

# WEBINAR: New Marijuana Laws & Rentals in California



**Ashlee Gonzales, Esq.**  
Junior Partner & Real Estate Attorney



**Adam Pedersen, Esq.**  
Senior Partner & Real Estate Attorney

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# LEGALIZATION OF RECREATIONAL CANNABIS

# CANNABIS IN CALIFORNIA

## PROPOSITION 64

- Approved by voters November 2016, effective January 1, 2018
- Adults 21 and over permitted to use and possess marijuana for personal recreational purposes in private home or business
- Gives counties and cities broad authority to implement laws within their jurisdictions as they see fit

## FEDERAL DRUG ENFORCEMENT AGENCY

- Schedule 1 Controlled Substance Federally
- Recent California Enforcement/Prosecution
- 21 U.S. Code §881





# CANNABIS IN CALIFORNIA

## FEDERAL REGULATION VS. STATE LAW

- 2013 Cole Memo
  - January 4, 2018 rescinded by Attorney General
  - Controlled Substances Act (“CSA”) reinstated
- Broad authority of local government blessing & curse
  - For example: Counties previously granting permits now revoking

## MEDICINAL VS. RECREATIONAL

- Despite legalization, permitting and licensing difficult regardless of classification of use





# NAVIGATING MARIJUANA REGULATIONS

# LAWS & ORDINANCES

## CONSTANTLY CHANGING AT ALL LEVELS

- State Level
  - State legalizes, but gives authority to customize legality to local government
- County & City/Local Government
  - They can control where and when businesses can cultivate, manufacture, and sell in city/county
- HOA/Apartment Owners
  - HOAs and owners still have ability to ban due to federal law



# LAWS & ORDINANCES

## COMMON RESTRICTIONS - USE OF CANNABIS

- Landlords and Apartment Owners
  - Based on risk of forfeiture and prosecution under federal law, ability to ban use is OK
  - Remember, still federally illegal. Landlords and apartment owners have the right to ban 'illegal activity', including use of cannabis
  - Law may change based on health benefits and certain disability conditions, yet to be seen
  - Recommend use of addendum to specify ban in lease





# LAWS & ORDINANCES

## COMMON RESTRICTIONS – GROWING CANNABIS

- **Individuals**
  - Under state law, allowed to grow no more than 6 non-medical cannabis plants, no matter how many people live in house/apartment
  - Counties and cities can place restrictions on where personal cannabis is grown
    - Example: must be grown indoors
- **Counties and Cities**
  - Can limit the amount of licenses administered to commercially cultivate/manufacture
    - Example: City of San Jose not accepting commercial applications



# LAWS & ORDINANCES

## COMMON RESTRICTIONS – SALE OF CANNABIS

- Prior to January 1, 2018, only medical cannabis could be sold at commercial dispensaries
- Health & Safety Code 11360
  - Must have license from County or City to sell cannabis
- Health & Safety Code 11359
  - It is a crime for anyone other than a licensed dispensary to possess cannabis with intent to sell





# MARIJUANA & RENTAL POLICIES

# MARIJUANA POLICIES FOR APARTMENT OWNERS

## LEASE TERMS & ADDENDA

- Restriction on Cigarette Smoking
  - A landlord may prohibit the smoking of [tobacco products] in any building or portion of the building, including any dwelling unit, other interior or exterior area, or the premises on which it is located
    - (*Civ. Code* § 1947.5)
  - New law provides for Landlord's right to preclude use and cultivation on premises
  - Law also prohibits smoking cannabis where tobacco use is prohibited, **BUT** prohibition needs to be in the lease



# MARIJUANA POLICIES FOR APARTMENT OWNERS

## CAUSE FOR EVICTION

- Consuming Cannabis vs. Dealing Drugs
  - Under California law, landlords potentially have a duty to evict a tenant who is dealing drugs (e.g. a tenant engaged in criminal activity known to the landlord)
- Cure or Quit Notice
  - Use and/or cultivation that is counter to the law and/or terms of the lease do subject the tenant to potential delivery of a “cure or quit” notice, just like any other violation of the lease terms





# MARIJUANA POLICIES FOR APARTMENT OWNERS

## PURCHASE & SALE OF PROPERTY

- Disclosures
  - Must disclose issues presented by the presence of cannabis-use and/or cannabis related business in a given area
- General Nuisance Law and Impact on Land Owners
- Multi-family Properties
  - Lease terms allowing and/or prohibiting cannabis use and cultivation as factor affecting value
  - Consider “mixed-use” projects or developments





# MARIJUANA & RENTALS

# COMMON ISSUES

# MEDICAL USE & DISCRIMINATION

## POTENTIAL ISSUE - MEDICAL ACCOMODATION

- Banning the use or possession of marijuana on site does not violate any landlord/tenant or fair housing laws, even where marijuana has been legalized by local ordinance or state statute.
- Federal courts have ruled that the ADA does not require a medical marijuana accommodation
  - 9th U.S. Circuit Court of Appeals in *James v. City of Costa Mesa* (2012)
  - In California, consider *Ross v. RagingWire Telecommunications, Inc.*, 70 Cal.Rptr.3d 382 (2008)



## Rule & Regulation

# ENFORCEMENT

### POTENTIAL ISSUE

- Federal Government retained authority to enforce Federal Law despite California's legalization of medical and recreational cannabis
- Forfeiture provision of the *Controlled Substances Act*, 21 U.S.C. § 881(a)(7)
- Consider *Harborside* federal court action affecting commercial property in Oakland (2102-2015)



## Rule & Regulation

# ENFORCEMENT

### POTENTIAL ISSUE - DISCOVERING VIOLATIONS

- Civil Code Section 1954
  - Landlord may enter if tenant violating healthy and safety codes
  - Make sure you give proper notice and in writing
- Thinking about Evicting?
  - Make sure you have tangible evidence. A 'hunch' or 'gut feeling' likely won't stand in court





# QUESTIONS?



**Ashlee Gonzales, Esq.**  
Junior Partner & Real Estate Attorney

(650) 327-2900 x22  
ashlee@brewerfirm.com



**Adam Pedersen, Esq.**  
Senior Partner & Real Estate Attorney

(650) 327-2900 x20  
adam@brewerfirm.com



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