

Gone To Pot

With Medical Marijuana, Condo Boards Deal With High Stakes, Murky Legal Issues

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For some time, condominium boards have had to deal with the challenging issue of smoking in their communities. Now, with the legalization of medical marijuana in Massachusetts and Rhode Island, smoking issues have become more complicated – and the resulting legal implications have become increasingly murky.

Effective at the start of this year, the use of medical marijuana by “qualified” patients and caregivers became legal in Massachusetts, which joined Rhode Island and 16 other states that have adopted similar measures. At the same time, Massachusetts and Rhode Island have decriminalized the possession of less than one ounce of non-medical marijuana (subject only to a civil fine).

Immediately after the changes went into effect, a raging debate ensued, and it is intensifying today. At the heart of this debate is the rights of patients for “reasonable accommodations” in the use of medical marijuana versus the rights of other unit owners who may be adversely affected by second-hand smoke.

When the parties on either side of the wall clash, it isn’t clear how courts will rule; in fact, state law and federal law may run counter to each other, and interpretations in many states vary widely. What is clear is that associations need to anticipate future scenarios and mitigate their risks.

How should boards proceed? A good place to start is by familiarizing yourself with the law.

- Next, boards should address a myriad of questions such as:
- What constitutes qualified patients and debilitating conditions?
- Under what conditions, if any, may patients be allowed to grow marijuana in their residences?
- How should you deal with non-smoking buildings and existing smoking bans?
- How should you deal with fair housing requests that would permit smoking if granted?
- How should you balance requests for accommodations with complaints from neighbors who may be allergic to smoke or have respiratory problems?
- Should you be concerned about a wider interpretation of this matter to include the potentially disturbing intrusion of odors from pungent cooking or objectionable perfume?



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Keeping these factors in mind, how can communities be fair while they project their interests?

After a review of key issues, boards need to determine what action steps and policy changes may be prudent. Some considerations:

- If you haven't enacted rules that restrict smoking, you may want to do so as a means of controlling the use of marijuana.
- If you have such rules in place, you may want to amend them so the ban isn't construed to prevent the use of medical marijuana as authorized by law.
- You may want to be proactive and poll members of your community to gauge their attitudes about this topic.

Growing Pains

Further complicating this debate are the possible effects related to the growing of marijuana. One concern is security. A 60-day supply of marijuana (as stipulated in the new legislation) is a sizable amount, and marijuana plants (valued at several thousand dollars apiece) might also make the growers a target. In addition, cultivating marijuana, which requires water, heat, and intense light, may increase the risks of mold and fires, and it will likely increase utility bills for all owners.

Tied to the above, a reasonable position for a board may be to allow for the smoking of marijuana but restrict its cultivation.

Overall, what may be most important in managing accommodation requests is the need to be flexible, even-handed, and resourceful. For example:

- Ask if drugs other than marijuana may be equally suitable.
- See whether marijuana may be ingested through baked goods rather than smoking.
- Look into retrofitting units as a means of blocking the passage of second-hand smoke.

In the coming days, more communities will be forced to face these changes. Boards need to anticipate future challenges and recognize that parties on either side in this equation may bring up charges against them. The resulting litigation may be lengthy and expensive. But it can also be averted.

It may be difficult to think clearly if smoke gets in your eyes. Still, when associations realize how high the stakes are, they should take the time to act responsibly.

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