



What to do if Your Neighbor Smokes: FAQs about Secondhand Smoke in Residences

My neighbor smokes and it comes into my apartment. What should I do?

First, document the problem. Write down specific details each time smoke enters your apartment. Include the date, time of day, location and any additional observations, such as health effects to you and other household members (e.g. coughing, problems breathing, asthma, etc.) Track these incidents in a journal or on your calendar. Be as detailed as possible, and do not delay in recording them. If you wait, you may not remember all of the details.

Next, talk to both your owner/managing agent and neighbor. Document each conversation and its details in writing. Consider a friendly, constructive approach, and try to suggest solutions. Inform your neighbor smoke is entering your apartment/unit and it's affecting you and/or your family's health. As a result, you are requesting help to fix the issue within your apartment. Your owner/managing agent should take reasonable measures to control the problem (e.g. filling cracks and gaps between the apartments, examining the ventilation system, etc.) Any written correspondence should concisely describe the problem, include your request for help, and indicate what steps he/she took or failed to take.

If initial efforts do not stop the secondhand smoke, you should tell your owner/managing agent and neighbor the outcome, and ask the owner/managing agent to try again.

Where can I find information and resources about secondhand smoke in housing?

A number of buildings in NYC have made the decision to implement 100% smoke-free indoor rules. For more information about smoke-free living, [click here](#).

Several organizations provide free mediation services to neighbors about secondhand smoke drift. For more information, visit the [New York Peace Institute](#).

Reach out to [NYC Smoke-Free](#) to become more involved in advocacy efforts around expanding smoke-free space in NYC.

Is it legal for my neighbors to smoke in their apartment if it enters my apartment?

There is no law that specifically prohibits a neighbor from smoking in his or her home (unless it is part of a residential healthcare facility or a children's institution). However, some owners do prohibit smoking in residences, in which case smoking indoors could be a violation of a lease or rental agreement. NYC, as well as other cities and states, have addressed similar issues on a case-by-case basis. In some cases, courts have ruled that a tenant is entitled to protection from secondhand smoke that comes from another apartment.

If you support going 100% smoke-free in your building, let your owner/managing agent know. Download the [Smoke-Free Housing Kit for Landlords and Managing Agents](#) for information on the benefits of going smoke-free, as well as the recommended steps for developing and implementing a new smoke-free rule. The kit also contains materials for educating residents,

which is one of the best ways to achieve compliance.

What are the laws?

Under NYC's Smoke-Free Air Act, smoking is not permitted in common areas (hallways, common rooms, etc.) of buildings with 10 apartments or more. There are two additional legal concepts that may apply when smoke travels from one apartment into another, known as (1) nuisance and (2) constructive eviction. Depending on the circumstances, the passage of smoke into an apartment might constitute a nuisance. Constructive eviction may protect a tenant from conditions that are dangerous or hazardous. It is important to remember that these are legal terms of art, and you may need to speak with a lawyer to find out if they apply to you. For additional legal information, visit the following websites:

<http://www.smokefreehousingny.org/>
<http://www.nyc.gov/html/hpd/html/tenants/housing-court-info.shtml>
<http://www.nycourts.gov/courts/nyc/housing/index.shtml>
<http://housingcourtanswers.org/for-tenants>

I live in public housing, do these rules still apply?

Yes, public housing complexes are subject to the Smoke-Free Air Act and other laws that apply when secondhand smoke drifts into an apartment unit.

What if my building owner refuses to help, or tries to help and fails?

If your building owner fails to stop the smoke intrusion or does not attempt to do so, you may consider consulting with an attorney who will be able to advise you of your legal rights and additional steps you can take. Additional information can be found at the websites listed above.

What can the Health Department do?

Because the Smoke-Free Air Act does not prohibit smoking in private residential apartments in NYC, the Health Department cannot issue citations for smoke drift between neighboring apartments. The Department is however, currently monitoring the number of complaints received related to secondhand smoke in residences for tracking purposes, and forwarding to other agencies as appropriate.

How harmful is secondhand smoke?

There is no known safe level of secondhand smoke exposure.

- Studies have shown that over half (57%) of non-smoking New Yorkers have elevated levels of cotinine in their bodies, an indicator of secondhand smoke exposure. This is well above the national rate of 45%, despite the fact that the smoking rate in NYC is lower than the national average.
- Secondhand smoke contains more than 7000 chemicals, including nearly 70 that are known to cause cancer. Secondhand smoke has health effects on infants, children, and adults. For more information on these health effects, visit [NYC Quits](#).