

78B-6-1106 Rental units -- Tobacco smoke.

- (1) There is no cause of action for a nuisance under Subsection 78B-6-1101(3) if the rental, lease, restrictive covenant, or purchase agreement for the unit states in writing that:
 - (a) smoking is allowed in other units, either residential or commercial, and that tobacco smoke from those units may drift into the unit that is subject to the agreement; and
 - (b) by signing the agreement the renter, lessee, or buyer acknowledges he has been informed that tobacco smoke may drift into the unit he is renting, leasing, or purchasing, and he waives any right to a cause of action for a nuisance under Subsection 78B-6-1101(3).
- (2) A cause of action for a nuisance under Subsection 78B-6-1101(3) may be brought against:
 - (a) the individual generating the tobacco smoke;
 - (b) the renter or lessee who permits or fails to control the generation of tobacco smoke, in violation of the terms of the rental or lease agreement, on the premises he rents or leases; or
 - (c) the landlord, but only if:
 - (i) the terms of the renter's or lessee's contract provide the unit will not be subject to the nuisance of drifting tobacco smoke;
 - (ii) the complaining renter or lessee has provided to the landlord a statement in writing indicating that tobacco smoke is creating a nuisance in the renter's or lessee's unit; and
 - (iii) the landlord knowingly allows the continuation of a nuisance under Subsection 78B-6-1101(3) after receipt of written notice under Subsection (2)(c)(ii), and in violation of the terms of the rental or lease agreement under Subsection (2)(c)(i).

Enacted by Chapter 3, 2008 General Session