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State Law vs. Federal Law – Is The "Grass" Greener?

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Many manufactured home communities are located in states that have legalized, decriminalized, or provided for the medical use and possession of marijuana. California was the first state to establish a medical marijuana program, enacted by Proposition 215 in 1996, which was followed up by Senate Bill 420 in 2003. In 2010, Senate Bill 1449 was enacted in California and decriminalized the possession of up to one ounce of marijuana from a misdemeanor to a citation, similar to a traffic violation, with a $100 fine and no mandatory court appearance or criminal record. Marijuana has been legalized in Colorado and Washington State and decriminalized or allowed for medical purposes in twenty-five other states and the District of Columbia. However, marijuana remains a Schedule I substance that is illegal under federal law.

This conflict between state law and federal law creates issues for park owners and landlords who lease or rent to individuals in states where this conflict exists. Many state laws allow for not only the possession but also the cultivation of marijuana. Thus, park owners are faced with the problem of residents possessing, cultivating, and using marijuana on the premises, which conduct is potentially legal under state law but is illegal under federal law.

A memorandum from U. S. Deputy Attorney General James M. Cole, dated August 29, 2013, sets forth the Department of Justice's current view on marijuana enforcement. While the guidance memorandum states that the federal government will rely on state and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws, the sale, use, and possession of marijuana remains illegal under the federal Controlled Substances Act (Title 21 U. S. C. § 812). Indeed, the federal government still routinely acts to enforce the restrictions on marijuana in states that allow for the decriminalization or medical use of marijuana. The nature and extent of future changes to the Attorney General's current guidelines are unknown. Department of Justice attorneys may take a markedly different stance on the enforcement of marijuana laws five or ten years from now

Park owners have the right to exclude the use of marijuana and other illegal and dangerous substances from their parks. While state law may allow marijuana use in defined circumstances, it is important to remember that park rules and regulations can include a provision which bars the violation of any federal law. For example, a rule could state: "The violation of any law or ordinance of the city, county, state or federal government will not be tolerated. No acts or activity will be permitted which would place the park or its management in violation of any law or ordinance, whether state or federal." Rules and regulations can also have a drug specific provision: "The illegal use, possession, distribution, sale, or manufacture of a controlled substance as defined in Section 102 of the Controlled Substances Act is expressly prohibited." If such a rule is adopted, it is important that the drug related provision contain a reference to federal law and the Controlled Substances Act to make clear that the use, possession, sale, distribution, or cultivation of marijuana is prohibited, regardless of what state law may allow.

The cultivation or sale of marijuana can also be prohibited by a park's general rule against business or commercial activity: "The mobile home and homesite shall be used only for private residential purposes and no business or commercial activity of any nature shall be conducted thereon." This rule can provide further protection against outrageous conduct such as the cultivation of marijuana inside or under a mobile home or the attempt to sell or distribute illegal drugs from a homeowner's premises.

Park owners who bar marijuana use and possession, ironically, could open themselves up to demands for reasonable accommodations under the Americans with Disabilities Act or a fair housing claim under the Federal Fair Housing Amendments Act. However, recent case law should limit the use of these theories against park owners.

The Ninth Circuit Court of Appeals stated in James v. City of Costa Mesa that the Americans with Disabilities Act (ADA) does not extend to state authorized, but federally prohibited, uses of marijuana. This is because "Congress has made clear that the Americans with Disabilities Act (ADA) defines illegal drug use by reference to federal law, rather than state law, and federal law does not authorize medical marijuana use." Federal law does not protect medical marijuana use, and therefore, medical marijuana use is also not protected by the ADA. Thus, park owners should be protected against ADA claims for not allowing the possession or use of medical marijuana by park residents.

Additionally, the U. S. Department of Housing and Urban Development (HUD) recently released a memorandum stating that federal and state nondiscrimination laws do not require public housing authorities or owners of other federally assisted housing to accommodate requests by current or prospective residents with disabilities to use medical marijuana. In fact, HUD came to the conclusion that public housing authorities and owners "may not permit the use of medical marijuana as a reasonable accommodation because: 1) persons who are currently using illegal drugs, including medical marijuana, are categorically disqualified from protection under the disability definition provisions of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act; and 2) such accommodations are not reasonable under the Fair Housing Act because they would constitute a fundamental alteration in the nature of a public house authority or owner's operations."

It is important to review state court cases that deal with fair housing discrimination and medical marijuana laws. Current federal law is clear that the use and possession of marijuana can be barred by park owners in every state. As noted above, park owners who wish to ban the use of marijuana can draft park rules and regulations that specifically prohibit the use of any illegal drug as classified by the Controlled Substances Act, and can enforce such rules.

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