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Legalization of recreational marijuana; How will “Yes” effect my commercial property - by Frank Flynn

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Frank Flynn, Flynn Law Group

Greetings Colleagues!

After this historic election a lot of things will be changing in New England, specifically in Massachusetts and Maine, but one of the biggest changes is the legalization of recreational marijuana!

Many of you saw the referendum questions on your voting ballot, and I'm sure you heard about them all in the media; but what does it mean now that we've voted “Yes”? What actually passed?

Though Massachusetts and Maine have slight differences, they both legalize three main things: The recreational use, possession, growth and (licensed) sale of marijuana. Implementing regulations similar to alcohol sale and consumption.

Marijuana can be consumed recreationally, grown for personal consumption and sold by licensed retailers. All three of which only apply to individuals over the age of 21.

Though don't expect “pot shops” to pop up on every street corner just yet; we don't have to worry about any licenses being issued until January 1, 2018.

In Maine there is still the chance of a recount, however in Mass., residents can possess under one ounce on their person, under 10 ounces in their home, and up to six plants for personal consumption effective Dec. 15, 2016.

Regardless of your personal opinion on whether this should have passed, it has. Now we have to examine what this will mean at your properties.

So which law governs, State or Federal? At this time, that is a complicated question with some states legalizing recreational marijuana and others legalizing medical marijuana use, it really becomes confusing. Which is why HUD recommends to have a specific marijuana policy. Detailing your property's rules and regulations regarding this substance.

We believe this method should be used at both subsidized and market rate properties. Though market rate apartments don't have a federal subsidy and state law usually controls, it is an effective method for controlling the substance use at your property.

Possessing marijuana at your complex may also lead to other unintended consequences including drug trafficking and unsavory visitors to the apartment. While your lease may have provisions that would cover some of these issues (i.e. a smoking policy, or nuisance clauses), we have found that where the law is “unclear” tenants (and legal services) will attempt to use this “confusion” to avoid being evicted.

If you provide a clear policy to your tenants regarding the use, growth, sale and possession of marijuana on the property and enforce the policy uniformly, you are less likely to face these issues when you get to court. Additionally, having a policy will help to avoid any claims of discrimination in

enforcing the terms of your lease.

This law goes into effect SOON, so if you don't have a marijuana policy already, or if you do but it needs to be revised due to the recent development, contact our office. Flynn Law Group has the experience and expertise to develop a strong marijuana policy for your property!

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