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**FAIR HOUSING:  
IT'S THE LAW!**

*A nonprofit organization protecting and advancing the legal rights of people with mental disabilities.*

## ***Fair Housing Tip of the Month***

### **Tip #11 – Requesting a Reasonable Accommodation to Reduce Exposure to Secondhand Smoke**

**TENANT:** *“I am a non-smoker, but the tenants in the unit next door are smokers, and the smoke seeps into my apartment. Since the neighbors moved in and started smoking, I’ve had several asthma and anxiety attacks. Previously, my physical and mental health disabilities were well-controlled with medication. My landlord says he can’t do anything because there are no smoking restrictions in this building. Since the secondhand smoke from my neighbors exacerbates my disabilities, can I request a reasonable accommodation to reduce my exposure to the smoke?”*

**The law says:** Yes, if secondhand smoke interferes with your use and enjoyment of your unit due to your disabilities, you can request a reasonable accommodation. Fair housing laws require that landlords make “reasonable accommodations,” or changes to rules or policies, when the change is necessary to allow a person with a disability to have equal access to housing. A landlord must grant the accommodation request, unless it changes the nature of the landlord’s business (a “fundamental alteration”) or is too difficult or expensive (an “undue burden”).

Before you request an accommodation, check local laws to determine how smoking is restricted in your area. Because secondhand smoke poses generally recognized health risks, many states, counties and cities have imposed smoking bans in public and/or private multi-unit housing. If your neighbors are not legally permitted to smoke in their apartment, you can call local code enforcement and ask them to investigate.

If the neighbor’s smoking does not violate local laws, but does exacerbate your disabilities, state and/or federal fair housing laws may offer you some protection. It will probably not be reasonable for you to demand that the neighbors not smoke as an accommodation to your disabilities. However, depending upon your situation, it might be reasonable for you to request that your landlord 1) agree to early termination of your lease, 2) move you to a smoke-free unit when the next such unit becomes available, 3) immediately make repairs related to smoke seepage (such as repairing faulty vents or re-caulking wall/floor joints), and/or 4) provide an air filtration system for your unit. Your landlord must engage in an interactive process with you to try to find an accommodation that enables you to use and enjoy your housing.

**What to do:** Make your request for reasonable accommodation in writing (email is an acceptable form of written communication), and keep a copy of your request. If your disability or need for accommodation is not obvious or known to your landlord, your landlord can ask for verification. This verification can usually come from you (for example, documentation of receipt of disability benefits or a credible statement by you) or from another person who knows about your disability (for example, a doctor, service agency, treating professional, or any reliable third party). The landlord must accept credible verification, and cannot request medical records or demand to know your diagnosis or diagnoses.

If your landlord denies your request and/or refuses to engage in an interactive process, you can file a complaint with a local fair housing agency, the California Department of Fair Employment and Housing (DFEH), or the U.S. Department of Housing and Urban Development (HUD).

To file a complaint with HUD, call 800-669-9777, or visit [www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/complaint-process](http://www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process)

To file a complaint with DFEH, call 800-884-1684, or visit [www.dfeh.ca.gov/complaint-process/file-a-complaint/](http://www.dfeh.ca.gov/complaint-process/file-a-complaint/)

Fair housing laws prohibit discrimination in housing based on the following characteristics: race, religion, national origin, color, sex, familial status, disability, marital status,\* ancestry,\* sexual orientation,\* gender identity,\* gender expression,\* genetic information,\* and source of income.\*

\*Covered under California law, but not federal law. (For most housing, California laws also prohibit discrimination on the basis of citizenship, immigration status and primary language.)

**Disclaimer:** *The Fair Housing Tip of the Month is for educational purposes only and does not constitute legal advice. If you have a legal question, please contact MHAS, your local fair housing council or another attorney of your choice.*

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