

Landlords Need to Take Action to Protect Their Tenants From Tobacco Smoke

Landlords have the responsibility to provide a healthful environment for their residents. Smoking in a unit or on a balcony may be a legal activity which enables the tenant who is smoking to use and enjoy the unit. But if that smoke drifts into another tenant's unit, it could be preventing that tenant from using and enjoying his or her premises. In addition, the drifting tobacco smoke could be considered trespass and/or battery and represents a serious health hazard.

The California Air Resources Board (ARB) in January, 2006, identified tobacco smoke as a Toxic Air Contaminant with no safe level of exposure. According to the ARB news release, secondhand smoke "is now formally identified as an airborne toxic substance that causes and/or contributes to death or serious illness."

The question has been asked:

Is a landlord liable when secondhand smoke produced by one tenant affects other tenants or third parties?

Several attorneys have suggested:

"As a general proposition, landlords have a duty to use 'ordinary care or skill in the management' of their property. Accordingly, an argument could be made that under ordinary principles of landlord-tenant law, a landlord (under certain circumstances) would have an obligation to eliminate risks of harm caused by secondhand smoke. A court could rule that landlords must take reasonable steps to protect against such harms."

"Another avenue that might be explored would be the landlord's contractual obligation to maintain the lease space in a manner that can be used by the tenant. Where one tenant's smoking is interfering with another tenant's use and enjoyment of the leased premises, a landlord may be violating their contractual obligation to provide a useable space."

"State statutes giving rights to occupants of property to causes of action for creating, maintaining or permitting nuisances based on noxious, offensive, harmful or toxic emissions are also arguably applicable both as against the offending neighbor and a Landlord."

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