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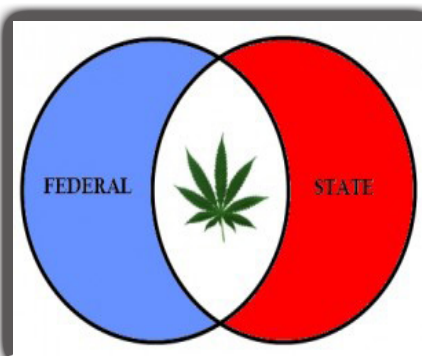
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# Landlord News

## MARIJUANA – YOU'VE GOT QUESTIONS, WE'VE GOT ANSWERS

The media has been all marijuana all of the time. At least part of the hype can be explained by the calendar. Even though Amendment 64 passed in November 2012, the portions of Amendment 64 that legalized the recreational use of marijuana did not become effective until January 1, 2014. The recent media hype is not justified because nothing has changed. The law has not changed since the passage of Amendment 64. Further, the passage of Amendment 64 did not change existing landlord tenant law. While the law has not changed, the overblown media hype has created the impression, in the multifamily industry that marijuana laws have changed and that action needs to be taken. To cut through the hype, this month, we answer the most common questions our clients have been asking about marijuana.



Is marijuana legal? Yes and No. Under federal law, marijuana remains a Class I Controlled Substance, and therefore illegal under federal law. Colorado's marijuana laws do not make marijuana

legal under federal law. However, Colorado has legalized both the use of medical marijuana and the recreational use of marijuana. Colorado treats marijuana very similar to alcohol, i.e. you have to be twenty-one years of age to purchase, and cannot drive or operate a motor vehicle under the influence of marijuana. Even though marijuana is illegal under federal law, the Obama administration stated in August of 2013 that it would not challenge laws legalizing marijuana, in Colorado and Washington, as long as these states maintain strict rules involving the sale and distribution of marijuana.

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## The Eviction Educator Providing You With The Eviction Tips of the Month

**1.** If your tenant files an answer, you or someone from your office who is knowledgeable about the case **MUST** attend the trial. If no one appears at the trial, you could lose time on your eviction --- or worse, your case could be dismissed. You, as the landlord are our primary witness when a resident fights the case.



**2.** If for any reason you are unable to attend the trial on the date it is set and you want us to make a motion to the court to continue your trial, all requests for a continuance must be in writing via email or fax. Remember, continuing your case will cause you to lose time, and is not always guaranteed. The court can and sometimes does refuse to grant our motion to continue a case. With this in mind, please only request to continue your case if you are absolutely unable to attend the trial.

**3.** When your residents call our office, we are obligated to tell them to speak to you, the Landlord, as you are the driving force behind the eviction process. We cannot tell your residents that you will or will not accept payment, what their balance is, or whether or not the writ will be sent to the sheriff--because we do not know what your preferences might be for a specific resident. These are all things that must be relayed to the resident directly by you, the Landlord. If, for any reason, you have a problem resident that just won't listen to you, you can refer them to our office. However, you need to let us know you are doing this and who the resident is. Otherwise, we are likely to refer them back to you.

**4.** DO NOT serve or send a letter once you have served a demand, as the letter will override the demand you've posted. This includes "courtesy letters" notifying residents that they are going to eviction--this fact is already stated in the demand "that they will be sent to eviction after 3 days". Best practice is to give just the legal demand, and nothing more. If you want to give your residents a courtesy follow up, please do it with a phone call.

## MARIJUANA – YOU’VE GOT QUESTIONS, WE’VE GOT ANSWERS CONTINUED FROM PAGE 2

Now that recreational marijuana use is legal, do I have to allow it on my property? No. Landlords can



prohibit tenants from using marijuana because it is illegal under federal law. More importantly, Amendment 64 specifically states that landlords may prohibit marijuana use on leased property. “Nothing shall

prohibit any person who owns or controls a property from prohibiting or otherwise regulating the possession, consumption, use, or growing of marijuana on that property.” Accordingly, it is clear under Colorado law that your right to prohibit marijuana trumps a tenant’s right to legally possess, use, and grow marijuana under Amendment 64. Based on the law, smoke-free properties can remain smoke-free.

Does Amendment 64 give your employees the right to smoke marijuana either on the job, or elsewhere if you decide to prohibit it? Federal law allows employers to both prohibit use and drug test for use. Amendment 64 specifically states that nothing in the law is intended to require an employer to permit or accommodate the use of marijuana in the workplace, or to affect the ability of employers to have policies restricting the use of marijuana by employees. Accordingly, landlords may still require drug testing as a condition of employment.



Regardless of whether or not you allow marijuana, should you or can you prevent tenants from growing marijuana on your property? Yes and Yes. Again, growing marijuana is illegal under federal law and Amendment

64 specifically allows you to prevent tenants from growing marijuana on your property. Persons who grow marijuana are much more likely to be selling marijuana. Marijuana distribution may lead to high traffic, as well as undesirable traffic. Further, cash and marijuana crops are attractive targets for thieves and increase the potential for

marijuana-related violence at your community. Marijuana also needs a significant amount of water and electricity

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## ANSWERS TO QUESTIONS YOU MAY HAVE

**1. Question:** If we serve a three-day notice and the tenant decides to move out, is the tenant responsible to pay the monthly rent until the apartment is leased?

**Answer:** They likely are still responsible for the rent. This will depend on your lease language.

**2. Question:** I have a tenant who decided not to move in after signing a six-month lease and leaving a deposit. Can I hold her to the lease agreement that she signed?

**Answer:** Once the tenant has signed the lease, he/she is bound by its terms and typically must pay rent until it expires or the premises are relet. However, some leases call for a lease break fee, and other leases do not hold the tenant accountable if they breach the lease.



**3. Question:** If you give residents a sixty-day notice of termination of tenancy and they do not pay their rent for that month, is it okay to give them a three-day notice to pay or quit? The three day notice does not void the sixty-day notice, does it?

**Answer:** You can and should serve them with a three-day notice to pay rent or quit, and if they fail to comply, start the eviction. Just make sure you do not ask for rent that goes beyond the sixty-day notice period.

**4. Question:** My tenant has verbally notified me that he will be terminating the lease in two weeks and said to use the deposit for the two weeks rent. The contract is a month-to-month and requires thirty days notice. What can I do?

**Answer:** You may consider giving the tenant a three-day notice to pay rent or quit for the rent owed, since a verbal notice is not going to be effective. You should also ask the tenant put their notice of intent to vacate in writing.

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## MARIJUANA – YOU’VE GOT QUESTIONS, WE’VE GOT ANSWERS CONTINUED FROM PAGE 2

(for grow lights) to grow. Excessive use of electricity will increase utilities and could disproportionately impact other tenants under allocation formulas. Excessive water can increase the relative humidity of an apartment and increase the probability of mold. Thus, even if you allow marijuana use, we strongly recommend against allowing growing. If you allow marijuana use, but prohibit growing, your lease documents may need to be revised.

We prohibit marijuana use at our community, what is the best way to implement? You should eliminate



potential marijuana problems before they begin by clearly setting forth your policy in your rental criteria. “Recreational marijuana use is legal in Colorado. However, both Colorado law and federal law give us the right to prohibit it. Marijuana use, posses-

sion, and/or growing is prohibited at this community, and violators will be evicted.” If you’re a no-marijuana property, clearly stating your policy up front will avoid the countless “marijuana is legal in Colorado” arguments with tenants. To give you maximum enforcement ability, your lease documents (either the main lease or an addendum) should give you the right to terminate marijuana violators without a right to cure. If your lease documents already give you this right (the right to terminate based upon violation of federal law), you don’t need to change your lease. You only need to change your lease documents if your crime-free and drug-free language is based on Colorado law, since use of marijuana is no longer a crime under Colorado law. If you’re using an NAA (Blue Moon) Lease without an addendum that deals with crime or smoking in greater detail, you may also want to update your lease language. The NAA lease doesn’t prohibit all unlawful behavior. With regard to drug use, it only prohibits possession or use of “controlled substances”. This begs the question of “controlled” by whom, given that Colorado no longer controls small amounts of recreational marijuana.

A tenant’s marijuana smoking is disturbing other tenants, what should I do? It depends. If you have a no-marijuana policy, then you serve the tenant with a three-day Demand for Compliance or Possession. You demand that the tenant stop smoking marijuana and stop disturbing other tenants. If you don’t prohibit marijuana, then you demand that the tenant stop disturbing other tenants. Regardless of your policy, tenants are never allowed to disturb other tenants. If the behavior persists, you commence eviction proceedings. If your lease contains crime-free language, you may have the right to serve a Notice to Quit, meaning a right to terminate the lease.

The difference between a Notice to Quit (get out) and a demand (comply or get out) is whether the tenant has a right to cure. You can still enforce marijuana-related violations, but Amendment 64 has decreased your leverage to deal with them. Before Amendment 64, many landlords were successful in imposing a practical solution, “Get out, or I’m calling the police.” Because recreational marijuana use is now legal, the police can’t be called or won’t respond to marijuana issues in most instances. Eviction cases, based on marijuana violations, will also be more difficult to prove without police documentation and testimony.



What should your marijuana policy be? If you’re a federally subsidized property, the answer to this question is simple. You may not allow the use of marijuana on your property. HUD regulations and policy prohibit marijuana use, because it is illegal under federal law. If you’re not federally subsidized, your marijuana policy is a business decision based on a host of factors similar to other business decisions you make. Will prohibiting marijuana hurt occupancy? Will allowing marijuana hurt occupancy? Remember, fifty-five percent of the electorate voted to legalize marijuana. Because marijuana is legal, maybe marijuana smokers will flock to Colorado? Similar to going smoke-free, your marijuana policy is determined by business considerations and risk analysis. Policies cover the spectrum from prohibition to tolerance. Some communities prohibit recreational use of marijuana, but allow medical marijuana.

Regardless of the policy, you should have a policy. We frequently receive and handle marijuana situations for clients. In order to provide legal advice, we need to know your policy. Too often onsite team members tell us that they don’t know the community’s position on



marijuana. Obviously, if your onsite teams aren’t clear on your policy, they can’t enforce it. If your policy isn’t well thought out, your documents probably won’t address your policy, and in some instances may be even contradictory to your policy. Once you have adopted your policy, your rental criteria and lease documents should track your policy, and all personnel should be educated about the policy, and trained on how to enforce your policy. While we can’t run your communities for you, we are available to answer your questions, and to discuss the various pros and cons of different policies.



**ANSWERS TO QUESTIONS YOU MAY HAVE****CONTINUED FROM PAGE 2**

**5. Question:** I would be interested in knowing what to do when a resident is demanding a repair be made inside of their apartment, but at the same time is demanding that none of the on-site maintenance staff complete the repair. Do we hire an outside vendor or must the resident allow the staff that is available to complete the repair?

**Answer:** This scenario happens on occasion, and it defies logic. You should find out the reason the resident does not want on-site staff to do the repair. You have the right to choose who should do the repairs for your apartment units. Most good leases require tenant cooperation with repairs. If the tenant fails to cooperate with access, typically if your lease requires cooperation, you can serve the tenant with a three-day demand for compliance.

**6. Question:** One of my tenant's sons just turned 18 years old. Should I obtain an application from the son, and add him to the rental agreement?

**Answer:** Yes, you should have everyone 18 years of age or older fill out an application and sign the rental agreement.

**7. Question:** I rented to a married couple two years ago and now the wife has moved out and filed for divorce. The husband is still living in the unit. The wife is demanding her portion of the security deposit back since she no longer lives there. What should I do?

**Answer:** The law does not require that the owner or manager account for the use of the security deposit until the unit is vacant.



**8. Question:** I have returned the balance of the security deposit to a former tenant after deducting cleaning charges and insufficient check bank charges. The former tenant claims that I cannot legally deduct the bank charges from the security deposit because that deduction was not specifically stated in the lease. What are my rights?

**Answer:** The law allows for the use of the security deposit to include other charges than just cleaning, damage and unpaid rent. There is no legal requirement that they must be specified in the rental agreement in order to be enforced by a court. However, there are some leases that limit the use of the deposit for only rent, so double check your lease.

**9. Question:** Our tenant gave us a thirty-day written notice to terminate her tenancy. She moved out 10 days after serving the notice and claims she only owes rent up to the day she left.

**Answer:** Much like the answers to question 1 and 2 typically, she is liable up to the date the thirty-day notice expires or you relet the premises, whichever occurs first. Keep in mind you are required to attempt to find a new resident to hold the tenant liable.

**IMPORTANT THS FEBRUARY DATES****February 12th**

**Evictions Workshop**  
**THS Lower Conference Center**  
**3600 S. Yosemite Street**  
**Denver, CO**

**February 17th**

**ALL COURTS CLOSED**  
**PRESIDENTS DAY HOLIDAY**

**February 21st**

**South Client Lunch**  
**Dave & Busters Denver**  
**2000 S. Colorado Blvd**  
**11:15 a.m. - 1:00 p.m.**

