



A Warning Label for Your Apartment Building: Disclosing Smoking Policies for Multi-Unit Buildings

INTRODUCTION

The popularity of smoking in the United States began to slowly decline after the publication of the U.S. Surgeon General's report in 1964 linking smoking to an increased risk of cancer.¹ With the gradual transition of the perception of smoking from an acceptable habit to a hazardous activity, the regulation of smoking, and its harmful byproduct, secondhand smoke (SHS), has correspondingly increased. The most recent wave of legislation in numerous states, including Minnesota, has essentially eliminated smoking from indoor public places, public transportation, and places of employment.² The next wave of regulation will likely encompass locations that are generally viewed as private: the home residence and the personal automobile.

Recognizing that laws controlling smoking in private residences, such as multi-family rental buildings, will face resistance, cities and counties wishing to protect their residents from SHS could start with an interim measure—disclosure of the smoking policy for multi-unit buildings. This would not mandate that any change in policy be imposed on landlords, but would only require that more information about a potential residence be provided to prospective tenants. Other federal and state laws have addressed similar residential health hazards—lead-based paint, radon, and methamphetamine laboratory residue—through requiring disclosure in real estate transaction documents, and these disclosures appear to have contributed to

reducing the health consequences resulting from exposure. Disclosure of the smoking policy for a building is a simple way to educate both tenants and landlords of the dangers of secondhand smoke and help to reduce the incidence of lung cancer and heart conditions.

2006 SURGEON GENERAL'S REPORT

Secondhand smoke (SHS), also referred to as environmental tobacco smoke (ETS), is a mix of “sidestream smoke released by the smoldering cigarette and the mainstream smoke that is exhaled by the smoker. Sidestream smoke, generated at lower temperatures and under somewhat different combustion conditions than mainstream smoke, tends to have higher concentrations of many of the toxins found in cigarette smoke.”³ The evidence documenting the adverse health consequences of exposure to secondhand tobacco smoke has been building for several years.⁴ Reports from the Surgeon General of the United States in 1972 and in 1982 discussed the risks to nonsmokers from involuntary exposure to secondhand smoke, and established the causal link between secondhand smoke and lung cancer.⁵ The 1986 Surgeon General's report on the dangers of secondhand smoke was “the first Surgeon General's report to conclude that involuntary exposure of nonsmokers to tobacco smoke causes disease.”⁶

The 2006 Surgeon General's report on the health consequences of exposure to

secondhand smoke expanded the topics reviewed in the 1986 report and reviewed substantially more literature than the 1986 report.⁷ Among the major conclusions of the 2006 report are the following:

- Secondhand smoke causes premature death and disease in children and in adults who do not smoke.
- Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma.
- Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.

The report estimates the health consequences of exposure to secondhand smoke to be approximately 50,000 excess deaths per year, with 3,400 deaths from lung cancer, 46,000 from cardiac-related illness, and 430 from SIDS.⁸ Other conclusions in the Surgeon General's report address exposure in buildings, such as multi-unit apartment buildings:

- The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.
- Many millions of Americans, both children and adults, are still exposed to secondhand smoke in their homes and workplaces despite substantial progress in tobacco control.

- Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke.

Further support for the Surgeon General's statement on the inability to eliminate indoor exposure to secondhand smoke without banning smoking can be found in a position paper on secondhand smoke published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) in June 2005.⁹ In that paper, ASHRAE concluded that "the only means of eliminating health risks associated with indoor exposure is to ban all smoking activity."

SECONDHAND SMOKE REGULATION IN MINNESOTA

On May 16, 2007, Gov. Tim Pawlenty signed the Minnesota Freedom to Breathe Act into law; the bill took effect on October 1, 2007. The Freedom to Breathe Act contained numerous additions or modifications to the existing statewide smoking law in Minnesota, the Minnesota Clean Indoor Air Act (MCIAA).¹⁰ With the incorporation of these changes, the MCIAA substantially eliminates the possibility of exposure to SHS in indoor public places and indoor places of employment. The act allows smoking in private residences as an exception in the law, however, and does not address exposure to SHS transferring between individual residential units in multi-unit housing.

In 2001, a survey was conducted of 600 rental households in multi-family buildings in Minnesota to quantify the perceived extent and severity of exposure to secondhand smoke.¹¹ Forty-eight percent of rental households in multi-family buildings in Minnesota reported that they experienced tobacco smoke odors in their apartments. This prevalence of smoke transfer in apartment buildings was confirmed by tests conducted in 2004 on six multi-family buildings representative of the type most commonly found in Minnesota.¹² The study found that "air

flow between units in apartment buildings can be a significant concern...[E]very one of the six buildings had at least one unit for which more than 10% of the air entering the unit came from another unit."

In addition to the frequency of secondhand smoke entering an apartment, another statistic that supports the need for regulation of secondhand smoke in apartment buildings is the amount of time residents spend at home. According to a 2007 Bureau of Labor Statistics study on daily activities, individuals spend more time in their homes than at any other location.¹³ On average, individuals 15 years of age or older spend approximately 8.57 hours sleeping, 1.84 hours on household activities, and 2.62 hours watching television.¹⁴ These averages can be contrasted with approximately 3.81 hours for work-related activities and 1.24 hours for eating and drinking, activities frequently occurring outside the home. Considering the amount of time that individuals spend in their residences, and the number of Minnesota apartment households reporting intrusion of secondhand smoke, exposure to secondhand smoke at home should not be overlooked as a primary contributor to the increased likelihood of Minnesotans developing health conditions such as lung cancer and heart disease in adults and asthma and sudden infant death syndrome in children.

HOUSING DISCLOSURES

To protect prospective owners of property and renters of apartments from residential environmental dangers that are similar to secondhand smoke, the federal government and local legislatures have enacted laws requiring disclosures of risks associated with residential property. Typically, these disclosures relate to risks that may not be readily apparent to the prospective buyer or renter upon inspection of the property. Two examples of disclosures currently required in Minnesota are the disclosure regarding lead paint in buildings built prior to 1978 and the disclosure of the prior use of a residence as a methamphetamine laboratory.

Lead-Based Paint Disclosure Rule

In 1991, the secretary of the Department of Health and Human Services called exposure to lead-based paint "the 'number one environmental threat to the health of children in the United States.'"¹⁵ The primary source for exposure to children is house paint used in homes. "Approximately three-quarters of the nation's housing stock built before 1978 (approximately 64 million dwellings) contains some lead-based paint...1.7 million children have blood-lead levels above safe limits, mostly due to exposure to lead-based paint hazards."¹⁶ In response to this danger, Congress passed the Residential Lead-Based Paint Hazard Reduction Act in 1992.¹⁷ One purpose of the act was "to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards."

The act required that the Environmental Protection Agency promulgate rules within two years of passage of the act "for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease."¹⁸ If leasing apartments or homes, the lessor must include, in the contract or as an attachment, a Lead Warning Statement containing the following language:

Housing built before 1978 may contain lead-based paint. Lead from



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paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.¹⁹

The regulations also required that the lessor disclose to the lessee any known lead-based paint hazards in the housing and any records or reports pertaining to lead-based paint. Additionally, the lessee must acknowledge receipt of the information required in the regulations.

The programs to reduce blood lead levels have been successful in achieving significant reductions in exposure to lead. In 1978, the Centers for Disease Control (CDC) estimated that 13.5 million children in the United States had elevated blood lead

levels.²⁰ By the early 1990s, the number of cases of lead poisoning had dropped to 890,000.²¹ In the period from 1999 to 2002, the CDC estimated that there were 310,000 children with elevated blood lead levels.²² As one strategy in eliminating exposure to lead-based paint in homes, the disclosure requirement in leases may account for a portion of the decline in cases.

Methamphetamine Lab Disclosure Statute

In the last decade, the abuse of the drug methamphetamine has increased substantially in Minnesota and, along with this, there has been a rapid growth in the use of private residences as methamphetamine laboratories.²³ The process of producing methamphetamine produces “a toxic cloud of hydrochloric acid, phosphine, iodine, and methamphetamine.”²⁴ When a home is used as a meth lab, the chemicals used to create methamphetamine can permeate the house.²⁵ “Methamphetamine residue was found not only on tables, but also on

air return grates, and on ceiling fans. High levels of methamphetamine were also found in refrigerators, microwaves, and kitchen appliances.”²⁶ As the Minnesota Department of Health states on its website, because the harmful residue can remain on the surfaces for months or years, “each meth lab, spill or dump is a potential hazardous waste site, requiring assessment and remediation by experienced and qualified personnel.”²⁷

In response to this potential hazard involving residential property, the Minnesota State Legislature passed legislation in 2005 requiring written notification to a buyer or transferee if the seller or transferor knows that methamphetamine production has occurred on the property.²⁸ This written notification must be given before any agreement to purchase or transfer the property is signed. If methamphetamine production has occurred on the property, the disclosure must include the following information:

- (1) whether an order has been issued on the property...(2) whether any

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order issued against the property... has been vacated...or (3) if there was no order issued against the property and the seller or transferor is aware that methamphetamine production has occurred on the property, the status of removal and remediation on the property.

If the seller or transferor knew of the use of the property as a methamphetamine lab and fails to disclose this to the buyer or transferee, the seller or transferor is liable for costs relating to cleaning up the property and reasonable associated attorneys fees' for collecting from the transferor.²⁹

Other provisions of the methamphetamine statute made it more difficult to purchase the raw materials to produce methamphetamine, increased penalties for those convicted of possessing or manufacturing methamphetamine, and required a meth manufacturer to pay restitution to the city or county for removal or remediation costs involved in cleaning up a meth site. The

incidence of methamphetamine events has decreased in Minnesota since the passage of the meth laws;³⁰ however, because the housing disclosure requirement was part of a set of meth-related laws, the portion of the decline attributable to that particular provision cannot be isolated.

SUGGESTED SMOKING-PERMITTED LEASE DISCLOSURE STATEMENT

Because separating smokers from non-smokers, cleaning the air, and ventilating the building do not prevent exposure to secondhand smoke, individuals renting apartments in smoking-permitted, multi-unit buildings continue to be faced with exposure to harmful chemicals in secondhand smoke. Given the significant health risks associated with exposure to secondhand smoke and the amount of time that residents spend in their homes, renters in multi-unit housing should be warned of the dangers they may encounter in a smoking-permitted building.

Oakland, California, recently enacted an amendment to the city ordinance on smoking; the amendment requires the disclosure of the smoking policies for both multi-unit rental apartment buildings and for multi-unit condominiums.³¹ The provision comes under the heading of "Prohibition of smoking in enclosed places and notices for multi-housing" and states:

B. Disclosure of Smoking Policy in New and Existing Multi-Housing:

1. All landlords in multi-housing complexes are required to disclose to prospective tenants whether smoking is permitted in the unit to be rented and, which units are designated smoking units and the smoking policy for the complex.
2. All sellers of condominium units are required to disclose to prospective buyers respectively whether smoking is permitted in the unit and the smoking policy for the complex.



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The ordinance was passed in September 2007, so it is too early to determine what effect the ordinance will have. One tobacco control advocate in the Bay Area has received several calls from landlords asking about the process to implement smoke-free policies after passage of the ordinance.³² Therefore one early result appears to be that landlords have become more aware that adopting smoke-free policies is legal.

Another possible model for a disclosure statement concerning smoking in a multi-unit residential building could be structured similarly to the lead-based paint disclosure statement that is included in the Minnesota standard lease.³³ Including some of the findings from the Surgeon General's report, the sample smoking-permitted lease language could be as follows:

SECONDHAND SMOKE WARNING AND DISCLOSURE

The Surgeon General of the United States has determined that secondhand smoke causes premature death and disease in children and in adults who do not smoke. The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke. The Surgeon General has also determined that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke.

A. Smoking-Permitted Policy Disclosed. Landlord permits smoking in the individual living units of this building.

B. Tenant's Acknowledgement. Tenant has read the Warning and Disclosure above and has been informed that the building is a smoking permitted building.

Tenant's Initials _____

ENFORCEMENT

Another choice facing a governmental body that may favor this approach is determining

the method of enforcing the disclosure requirement. Oakland's provision is included in the city's ordinance chapter that regulates smoking in multiple venues; also included in the chapter is an enforcement section.³⁴ This section establishes that private citizens can register a complaint with the city administrator or initiate a legal action on their own to enforce provisions of the chapter. Fines for violations start at \$100 for a first violation, \$200 for a second violation within one year, and up to \$500 for each additional violation within one year.

For cities and counties that may not have their own smoking code or ordinances, another option would be to include the disclosure requirement in any ordinances that require licensing of multi-unit residences by the city or county. The purpose of rental licensing ordinances, similar to the reason for disclosing smoking policies, is to help ensure that residents have a healthy place to live, so the disclosure language would fit well within the existing code. As an example, the City of Shoreview, Minnesota, has a rental licensing section in its municipal code and the purpose stated in the code for its licensing provisions is to

assure that rental housing in the City is decent, safe and sanitary and is operated and maintained in accordance with the City's regulations...Owners of rental housing are responsible to take the reasonable steps to ensure that citizens who occupy rental housing units may pursue the quiet enjoyment of the normal activities of life in the surrounding area that are: safe, secure, and sanitary; free from crimes and criminal activity, noise, nuisances or annoyances; free from unreasonable fears about safety of persons and security of property; and suitable for raising children.³⁵

The city or county could require that documentation be provided demonstrating disclosure of the building's smoking policy in order to obtain or to renew a license. Using an existing ordinance would provide the benefit of supplying an enforcement

structure already in place and familiar to the affected population—landlords.

A third option could be to include the disclosure requirement in a state, city, or county's landlord and tenant laws. For example, Oregon is considering a state law requiring disclosure that may be included as part of the landlord/tenant statutes.³⁶ As with existing licensing ordinances, landlord/tenant laws would likely already have some remedies built into the statute or ordinance for violations of other provisions.³⁷ Potential remedies for tenants who did not receive the required disclosure could also include allowing them to break the lease without penalty, or to be moved to another unit in the building away from the smoke at the landlord's expense.

BENEFITS OF DISCLOSURE

Landlords

A primary benefit to landlords provided by the adoption of a smoking-permitted disclosure policy would be a reduction in conflicts and potential litigation brought by tenants who experience adverse reactions to secondhand smoke entering their apartments.³⁸ When a prospective tenant initially inspects an apartment, the level of secondhand smoke entering the apartment may not be apparent, or smokers may not be living adjacent to the unit at that time. If the smell or presence of smoke is not apparent, the prospective tenant may not think to inquire about a smoking policy at the building. However, if after occupying the apartment, secondhand smoke entering the unit becomes an issue, then the landlord could be faced with conflict between tenants, or the landlord may face claims brought by the tenant based on a breach of the warranty of habitability.³⁹

If the tenant has a health condition that could be considered a handicap under the Fair Housing Act (FHA), or a disability under the Americans with Disabilities Act (ADA), then the landlord may be required to accommodate the nonsmoker through means such as "enforcing a smoke-free policy, repairs to reduce or eliminate secondhand smoke infiltration, or adding separate ventilation or heating systems."⁴⁰ Additionally, because of the growing

knowledge of the dangers of secondhand smoke resulting from the enactment of laws by states and local municipalities, landlords could potentially face claims based on failure to disclose and/or properly abate secondhand smoke issues if an uninformed tenant subsequently becomes ill from exposure.⁴¹ Disclosing the smoking-permitted policy would help filter out those tenants for whom exposure to secondhand smoke would be an issue as those tenants would likely choose to rent elsewhere.

Tenants

Tenants would benefit from a disclosure statement by being informed before signing the lease and occupying the apartment that the landlord permits smoking in the building. If information is also included in the disclosure on health risks, this would serve to educate the prospective tenants on the risks of exposure to secondhand smoke. Any tenants with sensitivity to smoke or health conditions

that may be exacerbated through exposure would be forewarned and could opt to live elsewhere.

The disclosure of the smoking-permitted status of the multi-unit residential building should not serve to waive all the rights of a tenant to bring an action against the landlord on smoking-related issues. In some instances, the intrusion of secondhand smoke into an apartment could rise to a level that even a tolerant smoker would find intolerable.⁴² To help protect a tenant from a landlord's claim that the tenant waived any right to relief from the smoke intrusion by signing the smoking-permitted disclosure, a clause could be included in the lease language to ensure that tenants do not forfeit any of their legal rights and remedies just by acknowledging that they live in a smoking-permitted building. The preservation of rights clause would ensure that a tenant could still bring an action if the smoke intrusion was excessive. The preservation of rights clause could be worded similarly to the provision in some local

smoke-free workplace ordinances preserving the legal rights of employees who consent to work in bars which allow smoking.⁴³ As an example, the clause could state:

Tenant's Rights Preserved. Tenant who acknowledges that the apartment building is smoking-permitted does not waive or otherwise surrender any legal rights the tenant may have against the landlord or any other party.

Community

The inclusion of the disclosure statement in leases would serve an educational purpose. While the 2006 Surgeon General's report was an important step in reducing the harm caused by SHS, it likely has not received widespread attention outside of the public health or tobacco control communities. Through the inclusion of pivotal report conclusions in apartment leases, the public, including landlords and tenants, would become more aware, and be frequently reminded, of the

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ongoing dangers posed to the nonsmoking public by SHS. Even if the language used in the disclosure simply states the smoking policy, this will serve to heighten awareness of the risks of exposure.

With the increased awareness among apartment building owners and landlords, the community in general would also likely benefit from an increase in the availability of smoke-free multi-unit apartment buildings. The default expectation may become that multi-unit housing buildings are smoke-free unless the owner specifically chooses to designate the building as smoking-permitted, unlike the current situation, where the majority of multi-unit buildings are considered to be smoking-permitted unless the owner has adopted a smoke-free policy. The percentage of smoke-free apartment buildings may come to approximate the percentage of nonsmokers in the population. Currently, only about 2 to 3 percent of apartment buildings are designated as smoke-free,⁴⁴ while approximately 83 percent of the Minnesota population is nonsmoking.⁴⁵

The heightened awareness of the dangers of secondhand smoke and the increased availability of smoke-free multi-unit living options should also result in reducing the number of people who smoke or who are exposed to smoke. Workplace and restaurant smoking bans have led to a reduction in the prevalence of smoking,⁴⁶ and the community health benefits are felt soon after the bans are implemented. In Indiana, one county saw a 70 percent decline in hospital admissions for heart attacks 22 months after a countywide smoking ban was put in place.⁴⁷ If the additional information about secondhand smoke exposure results in more smoke-free apartments, this will likely result in reduced incidence of tobacco-related illnesses and conditions.

CONCLUSION

With the publication of the 2006 Report of the Surgeon General on secondhand smoke, perceptions about smoking in multi-unit housing are fundamentally changing. Whereas in the past, a smoke-free policy in a multi-unit housing building may have been marketed as an amenity, smoke-free buildings may soon be considered the norm. The

adoption of a smoking-permitted disclosure statement in a standard lease for multi-unit rental housing will serve the interests of all parties involved in apartment leasing. Tenants will be alerted to living environments that may be dangerous to their health and landlords will be less likely to have to address conflicts between tenants or to face litigious situations from tenants adversely affected by drifting smoke. The community will generally become more aware of the dangers of secondhand smoke, while the availability of smoke-free apartments should increase, resulting in healthier communities. 

¹ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. REDUCING TOBACCO USE: A REPORT OF THE SURGEON GENERAL 33 (2004).

² Americans for Nonsmokers Rights, Smokefree Lists, Maps, and Data, at <http://www.no-smoke.org/goingsmokefree.php?id=519> (Information based on visit Nov. 15, 2008). (This site provides a listing of the tobacco control statutes and ordinances around the country and the different levels of coverage.)

³ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL - EXECUTIVE SUMMARY 7 (2006).

⁴ U.S. Department of Health and Human Services, Reports of the Surgeon General, at <http://www.surgeongeneral.gov/library/reports/index.html> (Information based on visit Nov. 18, 2008).

⁵ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL 1 (2006).

⁶ *Id.* at iii.

⁷ *Id.* at 6.

⁸ *Id.* ("The agency also estimated that between 24,300 and 71,900 low birth weight or pre-term deliveries, about 202,300 episodes of childhood asthma (new cases and exacerbations), between 150,000 and 300,000 cases of lower respiratory illness in children, and about 789,700 cases of middle ear infections in children occur each year in the United States as a result of exposure to secondhand smoke.")

⁹ AMERICAN SOCIETY OF HEATING, REFRIGERATING AND AIR-CONDITIONING ENGINEERS, INC., ENVIRONMENTAL TOBACCO SMOKE (2005).

¹⁰ MINN. STAT. §§ 144.411-417 (2008).

¹¹ CENTER FOR ENERGY AND ENVIRONMENT, SURVEY OF MINNESOTA RENTERS REGARDING SECONDHAND SMOKE MOVEMENT IN APARTMENT BUILDINGS AND INTEREST IN SMOKE-FREE BUILDINGS (2001).

¹² CENTER FOR ENERGY AND ENVIRONMENT, REDUCTION OF ENVIRONMENTAL TOBACCO SMOKE TRANSFER IN MINNESOTA

MULTIFAMILY BUILDINGS USING AIR SEALING AND VENTILATION TREATMENTS, 4 (2004).

¹³ Bureau of Labor Statistics, Table 1. Average hours per day spent in primary activities (1) for the total population and for person reporting the activity on the diary day by activity category and sex, 2007 annual averages, U.S. Department of Labor, at <http://www.bls.gov/news.release/atus.t01.htm> (Information based on visit Nov. 18, 2008).

¹⁴ *Id.*

¹⁵ United States Environmental Protection Agency, Lead-Based Paint, at <http://www.epa.gov/iaq/homes/hip-lead.html> (Information based on visit Nov. 18, 2008). ("Lead affects practically all systems within the body. At high levels it can cause convulsions, coma, and even death. Lower levels of lead can adversely affect the brain, central nervous system, blood cells, and kidneys. The effects of lead exposure on fetuses and young children can be severe. They include delays in physical and mental development, lower IQ levels, shortened attention spans, and increased behavioral problems. Fetuses, infants, and children are more vulnerable to lead exposure than adults since lead is more easily absorbed into growing bodies, and the tissues of small children are more sensitive to the damaging effects of lead. Children may have higher exposures since they are more likely to get lead dust on their hands and then put their fingers or other lead-contaminated objects into their mouths.")

¹⁶ UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, EPA AND HUD MOVE TO PROTECT CHILDREN FROM LEAD-BASED PAINT POISONING; DISCLOSURE OF LEAD-BASED PAINT HAZARDS IN HOUSING (1996).

¹⁷ 42 U.S.C. § 4851 (2008).

¹⁸ 42 U.S.C. § 4852d(a)(1) (2008).

¹⁹ 24 C.F.R. 35.92(b)(1) (2008).

²⁰ Environmental Protection Agency, Lead in Paint, Dust, and Soil, at <http://www.epa.gov/lead/> (Information based on visit July 31, 2007).

²¹ Office of Management and Budget, EPA Lead-Based Paint Risk Reduction Program, at <http://www.whitehouse.gov/omb/expectmore/detail/1004375.2005.html> (Information based on visit July 31, 2007).

²² CENTERS FOR DISEASE CONTROL AND PREVENTION, MORBIDITY AND MORTALITY WEEKLY REPORT, *Blood Lead Levels - United States, 1999-2002* (May 27, 2005) / 54 (20); 513-16.

²³ Minnesota Department of Health, Methamphetamine and Meth Labs, at <http://www.health.state.mn.us/divs/eh/meth/> (Information based on visit Nov. 18, 2008).

²⁴ National Jewish Medical and Research Center, Toxic Brew of Chemicals Cooked Up in Meth Labs, at <http://www.njc.org/news/y2004/meth-results.aspx> (Information based on visit Aug. 16, 2007).

²⁵ Frederick Melo, *Mother released in meth lab case, Probation ordered for endangering kids*, ST. PAUL PIONEER PRESS, Feb. 8, 2006 at 5B. ("Residue from meth ingredients such as iodine and red phosphorus was 'all over everything in the house,' said assistant county prosecutor Kevin J. Golden.")

²⁶ John W. Martyny, Ph.D., et al., National Jewish Medical and Research Center, Chemical Exposures Associated with Clandestine Methamphetamine Laboratories 21 (2005).

²⁷ MINNESOTA DEPARTMENT OF HEALTH, *supra* note 23.

²⁸ MINN. STAT. § 152.0275, subd. 2(m) (2006).

²⁹ MINN. STAT. § 152.0275, subd. 2(n).

³⁰ MINNESOTA DEPARTMENT OF HEALTH, *supra* note 23.

³¹ OAKLAND, CA., MUNICIPAL CODE § 8.30.050 (2008).

³² Telephone Interview with Serena Chen, Regional Director, Policy and Tobacco Programs, Bay Area American Lung Association of California in Emeryville, CA (July 21, 2008).

³³ See Minnesota Standard Residential Lease, Minnesota State Bar Association, Real Property Form No. 41, at <http://www2.mnbar.org/sections/real-property/forms/rpf41.pdf> (Information based on visit Nov. 11, 2008).

³⁴ OAKLAND, CA., MUNICIPAL CODE § 8.30.100.

³⁵ CITY OF SHOREVIEW MUNICIPAL CODE § 714.010 (2008).

³⁶ E-mail from Kylie Meiner, Tobacco Prevention and Education Program, Oregon Public Health Division, to Warren Ortland, Staff Attorney, Tobacco Law Center (Aug. 28, 2008, 11:13 AM CST)(on file with author).

³⁷ OR. REV. STAT. § 90.245 (2008) (For example, Oregon's landlord/tenant statute on unenforceable provisions of a lease provides for actual damages and three months' rent as a remedy).

³⁸ See, generally, Douglas J. Carney, Legal Research Regarding Smoke-free Buildings and Transfer of Environmental Tobacco Smoke Between Units in Smoking Permitted Buildings (2002), at <http://www.mncee.org/pdf/research/report.pdf>.

³⁹ David B. Ezra, "Get Your Ashes Out of My Living Room!": Controlling Tobacco Smoke in Multi-Unit Residential Housing, 54 RUTGERS L. REV. 135, 160 (2001).

⁴⁰ SUSAN SCHOENMARKLIN, TOBACCO CONTROL LEGAL CONSORTIUM, INFILTRATION OF SECONDHAND SMOKE INTO CONDOMINIUMS, APARTMENTS AND OTHER MULTI-UNIT DWELLINGS 5 (2004).

⁴¹ See Lawrence R. McDonough, *Still Crazy After All These Years: Landlords and Tenants and the Law of Torts*, 33 WM. MITCHELL L. REV. 427, 431 (2006); see also Canada v. McCarthy, 567 N.W.2d 496 (Minn. 1997).

⁴² SCHOENMARKLIN *supra* note 40, at 3. (In a 1998 Massachusetts case, 50-58 Gainsborough St. Realty Trust v. Haile, the judge ruled that the amount of smoke drifting from a first floor bar into the apartment above made the apartment, "unfit for smokers and nonsmokers alike.")

⁴³ See Olmsted County, Minn., Olmsted County Smoke-Free Workplace Ordinance (Jan. 23, 2007), at <http://www.co.olmsted.mn.us/announcements/docs/CoSmokefreeWrkplcOrd12307.pdf> (Information based on visit Nov. 18, 2008). ("An employee who consents to work in a setting where an employer allows smoking does not waive

or otherwise surrender any legal rights the employee may have against the employer or any other party.")

⁴⁴ Center for Energy and Environment and the Association for Nonsmokers-Minnesota, Survey of Minnesota Renters Regarding Secondhand Smoke Movement in Apartment Buildings and Interest in Smoke-Free Buildings 4 (October 2001), at <http://www.mncee.org/pdf/research/rentersurvey.pdf>.

⁴⁵ CLEARWAY MINNESOTASM, BLUE CROSS AND BLUE SHIELD OF MINNESOTA, AND MINNESOTA DEPARTMENT OF HEALTH, CREATING A HEALTHIER MINNESOTA: PROGRESS IN REDUCING TOBACCO USE E-3 (September 2008).

⁴⁶ Americans for Nonsmokers' Rights, The Effect of Smoke-free Air Ordinances on Smoking Prevalence and Cessation, (November 2004), at <http://www.no-smoke.org/document.php?id=205> (Information based on visit Nov. 18, 2008).

⁴⁷ "USA: Study Finds That Heart Attacks in Non-smokers Decreased with Smoking Ban," Medical News Today, Nov. 19, 2007, at <http://www.medicalnewstoday.com/articles/89247.php>.

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