

## Liability Risks for Housing Providers That Allow Smoking in Their Building

There are several ways a housing provider could be held liable by residents when smoking is allowed in multi-unit buildings, including:

- **Common Law Theories.** These are ways a resident may bring legal action against a housing provider or against residents who smoke under common law. These theories include:
  - Breach of the covenant of quiet enjoyment
  - Negligence
  - Nuisance
  - Breach of warranty of habitability
  - Battery
  - Intentional infliction of emotional distress
  - Trespass
  - Constructive eviction
- **Americans with Disabilities Act and Fair Housing Act.** Non-smoking residents who are afflicted with breathing disorders may be able utilize the Americans with Disabilities Act and/or the Fair Housing Act to bring legal action against landlords for not making reasonable accommodations to protect these residents from secondhand smoke in common areas or in their apartments.
- **Other Possible Legal Action.** Violation of State and Local Building Codes. Violation of State Sanitary Codes.

### Federal Housing Act Complaints

- The federal Fair Housing Act (FHA) prohibits housing discrimination based on race, color, religion, sex, family status, national origin, or disability.
- The FHA, among other things, prohibits discrimination against people with disabilities, including those with severe breathing problems that are exacerbated by secondhand smoke. The FHA prohibits such discrimination by owners and operators of most housing, including most apartments, Section 8 housing, and other HUD-assisted housing.
- It is clear from the language of the FHA, its interpretation by HUD General Counsel, and court decisions, that the FHA is available to people with breathing disabilities to seek reasonable accommodations from owners and operators of most housing in the United States to address the serious health hazards posed by secondhand smoke that infiltrates their housing.

*This paper is based on information adapted from [www.mismokefreeapartment.org](http://www.mismokefreeapartment.org)*

*This fact sheet is provided as a public service and is not intended as legal advice.*

*Please consult an attorney before implementing a smoke-free policy.*