

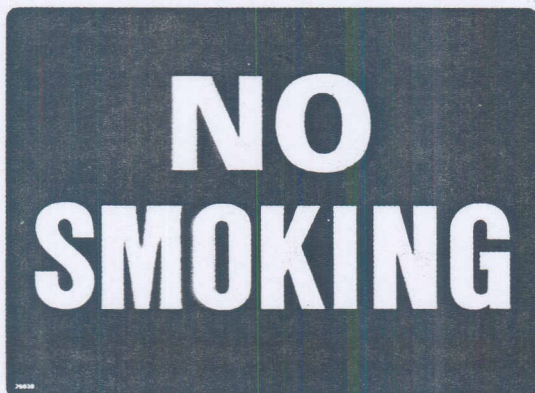
LANDLORDS MAY BE REQUIRED To ALLOW TENANTS' USE OF MARIJUANA

CALIFORNIA VOTERS HAVE RECENTLY PASSED PROPOSITION 215 WHICH LEGALIZES MARIJUANA USAGE IF PRESCRIBED BY A DOCTOR FOR MEDICAL PURPOSES.

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The passage of this law has created confusion within the property management community. On one hand, many landlords have zero drug tolerance policies. In fact, tenants receiving subsidized housing, via the federal government, are required to sign an addendum to their lease agreeing to be subject to immediate eviction if they use drugs. On the other hand, however, failure to tolerate medically prescribed marijuana use may subject a landlord to an action by the California Fair Housing Authority for discrimination on the basis of a disability.

The California Fair Housing laws prohibit discrimination against tenants based on disability. Federal Fair Housing laws, under the Americans with Disabilities Act ("ADA") require that landlords provide reasonable accommodations to persons with disabilities. The persons who are eligible for prescribed marijuana are those suffering from a serious illness and could be classified legally disabled. Thus, under both federal and state law, landlords must determine whether the tenant's requested accommodation is reasonable and thus enforceable. The question is whether allowing consumption of marijuana when prescribed by a physician is a reasonable accommodation. Most likely under California law the request for physician-prescribed marijuana consumption in a rented unit will be deemed reasonable, if confined to the tenant's own unit, especially in light of the fact that it requires no expenditure of money by the landlord, nor any structural modification to the unit itself.



Landlords may attempt to challenge Proposition 215 on business necessity grounds, arguing that marijuana usage will adversely affect neighboring units, thus causing vacancies and that reasonable accommodations should not include violation of federal laws. These landlords will look to the federal government for support since it is opposed to the new California law and has taken the position that doctors who prescribe marijuana will have their prescription licenses revoked. (These are federally issued licenses.)

The California Fair Housing Authority will undoubtedly prosecute a landlord for evicting a disabled tenant (or refusing to rent

to him). It is unlikely, however, that the federal government would prosecute a landlord who allows marijuana use under prescription, since detection would be difficult and there are no laws requiring a landlord to evict tenants.

Recently a property management company attempted to evict a handicapped tenant who possessed 163 marijuana plants, cultivating the same for medicinal purposes. The plants were seized by the local police. The facts of the case seem to indicate that the management company was not opposed to the use of the marijuana, but rather objected to the number of plants and their availability to other occupants, especially children. Unfortunately, we will never know how the court ruled since the parties entered into an out of court settlement, allowing the tenant to grow and smoke marijuana at



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home with no restrictions while he remains in the unit for one year.

So what should a landlord do when he finds a tenant using marijuana? To be on the safe side and avoid being the test case for the new law, landlords should avoid serving three day notices to quit (without opportunity to cure) on tenants for marijuana use. Instead, a landlord should serve a three day notice to produce a physician's letter which states that such use is recommended, authorized and/or under prescription. If the tenant is unable to produce such a letter, eviction could commence. If the tenant does produce the letter, the landlord probably should not proceed with eviction.

Currently, neither the state nor federal Fair Housing Commissions have taken a formal position on Proposition 215. Landlords should keep close watch on these developments which hopefully will provide greater guidance. ★

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