



Secondhand Smoke & Multi-family Homes: Addressing Smoke Drift in Apartments and Condos

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Overview

- Secondhand cannabis
 - Risks
 - Mitigation
- Legal protections
 - The lease
 - The condominium agreement
 - The Fair Housing Act and the Clean Indoor Air Act
 - Common law claims
- Public housing and cannabis

References with hyperlinks are included at the end of the presentation.



Secondhand Cannabis - Risks

- Cannabis smoke contains many of the same harmful and carcinogenic compounds that are found in tobacco smoke, some of them in higher concentrations, including:
 - Ammonia
 - Hydrogen cyanide
 - Nitric oxide
 - Aromatic amines
 - Polycyclic aromatic hydrocarbons
- Extreme exposure to secondhand cannabis smoke can lead to detectable levels of THC in a non-smoker's body.



Inhaling Particulate Matter and Aerosols – Risks

- Aerosolized cannabis creates tiny particles of cannabis concentrate that are inhaled, which can also be consumed secondhand.
- Inhaling fine particulate matter has been linked to:
 - Asthma
 - Decreased respiratory and cardiovascular health
 - Increased hospital stays for respiratory and cardiovascular problems
 - Increase in respiratory illnesses such as pneumonia and bronchitis
- The long-term health effects of vaping have not yet been fully documented, but in the short-term, vaping has been linked to lung damage, including both cannabis and nicotine vapes.



Secondhand Smoke Mitigation

Ventilation, air purification, apartment sealant, and other mitigation techniques can mask odor and decrease discomfort but cannot entirely eliminate the exposure to chemicals contained in smoke.



Secondhand Smoke Mitigation

- The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has found the **only** effective way to prevent secondhand exposure in homes is to ban smoking in and near buildings.
 - The American Lung Association recommends a distance of at least 25 feet.
 - Secondhand smoke can remain in the air for up to five hours, and particles can linger on surfaces (called thirdhand smoke) for several months.
- A study of a consumption site found that vaping and dabbing cannabis indoors produced aerosolized particles that lingered in high concentrations despite use of ventilation, air conditioning, and filtration.



Legal Protections for Apartment Residents



Legal Remedies – The Lease

- The lease is the primary source of legal rights and responsibilities for tenants and landlords in a rental agreement.
- Lease agreements may directly include smoke-free policies.
- Placing a detailed smoking policy in a lease is the best way to address the smoking concerns of both tenants and landlords.
 - Provides clarity on what is allowed
 - Provides an enforcement mechanism if violated
 - Protects both the health of the tenant and the value of the property



Legal Remedies – The Lease

- Regardless of whether the lease addresses smoking, the landlord has certain obligations to all tenants:
 - Covenant of quiet enjoyment
 - "Quiet enjoyment" is the right of a tenant to peacefully possess and enjoy property without unreasonable interference, which can include anything from harassment to regular unnecessary noisiness.
 - When a landlord possesses the ability to correct or terminate the conduct of a tenant, this covenant may require them to take action to protect other tenants.



Legal Remedies – The Lease

- Warranty of habitability
 - A dwelling unit rented to a tenant must be “free from serious defects or conditions that constitute, or will constitute if not promptly corrected, a fire hazard or other serious and substantial threat to the life, health, or safety of occupants of the dwelling unit.”



Constructive Eviction

- **Constructive Eviction:** A landlord's act of making premises unfit for occupancy, often with the result that the tenant is compelled to leave.

— Black's Law Dictionary

- Occurs when an issue is so severe that it deprives the tenant of enjoyment of all or part of the residence.
- Can result in the termination of the lease and money damages awarded to the tenant if constructive eviction is established at trial.
- The premises must be truly unfit for occupancy; mere defects do not constitute eviction if the residence is still suitable for habitation.



Legal Protections for Condominium Residents



Legal Remedies – The Condominium Agreement

- The Maryland Condominium Act grants condominium boards powers to create and enforce condo rules.
- Boards are bound to exercise reasonable and ordinary care to keep common areas safe and prevent harm to guests. Common areas include hallways, stairs, and shared building facilities.
- The Maryland Office of the Attorney General has concluded that condominium boards may regulate smoking in individual units if the condo bylaws do not specifically deny them that authority.



Statutory Protections



Legal Remedies – The Fair Housing Act

- The federal Fair Housing Act prohibits discrimination in private housing against specific protected classes of individuals, including those with a disability.
- The FHA requires housing providers to make reasonable accommodations to housing rules, practices, and services that are necessary for a disabled person to use the housing on an equal basis with non-disabled persons.



Fair Housing Act Coverage

- To qualify as a protected individual with a disability requires:
 - A mental or physical impairment that substantially limits one or more major life activities;
 - Major life activities include a wide variety of ordinary activities, including breathing.
 - A record of having such an impairment; or
 - Being regarded as having such an impairment.
- The limitation must be both severe and either permanent or long-term.



Fair Housing Act Coverage

- Many cardiovascular conditions can substantially limit the ability to breathe when secondhand smoke is present, including:
 - Asthma
 - Allergies
 - Chronic bronchitis



Fair Housing Act Requirements

- Housing providers are required to make reasonable accommodations to provide access to housing for individuals whose disabilities substantially limit their ability to breathe when exposed to secondhand smoke.
 - The easiest accommodation would be a non-smoking policy in and around housing units.
 - Another option could be moving either the smoking tenant or the affected tenant to a different unit.
- Failure of the housing provider to comply can result in compensation for damages, civil fines up to \$10,000 for a first violation, and equitable relief (court-ordered accommodation).



Maryland Clean Indoor Air Act (CIAA)

- Maryland law prohibits smoking and vaping in indoor areas open to the public and indoor places of employment.
- Private residences are not covered by the CIAA, but common areas are if they are open to guests or if they are served by building maintenance staff.
- Violators may be reported to the Department of Health at mdh.envhealth@maryland.gov or by contacting the county health department.



Legal Remedies – Common Law

- Private nuisance
 - Occurs when one person unreasonably interferes with another person's interest in property.
 - The interference must be continuous or recurring.
 - Would require a lawsuit showing damages to health, comfort, and/or property value.
 - D.C. case *Ippolito-Shepherd v. Farserotu* found nuisance occurred when years of cannabis odor caused a neighbor severe stress, sleep loss, and vomiting.



Related Topics in Housing Law



Public Housing and Cannabis

- Federal law completely prohibits cannabis use.
- Federal law specifically prohibits federal housing subsidies for individuals who use illicit drugs. This includes both medical and recreational cannabis users.
- Subsidized housing programs (like the Housing Choice Voucher program and public housing units) are funded by the federal government.



University Housing and Cannabis

- Like federally subsidized housing, colleges and universities are subject to federal cannabis prohibition, provided the institution receives any form of federal funding (including student loan payments).
 - Drug Free Schools and Communities Act of 1989



Questions?

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- *Secondhand Smoke*, Cleveland Clinic (last visited Apr. 28, 2025), <https://my.clevelandclinic.org/health/articles/10644-secondhand-smoke-dangers>.



Citations - Cases

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- Stevan v. Brown, 54 Md. App. 235 (Md. App. Ct. 1983).
- Macias v. Summit Management, Inc., 243 Md. App. 294 (Md. App. Ct. 2019).
- Toyota Motor Mfg., Kentucky, Inc. v. Williams, 534 U.S. 184 (2002).
- Matarese v. Archstone Pentagon City, 761 F. Supp. 2d 346 (E.D. Va. 2011).
- Godbolt v. Trinity Protection Services, Inc., 217 WL 2579020 (D. Md. 2017).
- Echard v. Kraft, 159 Md. App. 110 (Md. App. Ct. 2004).
- Bloch v. U.S. Dep't of Hous. & Urban Dev., 2024 WL 3029135 (W.D. Pa. 2024).



Citations – Statutes

- [42 U.S.C. § 3602.](#)
- [42 U.S.C. § 3604.](#)
- [42 U.S.C. § 3612.](#)
- [Md. Code Ann. Real Prop. § 8-212.](#)
- [Md. Code Ann. Real Prop. § 11-104.](#)
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