of smoke from three to six cigarettes a day was not a nuisance. The standard for nuisance, according to the court, was a substantial effect on an ordinary person. "Plaintiff may be particularly sensitive to smoke, but an injury to one who has specially sensitive characteristics does not constitute a nuisance." There are no reported decisions in which a plaintiff was able to prove that exposure to secondhand smoke was a nuisance.

Other theories used by plaintiffs in secondhand smoke cases are negligence, harassment, trespass, constructive eviction, intentional infliction of emotional distress and battery. Under the theory of negligence, one can argue that allowing secondhand smoke to drift into the plaintiff's residence is negligent. Landlords have a duty under common law to exercise reasonable care in maintaining rental property. A landlord's failure to curb secondhand smoke could be construed as a breach of the duty to exercise

reasonable care in maintaining rental property.

Condominium owners successfully obtained an injunction against a smoker under the theory of harassment. [21] The plaintiffs alleged the defendant was harassing them by smoking in a garage located below the owners' condominium. According to the plaintiffs, the exposure to secondhand smoke forced them to leave their residence "for hours at a time." The Superior Court of California issued a restraining order, requiring the defendant to refrain from smoking in his garage.

In the 1991 Massachusetts case *Donath v. Dadah*,[22] a tenant sued her landlord alleging negligence, nuisance, breach of warranty of habitability, breach of the covenant of quiet enjoyment, intentional infliction of emotional distress and battery due to secondhand smoke exposure. The plaintiff asserted secondhand smoke from the second floor of the building in which she lived caused asthma attacks, difficulty breathing, wheezing, prolonged coughing, clogged sinuses and frequent vomiting. The plaintiff moved out of the apartment shortly after filing suit, and settled for an undisclosed sum of money in December 1992.

Safety and Health Code Violations

A lesser-known but promising approach to the problem of secondhand smoke infiltration is to utilize administrative proceedings. Robert Kline of the Tobacco Control Resource Center at Northeastern University School of Law discusses this approach in his article, *Smoke Knows No Boundaries: Legal Strategies for Environmental Tobacco Smoke Incursions into the Home within Multi-Unit Residential Dwellings*.[23]

The article notes that every state has local authorities empowered to protect public health. Such public health authorities are typically responsible for enforcing a sanitary code, housing code, a landlord/tenant regulation or a municipal code. These regulations usually list different kinds of *per se* violations, and then conclude with a broad "catch all" clause that permits the local authority to remedy unlisted health problems. While probably not a *per se* violation, the infiltration of secondhand smoke could be actionable under a "catch all" clause, particularly in light of current health data on secondhand smoke.

According to Kline, if a violation is found, the regulatory body's procedure may include assessing a fine, ordering repairs, or reporting the infraction to some other agency. Most administrative schemes provide an appeals process for the landlord. The evidentiary standards and standard of review applied during the appeal process vary by state.

Kline noted that the administrative approach is less time-consuming than court cases because the local officials can simply apply well-accepted scientific conclusions about secondhand smoke to the particulars of the case. Battling in court over well-accepted science is unnecessary. If an administrative decision is appealed, the landlord has the burden of proving that the board acted unreasonably; the board does not have to prove well-accepted science.

The Federal Fair Housing Act

A tenant or condominium owner who is sensitive to tobacco smoke may be able to use the federal Fair Housing Act (FHA) to obtain relief from secondhand smoke infiltration. The FHA prohibits discrimination in housing against, among others, persons with disabilities, including persons with severe breathing problems that are exacerbated by secondhand smoke.[24] The FHA applies to virtually all rental and condominium housing, with the exception of single-family housing rented without the use of a broker and condominiums with four or fewer units. The Smoke-Free Environments Law Project of the Center for Social Gerontology is an excellent resource for more information on the application of the FHA to secondhand smoke infiltration. The Center's materials are posted at www.tcsg.org.

In a 1992 analysis, the General Counsel of the U.S. Department of Housing and Urban Development concluded that persons suffering from Multiple Chemical Sensitivity Disorder (MCS) and Environmental Illness (EI) could qualify as disabled under the Fair Housing Act.[25] According to the analysis, MCS and EI include secondhand smoke-related illnesses and disorders.

Nevertheless, simply showing an adverse health reaction to secondhand tobacco smoke is insufficient. To use the FHA, the affected person must prove such adverse health reaction substantially limits one or more major life activities. To be "substantial" the

impairment must be severe and long-term. A substantial impairment could include difficulty breathing or other ailments, such as a cardiovascular disorder, caused or exacerbated by exposure to secondhand smoke. For a person who suffers from such health effects, secondhand tobacco smoke may pose as great a barrier to access to or use of housing as a flight of stairs poses to a person in a wheelchair.[26]

A person who finds secondhand smoke merely irritating, distasteful or discomforting would probably not obtain protection under the FHA.[27] The 2003 Massachusetts case *Donnelley v. Cohasset Housing Authority*[28] is instructive. Under a Massachusetts civil rights law modeled after the federal Americans with Disabilities Act, the superior court decided that a plaintiff who said she could not be around smokers and who experienced itchy eyes and tiredness from exposure to secondhand smoke did not qualify for protection from secondhand smoke as a disabled person. The federal Americans with Disabilities Act sets the definition of "disabled" for the FHA. While not controlling, this exemplifies the high standard plaintiffs will need to meet to show their sensitivity to secondhand smoke substantially limits a major life activity.

The United States Supreme Court case *Sutton v. United Air Lines*[29] also sets a high standard for showing a qualifying disability under the federal Housing Act. The Supreme Court ruled that a disabled person who is using a mitigating measure, such as medication, is not disabled under the Americans with Disabilities Act if the person is not experiencing any substantial limitation in any major life activity. As mentioned previously, the Americans with Disabilities Act determines the definition of "disabled" for the FHA. Thus, a court might deny relief for a person with asthma that is fully controlled with medication on the grounds that the person is not disabled for the purposes of the FHA. However, this theory has never been thoroughly tested, and it is equally reasonable to speculate that courts would not disqualify a plaintiff based on use of a mitigating measure when a smoke-free environment is the most efficient and least costly alternative. In addition, potentially millions of Americans on medication who are exposed to tobacco smoke, even though their health care providers advise them to avoid it, would still qualify as "disabled" under the FHA. Finally, if a person with asthma is not using medication, any speculation on his or her condition if medicated would be groundless as the disability determination is made based on the person's actual condition. For example, it would be futile for a landlord to argue that a tenant should use asthma medication due to secondhand smoke infiltration if the person is not in the practice of using such medication.

If an aggrieved tenant or condominium owner successfully proves a disability under FHA, the landlord must make "reasonable accommodations" in housing to protect the individual from secondhand smoke exposure. Such accommodations could include developing or enforcing a smoke-free policy, repairs to reduce or eliminate secondhand smoke infiltration, or adding separate ventilation or heating systems. What remedial actions are reasonable and what constitutes an "undue hardship" on a landlord is determined on a case-by-case basis.

In the case *In re HUD and Kirk and Guilford Management Corp. and Park Towers Apartment,*[30] HUD approved as a "reasonable accommodation" a conciliation agreement in which an existing building was made smoke-free for future tenants. Current smokers were asked if they would be willing to relocate elsewhere in the building to make more areas of the apartment building smoke-free.

Section III — Advantages to Landlords of Smoke-Free Leases

In a survey of forty-nine owners and managers of multi-family housing in Minnesota, the most commonly raised legal concern with respect to smoke-free housing was the legal recourse owners have to enforce a smoke-free rule.[31] Landlords wanted the authority to evict a tenant for smoking, and wanted their authority to stand up in court.

The Center for Energy and Environment, which co-authored the survey, concluded that landlords offering smoke-free rental properties face a small risk that they could be held to a higher standard of care in the event of a violation of a no-smoking lease.[32] The author suggested this risk could be avoided by using

appropriate lease provisions and suggested model language, drafted in consultation with a legal advisory committee. The committee consisted of attorneys who regularly represent property owners and managers, as well as attorneys who represent tenants or serve as counsel for public housing agencies.

In general, the template language states that the landlord is not a guarantor of smoke-free environments and informs tenants that their assistance with enforcement is needed. The lease also gives tenants a right of action to enforce smoke-free restrictions against fellow tenants or their guests. Finally, the template includes an optional grandfather paragraph for rental units occupied by smokers. Key provisions of the model lease are reprinted below:[33]

Smoke-free Complex. *Tenant agrees and acknowledges that the premises to be occupied by Tenant and members of Tenant's household have been designated as a smoke-free living environment. Tenant and members of Tenant's household shall not smoke anywhere in the unit rented by Tenant, or the building where the Tenant's dwelling is located or in any of the common areas or adjoining grounds of such buildings or other parts of the rental community, nor shall Tenant permit any guests or visitors under the control of Tenant to do so.*

Tenant to Promote No-Smoking Policy and to Alert Landlord of Violations. *Tenant shall inform Tenant's guests of the no-smoking policy. Further, Tenant shall promptly give Landlord a written statement of any incident where tobacco smoke is migrating into the Tenant's unit from sources outside of the Tenant's apartment unit.*

Landlord Not a Guarantor of Smoke-Free Environment. *Tenant acknowledges that Landlord's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free do not make the Landlord or any of its managing agents the guarantor of Tenant's health or of the smoke-free condition of the Tenant's unit and the common areas. However, Landlord shall take reasonable steps to enforce the smoke-free terms of its leases and to make the complex smoke-free. Landlord is not required to take steps in response to smoking unless Landlord knows of said smoking or has been given written notice of said smoking.*

Other Tenants are Third-Party Beneficiaries of Tenant's Agreement. *Tenant agrees that the other Tenants at the complex are the third-party beneficiaries of Tenant's smoke-free addendum agreements with Landlord. A Tenant may sue another Tenant for an injunction to prohibit smoking or for damages, but does not have the right to evict another Tenant. Any suit between Tenants herein shall not create a presumption that the Landlord breached this Addendum.*

Disclaimer by Landlord. *Tenant acknowledges that Landlord's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, does not in any way change the standard of care that the Landlord or managing agent would have to the Tenant household to render buildings and premises designated as smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental premises.*

Landlord specifically disclaims any implied or express warranties that the building, common areas, or Tenant's premises will be free from secondhand smoke. Tenant acknowledges that Landlord's ability to police, monitor, or enforce the agreements of this Addendum is dependent in significant part on voluntary compliance by Tenant and Tenant's guests. Tenants with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that Landlord does not assume any higher duty of care to enforce this Addendum than any other landlord obligation under the Lease.

Conclusion

Smoke-free apartments or condominiums are not only good health policy, but they also make sense legally. The law gives landlords and building owners the right to prohibit smoking in apartments and condominiums, which protects them from lawsuits over secondhand smoke incursion. Aggrieved residents affected by secondhand smoke have a broad

choice of legal actions, ranging from claims under common law to allegations of code violations or violations under the FHA.

Tenants and condominium owners have had some success in the various legal venues, and this trend is likely to continue. As evidence of the ill effects of secondhand smoke mounts and more environments become smoke-free, increasing numbers of people will assert their rights to smoke-free living. Landlords and building owners can join this movement by offering smoke-free leases.

About the Author

Susan Schoenmarklin is a Consulting Attorney for the Smoke-Free Environments Law Project.

Endnotes

1 National Cancer Institute, *Health Effects of Exposure to Environmental Tobacco Smoke: The Report of the California Environmental Protection Agency*, Smoking and Tobacco Control Monograph 10 (Aug. 1999).

2 Stanton A. Glantz & William W. Parmley, *Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry*, 83(1) CIRCULATION 1-12 (1991).

3 David Satcher, *Reducing Tobacco Use: A Report of the Surgeon General*, U.S. Dept. of Health and Human Services (2000).

4 Mich. Op. Att'y Gen. 6719 (May 4, 1992).

5 In addition to conducting independent research, the author has relied on other extensive searches. *See* Edward L. Sweda, Jr., *Summary of Legal Cases Regarding Smoking in the Workplace and Other Places*, Tobacco Products Liability Reporter (July 2003); s*ee also* Douglas Carney, *Legal Research Regarding Smoke-Free Buildings and Transfer of Environmental Tobacco Smoke Between Units in Smoking-Permitted Buildings*, Center for Energy and Environment, Minnesota (Aug. 2002), *available at* http://www.mncee.org/frame_iaqmb.htm.

6 *See Fagan v. Axelrod*, 550 N.Y.S.2d 559 (Sup. Ct. Albany County 1990) (noting that under common law a landlord could prohibit smoking on rental property).

7 *Kurtz v. City of North Miami,* 653 So.2d 1025 (Fla. 1995) (allowing the government to refuse to hire smokers, the court stated, "there is no state or federal constitutional right to smoke").

8 *In re HUD and Kirk and Guilford Management Corp. and Park Towers Apartments*, HUD Case No. 05-97-0010-8, 504 Case No. 05-97-11-0005-370 (1998); *In re Kearney, Nebraska Public Housing Authority Tenant/Unit Assignment According to Smoking Preference Compatibility with Tenant Selection/Assignment Regulations*, HUD Opinion (June 27, 1996); *In Re City of Fort Pierce, Florida Housing Authority*, HUD Opinion (July 9, 1996).

9 *In re City of Fort Pierce, Florida Housing Authority*, HUD Opinion (July 9, 1996).

10 Utah Code § 57-22-5-1 (h).

11 Utah Code § 57-8-16 (7).

12 Ventilation cannot completely eliminate health concerns related to exposure to secondhand smoke.

13 *Platt v. Stella Landi*, No. BC 152452 (Super. Ct. of Cal., Los Angeles County 1996).

14 Robert L. Kline, *Smoke Knows No Boundaries: Legal Strategies for Environmental Tobacco Smoke Incursions into the Home within Multi-Unit Residential Dwellings*, 9 Tobacco Control 201-205 (2000).

15 No. 92-6924 (Or. Dist. Ct. Lackamas County 1992).

16 No. 98-02279 (Boston Housing Ct. 1998), *reprinted in* 12 Tobacco Products Liability Reporter 2.302 (1998).

17 638 N.E.2d 636 (Ohio Ct. App. 1994).

18 Utah Code § 78-38-1(3).

19 *See* Carney, *supra* note 5, at 8 (discussing unreported case *Parish v. MacFarlane*).

20 No. 191918 (Super. Ct. of Mass., Middlesex 1991), *reprinted in* 6.2 Tobacco Products Liability Reporter 2.345 (1991).

21 *Layon v. Jolley*, No. NSOO4483 (Super. Ct. of Cal., Los Angeles County 1996).

22 No. 91cv179 (Worcester City Housing Ct. Dept. 1991).

23 Kline, *supra* note 14.

24 This section is based on research by the Smoke-Free Environments Law Project of the Center for Social Gerontology, which can be viewed at http://www.tcsg.org.

25 Carole W. Wilson, Associate General Counsel for Equal Opportunity and Administrative Law, *Multiple Chemical Sensitivity Disorder and Environmental Illness as Handicaps*, No. GME-0009, United States Department of Housing

and Urban Development (March 5, 1992), *available at* http://www.hudclips.org/sub_nonhud/cgi/hudclips.cgi?hudclips.

[26] Smoke-Free Environments Law Project, *The Federal Fair Housing Act and the Protection of Persons Who Are Disabled by Secondhand Smoke* (Sept. 2002), *available at* http://www.tcsg.org/sfelp/fha_01.pdf.

[27] Wilson, *supra* note 25.

[28] 2003 WL 21246199 (Mass. Super. Mar. 31, 2003).

[29] 527 U.S. 471 (1999).

[30] *In re HUD and Kirk and Guilford Management Corp. and Park Towers Apartments*, HUD Case No. 05-97-0010-8, 504 Case No. 05-97-11-0005-370 (1998).

[31] Center for Energy and Environment & Association for Nonsmokers – Minnesota, *Survey of Multifamily Building Owners and Managers in Minnesota Regarding Movement of Secondhand Smoke in Buildings and Designation of Smoke-free Buildings* (Oct. 2001), *available at* http://www.mncee.org/frame_iaqmb.htm.

[32] *See* Carney, *supra* note 5. Prepared at Hanbery, Neumeyer & Carney, P.A., for the Center for Energy and Environment.

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About the Tobacco Control Legal Consortium

The Tobacco Control Legal Consortium is a national network of legal programs supporting tobacco control policy change by giving advocates better access to legal expertise. The Consortium's coordinating office, located at William Mitchell College of Law in St. Paul, Minnesota, fields requests for legal technical assistance and coordinates the delivery of services by the collaborating legal resource centers. Legal technical assistance includes help with legislative drafting; legal research, analysis and strategy; training and presentations; preparation of friend-of-the-court legal briefs; and litigation support. Drawing on the expertise of its collaborating legal centers, the Consortium works to assist communities with urgent legal needs and to increase the legal resources available to the tobacco control movement.

Preparation of this synopsis was supported by the Tobacco Technical Assistance Consortium, Atlanta, Georgia, under Grant No. 416290 from the Robert Wood Johnson Foundation, Princeton, New Jersey.