



Experienced legal professionals providing practical solutions and exceptional service.
Call us for a free and confidential initial phone consultation - (781) 292-1080.

Crowninshield Management Corporation Seminar

Legal Marijuana Update

Wednesday February 12, 2020

Current State

- ▶ 33 states, D.C., Guam, Puerto Rico, and the US Virgin Islands have legalized medical marijuana
- ▶ 11 states and D.C. have legalized recreational use
- ▶ October 2018 Canada legalized marijuana federally, being the first G7 country to do so
- ▶ Mexico's Supreme Court ruled marijuana prohibition unconstitutional, paving the way for federal legalization
- ▶ Recent Pew Poll shows that 67% of Americans think all marijuana use should be legalized, 91% support legalizing medical marijuana
- ▶ Farm Bill signed in 2018 legalizes hemp production in all 50 states.
 - ▶ Hemp is made from the cannabis plant, but does not contain THC, the active compound that gets folks high
 - ▶ Hemp can be used to produce CBD oil which is used medicinally



In Massachusetts

- ▶ Currently has 33 recreational marijuana dispensaries, more are being approved on a rolling basis
- ▶ Patient or caregiver can have 60 day supply of medical marijuana
- ▶ Patients with limited access to dispensary can obtain hardship registration from the Dept of Public Health to cultivate a 60 day supply in their own home
- ▶ Recreational Use: 1oz individually, 10oz in your home
- ▶ Recreational Grow: 6 plants individually, up to 12 plants for 2+ adults
- ▶ Grower can give away up 1oz, but only to adults over 21 years
- ▶ Intersection between Federal vs. State law
 - ▶ HUD prohibition in federally assisted properties
 - ▶ Owners must deny admission to those illegally using a controlled substance
 - ▶ Schedule 1 controlled substance

Risks of Marijuana Use: Landlords and HOAs

▶ Property Damage

- ▶ Strong skunk-like odors
- ▶ Growing requires water, heat, intense light which can lead to mold and fire hazards
- ▶ Insurance claims will claim not to cover damage from federally illegal acts

▶ Secondhand Smoke

- ▶ Harmful toxins, carcinogens, irritants
- ▶ Noxious odor for tenants/children

▶ Federal implications

- ▶ HUD prohibition
- ▶ Property seizure



Legal Options

- ▶ Medical marijuana use should be treated like a medical condition that requires **reasonable accommodation**
- ▶ **Good faith effort** to identify accommodations that meets the needs of the resident **without unduly burdening the community or harming other residents**
- ▶ Balanced evaluation process: Consider legitimate patient needs vs. concerns of other residents
- ▶ Establish a **smoke-free policy**, but allow alternatives such as edibles or pills
- ▶ Incorporate and utilize boilerplate nuisance provisions
- ▶ **Mitigate** the effects of marijuana use in both smoker and receiving units:
 - ▶ Air filters
 - ▶ Edibles
 - ▶ Better insulation around doors, electrical outlets and other openings
 - ▶ Vaporizers



Responding to a Secondhand Smoking Complaint

- ▶ Mitigation Factors
- ▶ Propose by-law amendment to prohibit smoking
- ▶ MA caselaw has not yet addressed nuisance smoking
- ▶ CA: be concerned about landlord's failure to mitigate as a breach of your obligation to ensure owner's quiet enjoyment of their home



Can you...

- ▶ Ask prospective tenants about their use of medical marijuana?
 - ▶ FHA prohibits landlord from asking whether applicant has a disability or about the severity of the impairment.
 - ▶ Landlords can ask about whether the applicant abuses or is addicted to an illegal controlled substance.
 - ▶ Marijuana is still an illegally controlled substance under federal law.
- ▶ *Refuse* to rent to tenants because of their use of medical marijuana? Likely, No.
 - ▶ Fair Housing Act might consider Illegal conduct as an “undue administrative burden”
 - ▶ Barbuto v. Advantage Sales & Marketing - employer held to have duty to engage in interactive process with employee to accommodate her need for medical marijuana use off-site; burden on employer to prove that allowing medical use off-site would be an undue hardship. Employee’s use was not “facially unreasonable” under the circumstances.
 - ▶ Employment law M.G.L. c.151B § 4(10) - Patients shall not be denied any right or privilege on the basis of their medical marijuana use
- ▶ *Evict* tenants because of their use of medical marijuana?
 - ▶ No, but there is the possibility of bringing a nuisance claim or for violations of an existing smoking policy in a building
- ▶ Be at risk of having your property seized under federal civil asset forfeiture provisions?
 - ▶ Federal agents’ seizure of personal or real property tied to illegal drugs have included marijuana in states that have legalized marijuana
- ▶ Further questions?