If you have a medical condition made worse by secondhand smoke drifting into your apartment, federal and state disability laws might help you address the problem. Depending on the nature of your disability, your landlord may be required to make changes to reduce your exposure.

Disability Laws
California and federal disability laws are designed to ensure that people with disabilities have an equal opportunity to access and enjoy their homes. If you rent, your landlord or property manager can be required to make reasonable changes to the rules to accommodate your disability. A tenant with a hearing impairment, for example, may ask to be exempted from a landlord’s no-pet policy if a service dog alerts her to sounds such as a knock at the door or a telephone ringing. Or a tenant with asthma could ask her landlord to prohibit smoking in the common areas of the building, if the smoke is coming into her unit from those areas.

In order to qualify for protection under these laws, your medical condition must meet the legal definition of a disability. A disability is a mental or physical condition that “limits” (under California law) or “substantially limits” (under federal law) a major life activity such as breathing, walking, or performing manual tasks. Courts have generally recognized that individuals are disabled when they have severe asthma, allergies, chemical sensitivities, or other respiratory conditions that limit their ability to breathe. Whether you are legally considered disabled will depend on the particular facts of your situation.

What is a reasonable accommodation?
There are several options you could request that would be considered reasonable and necessary to accommodate your respiratory condition. For example:

- You could ask your landlord to prohibit smoking in the common areas of the building, if the smoke is coming from those areas.
- You could ask to move to a vacant unit in the complex, away from the drifting smoke. In this situation, it is not clear how much of the moving and preparation expenses the landlord must pay; however, the law clearly contemplates that the landlord bear some costs. (Your landlord would not be required to evict another tenant in order to create a vacancy.)
- You could ask your landlord to prohibit smoking in the apartments and balconies surrounding your unit. This might not be an immediate solution: the landlord may be required to follow a legally prescribed set of steps to change the leases and

Illustrations by Janet Cleland © California Department of Public Health
make these units nonsmoking, and it could be up
to a year before smoking is prohibited. For more
information on adopting smokefree policies, see
“How Landlords Can Prohibit Smoking in Rental
Housing,” another fact sheet available from TALC
at www.phlpnet.org.

• You could ask to “break” your lease without
incurring any financial penalties so that you can
move to another apartment complex.11

Although disability laws also can be used to request
building alterations such as sealing gaps and cracks
or installing fans or air purifiers, these approaches
rarely solve the problem of drifting tobacco smoke.
One study found that as much as 60 percent of the
air in one unit can come from another unit, and that
sealing leaks and openings only reduces air flow
by about 3 percent.12 Air cleaning technologies and
ventilation systems also have been shown to be
ineffective: according to a U.S. Surgeon General’s
report, filters only remove large particles, not the
minute particles and toxic gases in secondhand
smoke.13

What is not a reasonable accommodation?
Your request for an accommodation must directly
address the problem affecting your health
condition. You could not request a reduction in
rent, for instance, because this does nothing to
alleviate the impact of drifting secondhand smoke.14

In addition, your accommodation request must not
impose an undue burden on the landlord.15 For a
tenant who begins to have difficulty climbing stairs,
requesting that an elevator be installed would likely
put an undue financial burden on the landlord, and
that request could be legally rejected. However, a
request by that tenant to move to a vacant ground-
floor unit would be considered reasonable.16 While
the law does not require a housing provider to absorb
excessive costs, such as the elevator, it does envision that
the landlord bear some costs.17

Finally, it would not
be a reasonable
request to ask the
landlord to evict
the person who
smokes from the
building. However,
you could ask the
landlord to change
the conditions of
that person’s rental
agreement to
prohibit smoking.18

What accommodation is reasonable and who
should pay for the changes depend on the facts of
each case. You and your housing provider should
discuss your needs and how to best accommodate
these.

How to make the request
It is your responsibility, as the person with
the disability, to make the request for an
accommodation to your housing provider. It is not
your landlord’s obligation to seek out and make
these alterations.19

Your reasonable accommodation request and all
subsequent exchanges should be in writing, and
you should keep copies of the letters. Although not
required by law, putting your requests in writing
facilitates clear communication and creates a
“paper trail” in case the issues are not resolved and
you later file a lawsuit. All letters should be sent
by registered mail not only to the manager of the
property but also to the property owner, property
management company, and/or board of directors.
Since each of these parties may ultimately be liable

Renting a condo?
Disability laws apply even if
you are renting a condominium
unit. Your landlord (the condo
unit owner) is required to
accommodate your disability.
However, what may be considered
reasonable in an apartment
setting may not be the same
in a condominium because of
the covenants, conditions, and
restrictions (CC&Rs) that regulate
what condominium owners
can do. For example, some of
the suggested accommodation
requests presented here could
not be implemented solely by the
owner of the condominium unit
you are renting but instead may
require the owner to work with
the homeowners’ association and/
or the board of directors.
in a lawsuit later, it is important that they all receive notice of the request.

When making a reasonable accommodation request, you will want to send a demand letter, a doctor’s note, and a record of the drifting smoke.

**Demand letter**

A demand letter to your housing provider describes your physical condition that is aggravated by exposure to secondhand smoke, identifies the source and frequency of the drifting secondhand smoke, outlines the reasonable accommodation(s) you are requesting, and summarizes the landlord’s legal responsibility to accept this request. (A sample letter accompanies this fact sheet.)

Nonprofit organizations in California called *fair housing councils* help residents with disabilities make their requests for accommodation. These services are typically provided free of charge. (A contact list of California fair housing councils accompanies this fact sheet.) Note that you do not need an attorney to prepare or submit an accommodation request.

**Doctor’s note**

A doctor’s note – which documents both the effect the drifting smoke has on your health and the need for the particular accommodation – is key to your request. Housing providers are not required to grant accommodations unless they know or should have known about the disability. In cases where the condition is not always obvious (such as asthma), the note serves as notice of the disability. Moreover, a doctor’s note answers many, if not all, of the provider’s legitimate medical questions in the least intrusive manner. (A sample doctor’s note accompanies this fact sheet.)

**Record of drifting smoke**

It is a good idea to keep a log of how the drifting secondhand smoke affects your health and the use of your home. You might list each instance when the smoke drifted into your apartment, including the time, date, and resulting health problems.

You should provide the log along with your demand letter, as it may help the landlord in deciding whether to grant the request for accommodation.

**If the request is denied**

In most drifting smoke situations, because the solutions cost little or nothing, a housing provider probably cannot reject the requested accommodation on the grounds that it is an undue burden. However, if your request is rejected, you have one year to file a complaint with the California Department of Fair Employment and Housing or the U.S. Department of Housing and Urban Development. You have two years to file a lawsuit after the accommodation request has been denied. A fair housing council may be able to refer you to a local attorney for assistance.

**Conclusion**

Depending on your situation, disability laws may provide the most effective way for you to get relief from drifting tobacco smoke. There are many reasonable adjustments a landlord can make to accommodate your respiratory disability and reduce your exposure to secondhand smoke. By using the protections of these laws, you may be able to enjoy a smokefree environment.

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See County of Fresno v. Fair Employment & Hous. Comm’n, 226 Cal. App. 3d 1541, 1551 (1991) (“To most people tobacco smoke is merely irritating, distasteful or discomforting. Someone who suffers from a respiratory disorder and whose ability to breathe is severely limited by tobacco smoke is, nevertheless, physically handicapped within the meaning of the [Fair Employment and Housing Act]”). See also Vickers v. Veterans Admin., 549 F. Supp. 85 (W.D. Wash., 1982) where the court found the employee to be a “handicapped person” because the employee was unusually sensitive to tobacco smoke and this limited one of his major life activities—working in an environment that was not completely smokefree. Note: the legal definition of “handicapped” is equivalent to the legal definition of “disabled.” See Bragdon v. Abbot, 524 U.S. 624, 631 (1998). Holdings in employment discrimination cases may be used as guidance in housing cases. Pfaff v. U.S. Dept of Hous. and Urban Dev., 88 F.3d 739, 745 n.1. (9th Cir. 1996).

These examples assume that you do not live in rental housing governed by a local rent control ordinance. A rent control ordinance might affect the ability of your landlord to implement various reasonable accommodation requests. Contact your local rent control board for specific information regarding this issue.

A California court determined that both the federal Fair Housing Act and FEHA do apply to common areas of residential complexes. Garza v. Raft, WL 33882969, at *3 (N.D. Cal. 1999).

Giebeler v. M&B Assoc., 343 F.3d 1143, 1152 (9th Cir. 2003) (“accommodations need not be free of all possible cost to the landlord”).


14 That request, however, may be valid to protect your rights under other legal claims such as alleging the landlord breached the warranty of habitability. See TALC’s fact sheet “Legal Options for Tenants Suffering from Drifting Tobacco Smoke.” Available at: www.phlpenet.org.

Giebeler v. M&B Assoc., supra note 9, at 1154 (an undue burden can include an excessive financial outlay or a fundamental change in operations).


Giebeler v. M&B Assoc., supra note 9, at 1152.

For more information on adopting smokefree polices, see TALC’s fact sheet “How Landlords Can Prohibit Smoking in Rental Housing.” Available at: www.phlpenet.org.

For more information about making a reasonable accommodation request: See Joint Statement, supra note 3, at 10-14.

Once a request for accommodation is made, the housing provider can ask for verification of the disability and for further information relating to the need for the requested accommodation. This does not entitle the provider to the resident’s medical records or to the precise nature (or even the name) of the disability. Id. at 13-14.

To file a complaint call (800) 233-3212 (available in both English and Spanish). For more information about the California housing complaint process, go to www.dfeh.ca.gov/DFEH/Complaints/hCompProc.aspx.

To file a complaint call (800) 669-9777. For more information about the federal housing complaint process, go to www.hud.gov/offices/fheo/promotingfh/atyourservice.cfm.
Dear [ Landlord or Property Manager ]:

I am writing to request that you make a reasonable accommodation for my disability. Both federal and state fair housing laws require that housing providers grant reasonable accommodation requests for tenants with disabilities. 42 U.S.C. § 3604(f)(3)(b) and Cal. Gov’t Code § 12927(c)(1). See also Giebeler v. M&B Associates, 343 F.3d 1143, 1147, 1156-8 (9th Cir. 2003).

I have a disability that significantly impairs my ability to breathe, and this condition is made worse by exposure to tobacco smoke. Tobacco smoke has been entering my unit and is coming from [ identify where smoke is coming from (e.g., neighboring unit) and how it is entering your unit (e.g., seems to be coming in through the heater vent ) ]. The smoke enters my apartment [ describe the frequency (e.g., every day) ]. A log is attached listing the dates of my exposure. This continuous exposure to secondhand tobacco smoke has aggravated my disability by [ describe your symptoms ]. A doctor’s letter is attached, documenting my condition and symptoms.


California courts and the U.S. Department of Housing and Urban Development (HUD) have required that reasonable accommodations be made for persons whose disabilities are aggravated by drifting tobacco smoke. See County of Fresno v. Dept. of Fair Employment and Hous. Comm’n, 226 Cal. App. 3d 1541 (employer liable for failure to accommodate two employees whose disabilities were aggravated by co-workers’ smoking); in re U.S. Dept’ of Hous. and Urban Dev. and Park Tower Apartments, HUD Case Nos. 05-97-0010-8 and 05-97-11-0005-370 (1998) (in response to complaint by disabled tenant with respiratory illness, landlord was required to include no-smoking term in all new tenants’ leases).

I am requesting [ describe your accommodation request (e.g., ban smoking in the common areas, allow to move to a vacant unit away from the drifting smoke, make the surrounding units nonsmoking, release from

An editable version of this sample demand letter (in Microsoft Word format) is available from TALC’s website at www.phlpnet.org.
rental agreement so can move, etc.)]. This change will eliminate my exposure to drifting tobacco smoke and alleviate the symptoms of my disability.

The only reason a housing provider may reject an accommodation request is if granting the accommodation would cause an **undue** financial or administrative burden. See *Giebeler*, 343 F.3d, at 1157. However, a housing provider is required to bear some financial and/or administrative burden. See *U.S. v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1416-17 (9th Cir. 1994).

My request to [describe your accommodation request (e.g., move to a vacant unit away from the drifting smoke, make the surrounding units nonsmoking, release from rental agreement so can move, etc.)] is reasonable because there will be little, if any, burden on you if you grant the accommodation.

Please respond in writing to this letter by [date] confirming whether or not you will grant my accommodation request. I would like to resolve this issue amicably and informally, if possible. If that cannot be done, please be aware that failure to grant a reasonable accommodation can subject a housing provider to a discrimination claim in which compensatory and punitive damages are awarded, along with prevailing party’s attorneys’ fees. 42 U.S.C. § 3613(c).

Thank you for your consideration and prompt attention in this matter.

[Signature]

cc: [Property Management Firm, Homeowners’ Association Board, etc.,]

Enclosures:

Letter from Dr. [doctor’s name]

Log of exposure to drifting smoke

**Additional resources:**

- How Landlords Can Prohibit Smoking in Rental Housing  
  [www.phlpnet.org](http://www.phlpnet.org)
- There Is No Constitutional Right to Smoke  
  [www.phlpnet.org](http://www.phlpnet.org)
- Secondhand Smoke: The Science  
  (fact sheet from Americans for Nonsmokers’ Rights)  
- There Is No Risk-Free Level of Exposure to Secondhand Smoke  
  (fact sheet based on the 2006 U.S. Surgeon General’s Report)  
[ Date ]

To Whom It May Concern:

[ Patient ] has been under my care for [ describe period of time (e.g., months, years) ]. [ Patient ] has [ name of condition ] which significantly interferes with [ her/his ] ability to [ describe limitations, especially related to respiratory impairment ]. As a result [ patient ] qualifies as disabled under the federal Fair Housing Act and the California Fair Employment and Housing Act.

[ Patient ] has reported to me that tobacco smoke is drifting into [ her/his ] unit from [ identify where smoke is coming from (e.g., neighboring unit) and how it is entering the unit, if known (e.g., through the heater vent) ]. [ Patient ] says that the smoke enters [ her/his ] apartment [ describe the frequency (e.g., every day) ].

Due to [ patient ]’s condition, exposure to tobacco smoke is detrimental to [ her/his ] health and increases the risk of [ patient ] suffering an adverse event, such as [ describe negative health impact ].

I urge you to grant [ patient ]’s accommodation request to [ describe the accommodation request (e.g., ban smoking in the common areas, allow to move to a vacant unit away from the drifting smoke, make the surrounding units nonsmoking, release from rental agreement so can move, etc.) ]. This accommodation is necessary to ameliorate the conditions of [ patient ]’s disability.

Sincerely,

[ Signature ]

Dr. [ doctor’s name ]
Nonprofit organizations called *fair housing councils* work to eliminate housing discrimination and can help residents with disabilities make their requests for accommodation. These services are typically provided free of charge.

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**Eden Council for Hope & Opportunities**  
*Offices in:* Berkeley, Hayward, Livermore, Oakland, and Palo Alto  
www.echofairhousing.org/home.html  
(510) 581-9380

**Fair Housing of Marin**  
*Office in:* San Rafael  
www.fairhousingmarin.com  
(415) 457-5025

**Fair Housing Council of Central California**  
*Office in:* Fresno  
Email: fhccc@cvip.net  
(888) 498-3247 or (559) 244-2950

**Fair Housing Council of Orange County**  
*Office in:* Santa Ana  
www.fairhousingoc.org  
(800) 698-FAIR or (714) 569-0823

**Fair Housing Council of Riverside County**  
*Offices in:* Coachella, Corona, Moreno Valley, Norco, Palm Springs, and Riverside  
www.fairhousing.net  
(800) 655-1812 or (951) 682-6581

**The Fair Housing Council of San Diego**  
*Office in:* San Diego  
www.fhcsd.com  
(619) 699-5888

**Fair Housing Council of the San Fernando Valley**  
*Office in:* Panorama City  
www.fairhousingcouncil.org  
(818) 373-1185

**Fair Housing Foundation**  
*Offices in:* Long Beach and Los Angeles  
www.fhfla.com  
(800) 446-3247 or (323) 295-3302

**Housing Rights, Inc.**  
*Office in:* Berkeley  
www.housingrights.org  
(510) 548-8776

**Housing Rights Center**  
*Offices in:* Los Angeles, Pasadena, and West Los Angeles and walk-in clinics throughout Los Angeles County  
www.hrc-la.org  
(800) 477-5977 or (213) 387-8400

**Inland Fair Housing and Mediation Board**  
*Offices in:* Barstow, San Bernardino, Upland, and Victorville  
www.inmedbd.com  
(800) 321-0911 or (909) 888-3763

**Project Sentinel**  
*Offices in:* Fremont, Gilroy, Modesto, Palo Alto, San Jose, and Sunnyvale  
www.housing.org  
(888) 324-7468

**Sentinel Fair Housing**  
*Office in:* Oakland  
www.sentinelfairhousing.org  
(510) 836-2687

**National Fair Housing Alliance**  
*Office in:* Washington, D.C.  
www.nationalfairhousing.org  
(202) 898-1661