

ARTICLE: THE LEGALIZATION OF MARIJUANA

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"The Legality versus the Reality"

What Property Managers Need to Know



Marijuana, Pot, Grass, Weed, Hemp or a Joint... these are but a few of the street names given to the infamous plant known as Cannabis. Marijuana is defined as a soft drug that is made from the leaves of the Cannabis plant and can be smoked or consumed to create a feeling of being euphoric or a high. For purposes of this article, we will use the term Marijuana.

Most of you are familiar with California's Prop 64 which was passed by a fair margin in November of 2016. While Marijuana has been available for medicinal purposes for many years, the passage of Prop 64 legalized the use of Marijuana for a recreational use by any person over the age of 21. For purposes of this article, we will discuss a recreational use only, as the laws differ for medicinal use. An individual over 21 may grow up to six Marijuana plants for private use, possess up to one ounce and smoke or consume edibles containing marijuana in the privacy of their own home. As of January 1, 2018, a person over 21 may purchase Marijuana commercially.

California has developed extensive regulations to govern the cultivation, planting, harvesting, drying, curing, grading, trimming, processing, storing, testing, packaging, labeling, transporting, delivering and selling of Marijuana and related products, collectively a Commercial Production. The laws govern the types of licenses required and number of licenses any one business can hold, in an apparent effort to preclude large companies from dominating the market.

There are numerous issues that have arisen that may impact you, as a commercial property manager,

and the assets you manage. The purpose of this article is to discuss the issues we've seen to date.

ISSUE: SMOKING POT - WHERE CAN YOU SMOKE?

We are hearing stories about tenants smoking Marijuana in the Designated Smoking area of properties, common areas and parking lots, among other places. The current law does not provide for this and you do not have to tolerate it.

* At the present time, Marijuana may ONLY be smoked or ingested on private property such as a residence. You cannot consume, smoke, eat or vape Marijuana in public places. Using Marijuana in public is still illegal.

* Property owners and landlords may ban the use and possession of Marijuana on their specific properties. The Designated Smoking Area of a commercial property may NOT currently be used to smoke or ingest Marijuana.

* You may not smoke while driving or riding in a vehicle. This includes edibles. Marijuana falls under the Open Container law and must be stored in a container with the seal intact or stored in the trunk of the vehicle. The DUI penalties apply to a person driving under the influence of alcohol or any drug including Marijuana.

* California is a smoke free state. Any building that precludes the use of cigarettes by law also prohibits smoking Marijuana, i.e. no smoking inside commercial buildings.

RECOMMENDATIONS

If you choose to ban the use of Marijuana at your property, we suggest you notify the tenants, in writing, of that policy and post new signage at any Designated Smoking Area that precludes the use of Marijuana on the property.

Note: There is talk about establishing Marijuana Smoking Zones. We expect this to be vigorously opposed by industry organizations but there is no way to predict how this will shake out.

ISSUE: CONVERSION OF COMMERCIAL SPACE

Some commercial tenants have altered their spaces (primarily in industrial parks) and set up a grow facility (A Pot Farm) without the permission or knowledge of their landlord. It is difficult to mon-

itor what a tenant is doing in an industrial space, especially in larger parks. Landlords frequently find out about the Marijuana issue when they are cited by the city or receive complaints from neighboring tenants. The existence of a Pot Farm has the potential to create troublesome issues with owners, lenders and neighboring tenants and may include:

- * Issues with institutional lenders who will not tolerate this use, especially given the conflict between State and Federal law
- * Potential fire hazards at the property
- * Issues with insurance carriers and coverage
- * Odor from the space, typically coming through the ventilation system, being offensive to neighboring tenants
- * Concerns with the type of clientele frequenting the business
- * Concerns with possible increase in crime

RECOMMENDATIONS

New Leases: We suggest having the Use Provision of your lease form reviewed and revised to ensure it specifically precludes, in great detail, any Commercial Production of Marijuana and related products.

Existing Leases: The tactic with existing leases will differ depending on your lease language, and specifically the AUse Provision@. There are ways to put a tenant in default but each situation must be evaluated on its own based on the contract and facts involved.

Proof Problems: It can be difficult to obtain sufficient evidence to prove the existence of an unauthorized or unlicensed Marijuana use. Offending tenants are typically secretive, evasive and opposed to any inspection, and many leases do not provide for inspections without tenant permission other than in the case of an emergency. There are a variety of tactics that may be used to build a case. We have had significant success partnering with individual cities to solve a mutual problem. Again, each case must be evaluated on its own facts and documents.

CONFLICT BETWEEN FEDERAL, STATE AND LOCAL LAW

While California has legalized the recreational use of Marijuana and permits Commercial Production as

defined above, the Federal government still considers any non-medicinal use to be illegal. In addition, while cities cannot preclude an individual from using Marijuana or growing up to six plants for personal use, individual cities CAN prohibit Commercial Production within their boundaries through local zoning ordinances. You cannot assume that Commercial Production is allowed within a specific city without first checking local ordinances.

In addition, any business that contracts with or receives funding from the Federal government will likely be prohibited from allowing Commercial Production of any kind.

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This article is intended to be an overview only and is not all inclusive. Any information contained herein is intended for informational purposes only and should not be construed as legal advice. Seek competent counsel for advice on any legal matter.



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