

## Smoke-Free Multi-Unit Housing Workshop: Minnesota

St. Paul, Minnesota April 30, 2007

### Presenter

**Jim Bergman, J.D.**, Co-Director, The Center for Social Gerontology, Inc., & Director, Smoke-Free Environments Law Project Ann Arbor, Michigan

### Why smoke-free apartments?

- SHS in apts affects millions of people
- Tenants want smoke-free apartments
- Increasing numbers of complaints about secondhand smoke infiltration in apts
- Health risks the same as elsewhere
- Secondhand smoke cannot be controlled
- Good deal for landlords
- It's legal to do

### Why smoke-free apartments?

**25.4% of Minnesota housing units are renter-occupied -- almost 1/2 million units**  
**That's over 1.2 million people, 24.7% of Minnesota's total population**

-- U.S. Census, 2000

### Why smoke-free apartments?

**In 2002, 66% of households in U.S. and in Minnesota were smoke-free.**

-- U.S. Surgeon General's Report on Secondhand Smoke, 2006

**In 2003, 76% of Minnesota adults said smoking was not allowed in their home**

-- 2003 Minnesota Adult Tobacco Survey

**In 2005, 78.2% of homes smoke-free in NE Minn and NW Wisc - 40% increase in 5 years.**

-- Bridge to Health Survey, 2005

### Why smoke-free apartments?

**Smoke-free homes are the norm, not the exception.**


**But, most apartment & condo buildings are not smoke-free.** A family with a smoke-free policy in their apartment or condo can easily have secondhand smoke intrusions.



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### Why smoke-free apartments

**Secondhand smoke cannot be controlled by ventilation or air cleaning:** On June 30, 2005, the American Society of Heating, Refrigerating & Air-Conditioning Engineers (ASHRAE) issued their latest position document on secondhand smoke. It states: "At present, the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity." [www.ashrae.org](http://www.ashrae.org)



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### Tenants want smoke-free apts

- Healthy Androscoggin in Auburn, Maine surveyed 850 tenants; 76% would choose to live in a smoke-free apartment complex
- Twin Cites (MN): random sample survey -- 55% of renters said they had moved or would move from an apartment because of secondhand smoke seepage
- ALA-California in 2004 surveyed 602 apartment residents; 69% favored requiring all apt buildings to offer non-smoking sections

For opinion surveys: [www.tcsg.org/sfelp/public.htm](http://www.tcsg.org/sfelp/public.htm)



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### Apartment secondhand smoke seepage complaints increase


- SFELP now receives more complaints from individuals about secondhand smoke seepage in apartments than any other, including workplaces complaints
- Tenants beginning to realize they don't have to accept this problem
- Tenants aware of dangers of secondhand smoke



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### Why All The Fuss?

- Why is there such concern about **secondhand smoke** in apartments, condominiums and other multi-unit residences?



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### Secondhand Smoke is Deadly

- It is a **Group A carcinogen** -- a substance known to **cause cancer in humans for which there is no safe level of exposure.**

National Institute for Environmental Health Sciences Report, issued May 15, 2000. U.S. Environmental Protection Agency report, issued July, 1993.



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### Secondhand Smoke is Deadly

- It is a **Toxic Air Contaminant**, putting secondhand smoke in the same category as the most toxic automotive and industrial air pollutants.

California Air Resources Board Report, issued January 26, 2006 by the California Environmental Protection Agency.



## The Surgeon General has concluded:

- There is no risk-free level of exposure to secondhand smoke. Breathing even a little secondhand smoke can be harmful.
- The only way to fully protect yourself and your loved ones from the dangers of secondhand smoke is through 100% smoke-free environments.


Surgeon General's Report on Secondhand Smoke, issued June 27, 2006



## Why Don't Landlords Adopt Smoke-Free Policies?


### 5 Major Reasons:

- 1) They don't think it's legal to do so
- 2) Economic concerns that cut two ways: a) fear that they won't be able to rent units; but b) knowledge that units with smokers cost much more to rehab.
- 3) Not sure how to transition buildings with smokers to smoke-free status.
- 4) Questions about enforcement of smoke-free policies.
- 5) Inertia: housing industry is lagging behind the market and the desires of tenants for smoke-free housing.




## So, What Can Landlords Legally Do?

- Apartment owners are permitted by federal and state law to adopt total smoke-free policies
- There is no constitutional "right to smoke"




## So, What Can Landlords Legally Do?

- Michigan Attorney General Opinion of 1992 states that **neither federal nor Michigan law prohibits a landlord from making his/her apartment building totally smoke-free.**



## So, What Can Landlords Legally Do?

- HUD Legal Counsel letter of July, 2003 states that apartment owners are **free under federal law to make their buildings totally smoke-free**, so long as they "grandfather" current residents who are smokers.
- "Grandfathering" means for a reasonable period, such as until lease renewal



## So, What Can Landlords Legally Do?


- As the HUD Legal Counsel letter stated: "The right to smoke or not to smoke is **not a right that is protected under the Civil Rights Act** of 1964 because smokers are not a protected class under federal law."




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### Adopt New Lease Language

- To implement a smoke-free policy in a multi-unit dwelling:
  - Add smoke-free provisions to the leases for apartment complexes or to the “house rules” in public Housing Authority buildings



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### Transitioning to Smoke-Free

- To implement a smoke-free policy in a multi-unit dwelling where smoking residents already reside:
  - Establish a date on which all new residents must not smoke inside
  - Decide how much time current resident smokers will have before their lease will include the smoke-free requirement



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### Why Should Landlords Care?


- **Complaints** from non-smoking tenants about smoke incursions.
- **Legal action** taken can be taken against landlords who allow smoking in their buildings.




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### In Fact


- Tenants negatively impacted by secondhand smoke actually have the right to **seek legal action against landlords** who do not make adequate provisions to protect them from second hand smoke.




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### The ADA and FHA Say:

- Persons **cannot be discriminated against** in workplaces, public places or in housing due to disability; and, having severe breathing problems constitutes a disability.



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### And, the ADA and FHA Say:


- Therefore, these facilities are **required** by the ADA and/or FHA (and parallel state statutes) **to provide reasonable accommodations** to persons with severe breathing disabilities, including possibly making the facility totally smoke-free.


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### Other legal actions available...

Common law remedies tenants may use:

- Breach of warranty of habitability and/or breach of warranty of quiet enjoyment
- Nuisance law violation
- Negligence, harassment, trespass, constructive eviction, intentional infliction of emotional distress, battery
- Violations of Housing or Health Codes


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### Why Should Landlords Care?

**The market for smoke-free housing is huge**

Over 80% of adults don't smoke

Over 90% of persons 65+ don't smoke

Many smokers don't want smoke in home

Most apartment buildings allow smoking; the marketplace is way behind demand


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### Why Should Landlords Care?

**The market for smoke-free housing is huge, regardless of income level**

Over 75% of MN adults with incomes \$15,000 - \$24,999 don't smoke

Over 77% of MN adults with incomes above \$25,000 don't smoke

Over 84% of MN adults with incomes over \$50,000 don't smoke


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### Why Should Landlords Care?

**The market for smoke-free housing is huge, regardless of race/ethnicity**

MN African Americans -- 73% don't smoke

MN Asians -- 82% don't smoke

MN Hispanics -- 76% don't smoke

MN whites -- 78% don't smoke

MN American Indians -- 46% don't smoke

-- Minnesota Survey on Adult Substance Use, 2004-2005


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### Why Should Landlords Care?

**Smoking damages residential property:**

- Poses fire hazard
- Causes cigarette burn damage and stench to carpets, counters, etc
- Leaves smoke residue on walls and curtains


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### Why Should Landlords Care?

**Smoking residue increases cost of rehabilitating apartment when smoker moves out**

Landlords estimate it costs \$500 to \$6,000 more to rehab an apartment in which a smoker lived than a non-smoker.




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### Cigarette-caused Fires

**Nationally:**


- Smoking was the cause of just 9% of apartment fires, but
- Smoking was the cause of 40% of deaths from apartment fires, and
- Smoking was the cause of 16% of injuries from apartment fires

NFIRS, 2002


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### Cigarette-caused Fires

- Fire damage can cause apartment units to go off-line for months
- Water and smoke damage to adjoining units can take them off-line, as well
- Former residents have to find alternative housing and probably won't return


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### Enforcement of Smoke-Free Policies


- Private and public landlords uniformly report that enforcement is not an issue
- Residents consistently follow the rule
- Violators of the smoke-free rule are most likely to be violators of other rules
- Eviction possible; rarely, if ever, occurs


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### Approaches Now Being Used to Get Smoke-Free Policies Adopted

Two major approaches:

- Voluntary adoption by private landlords and/or public housing authorities
- Legislative enactments on local or state levels.


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### Voluntary Approach to Get Smoke-Free Policies Adopted


Voluntary approaches being used in most states and localities, including: MI, ME, MN, UT, OR, WA, MD, OH, NY, NYC, CA, NJ, WV, HI, ID, MA, Canadian Provinces, etc.


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### Legislative Approaches to Get Smoke-Free Policies Adopted

**Legislative Approaches Tried or Proposed:**

- Utah law enacted in 1997: right to have smoke-free apts & condos; SHS is "nuisance"; other civil remedies
- Local laws providing for smoke-free common areas
- Thousand Oaks, CA law: requires all future city-aided "affordable" housing to have at least 1/3 of units smoke-free; enacted Sept. 14, 2004
- CA example of ordinance to regulate smoking in multi-unit residences



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## Legislative Approaches to Get Smoke-Free Policies Adopted

**Legislative Approaches Tried or Proposed:**  
The tried or proposed legislative approaches are still works-in-process. Much as smoke-free workplaces & public places laws went through a trial and error period, so will legislative approaches to smoke-free housing. E.g., does it ever make sense to have smoking & smoke-free units in the same building?



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## Legislative Approaches to Get Smoke-Free Policies Adopted

**Utah Second Hand Smoke Amendments**  
**What the Second Hand Smoke Amendments Do**

- Give authority to condominium associations to restrict smoking in units, common areas and facilities. Common areas includes yard space.
- Give authority for apartment and rental contracts to include prohibitions on smoking in units, on the premises, or both.
- Establish that any tobacco smoke that drifts into any residential unit a person rents, leases, or owns is a nuisance under the law. The smoke must drift in more than once in each of two or more consecutive day periods. **Note:** "Nuisances" are resolved through a civil court process, not by reporting the condition to the police or the health department. For most people this will require that they consult with their legal advisor on how to proceed.



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## Legislative Approaches to Get Smoke-Free Policies Adopted

**Utah Second Hand Smoke Amendments: cont.**

- Provide that residents of condominiums, apartments, or private homes may seek injunctive relief or damage if exposed to nuisance tobacco smoke.
- Exempt rental units available for temporary rental, such as for vacations or available for only 30 days or fewer at a time from the nuisance tobacco provisions.
- Provide authority for an apartment renter to file a nuisance action even if a renter has signed away his rights to file a nuisance in the rental contract.

Utah law enacted in 1997.  
Utah Dept. of Health <http://www.tobaccofreeutah.org/apcondoguide.html#smoke>



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## Legislative Approaches to Get Smoke-Free Policies Adopted

**Local laws providing for smoke-free common areas**

Local laws requiring smoke-free common areas in multi-unit residential buildings are fairly common in local and state smoke-free workplaces and public places laws. Areas covered include: hallways, entry ways, laundry rooms, common or recreation areas, etc.



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## Legislative Approaches to Get Smoke-Free Policies Adopted

**CA example of ordinance to regulate smoking in multi-unit residences includes:**

- Findings
- Designates drifting smoke as "nuisance" anywhere in city
- No smoking in common areas of multi-unit housing
- Smoke-free buffer zones around non-smoking units
- Non-smoking units required in multi-unit residences
- Requires no smoking provision in lease



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## Legislative Approaches to Get Smoke-Free Policies Adopted

**CA example of ordinance to regulate smoking in multi-unit residences includes: cont**

- Requires landlord to disclose location of smoking & non-smoking units to new tenants
- States who is responsible for enforcement of law
- Allows tenant or landlord to enforce ordinance through a lawsuit

Prepared by the Technical Assistance Legal Center (TALC), Oakland, CA  
[http://talc.phlaw.org/pdf\\_files/0073.pdf](http://talc.phlaw.org/pdf_files/0073.pdf)

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## MISmokeFreeApartment as an Example of a Voluntary Approach

MISmokeFreeApartment initiative begun in Michigan in 2004 because:

- Other remedies, including legal, weren't getting the results we hoped for.
- We thought landlords would adopt smoke-free policies if they were sure it was legal.
- We didn't think a legislative approach would succeed at this time.

**MISmoke-Free Apartment**

## The MISmokeFreeApartment initiative includes:

- MISmokeFreeApartment web site info & materials
- Radio ads
- Billboards
- Postcard mailings to landlords
- Listing of smoke-free apartments on web site
- Surveys of smoke-free apartment availability
- Technical assistance from SFELP
- Press releases and media initiatives

**MISmoke-Free Apartment**

Where there's smoke, there can also be a smoke-free apartment. How you can make it happen.

**MISmoke-Free Apartment**

Where there's smoke, there can also be a smoke-free apartment. How you can make it happen.

Tenants' Rights

Your Resources

Did You Know

## Tenants

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Landlords

Tenants

**MISmoke-Free Apartment**

Where there's smoke, there can also be a smoke-free apartment. How you can make it happen.

Myths Revealed

Landlord Rights

Your Risks

Save Money, Save Your Building

Tools

## Landlords

As a landlord, you can play a role in eliminating the leading cause of death in the home and the third leading cause of preventable death in the United States: secondhand smoke.

There is so much false information available to landlords about smoke-free policies, that you may find it difficult to make an informed decision. On this site you will find all of the information you will need to make your building(s) smoke-free.

A smoke-free policy is NOT discriminatory. The right to smoke is not protected under law, according to the opinions of the Michigan Attorney General and HUD (U.S. Department of Housing and Urban Development). In fact, non-smokers with serious breathing disabilities or smoke allergies have legal protection under the Americans with Disabilities Act. As long as the policy is not used to target a protected class or minority, a building manager is legally free to restrict or prohibit smoking in his/her building.

Learn more about the opinions of the Michigan Attorney General and HUD.

Landlords

Tenants

**MISmoke-Free Apartment**

## Radio ads

- Two humorous radio ads informing listeners of information on [mismokefreeapartment.org](http://mismokefreeapartment.org)
- For use in selected regions of state in coordination with local tobacco reduction coalitions, health departments & apartment associations
- SFELP will assist in raising funds for ads





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### Billboards

- Six billboards to inform viewers of the [mismokefreeapartment.org](http://mismokefreeapartment.org) web site
- For use in selected regions of state in coordination with local tobacco reduction coalitions, health departments & apartment associations
- SFELP will assist in raising funds for and placement of billboards



**MISmoke-Free Apartment**

### Billboards ...

**MISmokeFreeApartment.org**  
Your Apartment. Your Rights. Your Resource.



Let your landlord hear what healthy lungs sound like.

[MISmokeFreeApartment.org](http://MISmokeFreeApartment.org)



Just because other tenants smoke doesn't mean you have to.

[MISmokeFreeApartment.org](http://MISmokeFreeApartment.org)



Sick of secondhand smoke? Learn your rights as a tenant.

[MISmokeFreeApartments.org](http://MISmokeFreeApartments.org)



Dying to talk to your landlord?

[MISmokeFreeApartment.org](http://MISmokeFreeApartment.org)


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## Postcard mailings to landlords

- Four large postcards mailed in sequence over three months to inform landlords of the [mismokefreeapartment.org](http://mismokefreeapartment.org) web site & reasons for them to go smoke-free
- SFELP did the mailings with lists of landlords obtained in coordination with local tobacco reduction coalitions, health departments & apartment associations


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## Postcards ...



**[MI Smoke-free Apartment.org](http://mismokefreeapartment.org)**  
Higher profits. Happier tenants. A better apartment building.

 start here


**MI Smoke-free Apartment**

## Postcards ...

If you've been thinking about making your apartment building smoke-free, now is a great time to get started. A smoke-free building can:

- Provide legal protection
- Reduce maintenance costs
- Attract new tenants
- Reduce turnover of current tenants—both smokers and non-smokers

Now there's a Web site to help you make the switch—[mismokefreeapartment.org](http://mismokefreeapartment.org). Watch your mail for more information, or go online and get the facts right now!

**[MI Smoke-free Apartment.org](http://mismokefreeapartment.org)**


**MI Smoke-free Apartment**

## Smoke-free apartment listing

- [mismokefreeapartment.org](http://mismokefreeapartment.org) web site includes a listing of smoke-free apartments:  
**[www.mismokefreeapartment.org/listing.html](http://www.mismokefreeapartment.org/listing.html)**
- SFELP has compiled the list of smoke-free apartments in coordination with local tobacco reduction coalitions, health departments, apartment associations, & others

### "Setting the Standard Since 1932"...

Wednesday, July 21, 2004

[\(Click for Rental Application\)](#)

**526 Linden, Ann Arbor, MI**

**L**ocated near the intersection of South University and Washtenaw just minutes from the University of Michigan's central campus and the CCRB (Central Campus Recreation Building). This location offers one, two and two bedroom bi-level apartments with the following amenities:

- \* Furnished apartment, includes carpet, Air conditioning, vertical blinds and disposal
- \* Apartments (except #5) have portable dishwashers
- \* Each bedroom of the bi-level apartments have a balcony - each living room of the bi-level apartments will have one or two balconies
- \* Laundry facilities on-site
- \* Heat, hot and cold water provided
- \* One parking space per apartment included in monthly rental rate
- \* No pets
- \* **This is a smoke free building**
- \* Twelve month lease term
- \* Security deposit equals 1 1/2 times the monthly rental rate


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## Smoke-free apartment listing site

[www.mismokefreeapartment.org/listing.html](http://www.mismokefreeapartment.org/listing.html)





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**Smoke-free apartment surveys**

- SFELP conducted a mail survey of apartment owners to locate smoke-free apartments in regions of Michigan
- Survey results will be used for media purposes, planning, etc.
- Surveys were done in coordination with local health departments and tobacco reduction coalitions

The slide features a blue header with a house icon and the text 'MI Smoke-Free Apartment'. Below this is a blue banner with 'Smoke-free apartment surveys'. The main content area has a background of white clouds and contains a bulleted list of survey information.

**MI Smoke-Free Apartment**

**Assistance from SFELP to ...**

- Help landlords - private & public - adopt smoke-free policies
- Help tenants seeking smoke-free apartments to know their rights & resources
- Work in coordination with local tobacco reduction coalitions, health departments, landlord associations, & others to promote smoke-free apartment policies

The slide features a blue header with a house icon and the text 'MI Smoke-Free Apartment'. Below this is a blue banner with 'Assistance from SFELP to ...'. The main content area has a background of white clouds and contains a bulleted list of assistance services.

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**You Have Resources**

**SFELP is available to assist you with:**

- Consultations throughout the process of adopting a smoke-free policy; at no cost to you.
- Written analyses of the policy and legal issues.
- Research on what has been done elsewhere.
- Setting up conference calls with other housing directors who have adopted smoke-free policies.
- In-person presentations.
- Drafting a smoke-free policy.
- Assistance on implementation issues.

The slide features a blue header with a house icon and the text 'MI Smoke-Free Apartment'. Below this is a blue banner with 'You Have Resources'. The main content area has a background of white clouds and contains a section titled 'SFELP is available to assist you with:' followed by a bulleted list of resources.

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**Press releases & media**

- Issued press releases with local health department partners
- Coordinated paid media with some PRs
- Did many radio and TV interviews with local stations
- Obtained over 150 free media reports in 2 1/2 years - newspaper, radio, TV, trade publications; almost all favorable
- Got national media coverage

The slide features a blue header with a house icon and the text 'MI Smoke-Free Apartment'. Below this is a blue banner with 'Press releases & media'. The main content area has a background of white clouds and contains a bulleted list of media-related activities.

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**Private Landlords Have Adopted Smoke-Free Policies**

- In 2004, no smoke-free apartments known to us
- Most newspapers didn't list "smoke-free" or "no-smoking" in classified ads
- Today, over 6,000 apartment units on our online listing; many more available
- Smoke-free multi-unit housing becoming the norm in Michigan

The slide features a blue header with a house icon and the text 'MI Smoke-Free Apartment'. Below this is a blue banner with 'Private Landlords Have Adopted Smoke-Free Policies'. The main content area has a background of white clouds and contains a bulleted list of statistics and trends regarding smoke-free policies.



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### Housing Authorities Have Adopted Smoke-Free Policies

40 public Housing Authorities in U.S. have adopted smoke-free policies. 17 are in Michigan, with over 1,900 apartment units that are either smoke-free or will be shortly.

MI has over 2,500 other affordable housing units that are either smoke-free or will be shortly.



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### Other Affordable Housing With Smoke-Free Policies

- First Centrum, a major national apartment development & management company, adopted a SF policy for 49 buildings in 6 states with 5,452 units; 15 buildings in MI with 1,526 units; Most are “affordable” housing
- Dillon Hall in Kalamazoo, MI adopted SF policy for its 76 units of Section 8 housing
- Jewish Apartments & Services has over 800 SF units
- Lutheran Social Services of WI & UP adopted SF policy for parts of Cherry Creek Village Apartments in Marquette; Most are Section 8 units



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### You Have Resources Online

**MI SmokeFreeApartment web site:**  
[www.mismokefreeapartment.org](http://www.mismokefreeapartment.org)

**Smoke-Free Environments Law Project site:**  
[www.tcsg.org/sfelp/home.htm](http://www.tcsg.org/sfelp/home.htm)

**SFELP Apartments site:**  
[www.tcsg.org/sfelp/apartment.htm](http://www.tcsg.org/sfelp/apartment.htm)

**SFELP Condominium site:**  
[www.tcsg.org/sfelp/condos.htm](http://www.tcsg.org/sfelp/condos.htm)



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### Was the MISmokeFreeApartment Initiative Successful?

- Raised public & landlord awareness of the issue and the fact that smoke-free apts are legal
- Assisted many private landlords in adopting smoke-free policies & this continues
- Over 600 SF apartment buildings identified, with over 6,000 apt units; web site listing grows weekly
- Assisted 17 public housing commissions in Mich. to adopt smoke-free policies & more coming
- Assisted a number of Section 8 MI Senior Citizen housing developments to adopt smoke-free policies



**MI Smoke-Free Apartment**

### Was the MISmokeFreeApartment Initiative Successful?

- Assisted a major national apartment development & management company to adopt a smoke-free policy for 49 buildings in 6 states with 5,452 units
- Convinced newspapers that classified ads could say “no smoking” or “smoke-free” apartment
- About 150 news reports in 24 months -- virtually all positive -- on TV, radio & newspaper, with a number of page 1 articles. Also national media.
- Aired over 11,000 radio ads in 24 months
- MISmokeFreeApartment site averaging over 25,000 hits per month and people are using the info



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### Was the MISmokeFreeApartment Initiative Successful?

- Produced a number of legal and policy analyses that greatly assisted landlords and tenants
- Produced analyses of smoke-free condominium issues & created new smoke-free condo web site
- Got HUD policies on this issue to be much more consistent and supportive of the position that it is legal to have smoke-free apt policies and to grandfather tenants just for a reasonable period
- Created excellent esprit de corps with the 14 local health depts who are our partners on the initiative



 MISmoke-free Apartment

### Was the MISmokeFreeApartment Initiative Successful?

- Helped make smoke-free apartments the “new frontier” issue in tobacco control
- Assisted many states in creating smoke-free multi-unit housing initiatives and let them use MISmokeFreeApartment web site materials, e.g., Maine, Ohio, Oregon, New York & NYC, Colorado, Washington state, Maryland, etc.
- Played major role in creating an international network of people working on smoke-free apts issues

 MISmoke-free Apartment

### To contact SFELP

- [www.mismokefreeapartment.org](http://www.mismokefreeapartment.org)
- **Smoke-Free Environments Law Project**  
[www.tcsog.org/sfelp/home.htm](http://www.tcsog.org/sfelp/home.htm)
- **Smoke-Free Environments Law Project**  
The Center for Social Gerontology, Inc.  
2307 Shelby Avenue  
Ann Arbor, Michigan 48103  
734 665-1126
- [jbergman@tcsog.org](mailto:jbergman@tcsog.org)

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### Smoke-free Apartment Decal

