

SIDE EFFECTS: MEDICAL MARIJUANA'S IMPACT ON OHIO'S RESIDENTIAL AND COMMERCIAL LANDLORDS


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PRESENTED BY

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TODAY, YOU WILL LEARN:

- ABOUT THE OHIO MEDICAL MARIJUANA LAW (OMML) EFFECTIVE SEPT. 8, 2016
 - SUMMARY OF FEDERAL CONTROLLED SUBSTANCES ACT OF 1970 (CSA)
 - HOW WILL RESIDENTIAL AND COMMERCIAL LANDLORDS BE AFFECTED?
 - BEST PRACTICES FOR LEASES AND MANAGEMENT AND OPERATIONS POLICIES AND PROCEDURES
 - IS USE OF MEDICAL MARIJUANA A REASONABLE ACCOMMODATION FOR TENANTS WITH DISABILITIES?
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MY BACKGROUND

TENANT'S LAWYER

STAFF ATTORNEY AT SOUTHEASTERN OHIO LEGAL SERVICES 1991-1997

LANDLORD/TENANT, FEDERAL HOUSING PROGRAM, AND FAIR HOUSING LAWS MY FAVORITE PRACTICE AREA

IN 1996 CALIFORNIA WAS THE FIRST STATE TO ALLOW MEDICAL MARIJUANA

IN-HOUSE RENTAL HOUSING COUNSEL

FOREST CITY ENTERPRISES, CLEVELAND 1998-2015

LEFT AS MANAGING COUNSEL FOR IN-HOUSE LEGAL DEPT. OF RESIDENTIAL MANAGEMENT BUSINESS UNIT

HELPED OVER 125 HOUSING COMMUNITIES (MARKET RATE, HUD/LIHTC, SENIOR, AND PRIVATIZED MILITARY HOUSING) IN OVER 24 STATES

MEDICAL MARIJUANA USE REQUESTS

ASSISTED SENIOR LEADERSHIP WITH MEDICAL MARIJUANA REQUESTS IN CA, WA, CO, MICHIGAN, ETC.

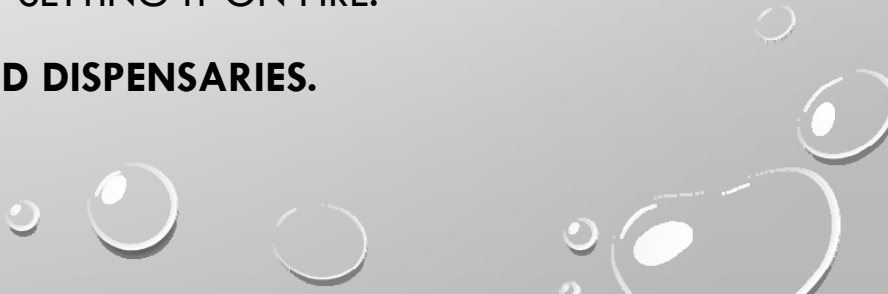
MOST REQUESTS FROM MICHIGAN AND ABOUT 50% OF REQUESTERS WERE 55 AND OLDER

HAD 1ST CASE IN US DENYING TENANT USE OF MEDICAL MARIJUANA



SUMMARY OF OMML

QUALIFIED PATIENTS MAY USE MEDICAL MARIJUANA IN THESE FORMS ONLY:

- CANNABIS OILS FOR EATING OR TOPICAL APPLICATION;
 - TINCTURES CONTAINING ALCOHOL FOR EATING;
 - PATCHES FOR TOPICAL APPLICATION;
 - OTHER EDIBLES AND PLANT MATERIALS (SUCH AS PLANT MATERIAL INFUSED OIL); &
 - VAPORIZATION WHEN CANNABIS IS HEATED WITHOUT SETTING IT ON FIRE.
 - **ALL OF THE ABOVE MUST BE SOLD BY STATE-LICENSED DISPENSARIES.**
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SUMMARY OF OMML

USERS MUST BE QUALIFIED PATIENTS WITH THESE MEDICAL CONDITIONS:

- ✓ CANCER
- ✓ CROHN'S DISEASE
- ✓ EPILEPSY
- ✓ FIBROMYALGIA
- ✓ MULTIPLE SCLEROSIS
- ✓ AIDS


SUMMARY OF OMML

USERS MUST BE QUALIFIED PATIENTS WITH THESE MEDICAL CONDITIONS:

- ✓ PTSD
- ✓ ALZHEIMER'S DISEASE
- ✓ ALS (LOU GEHRIG'S DISEASE)
- ✓ **PAIN THAT IS CHRONIC & SEVERE OR INTRACTABLE TO QUALIFY AS A MEDICAL CONDITION. THE DEFINITION OF PAIN IS UNCLEAR NOW. HOPEFULLY, THERE WILL BE A BETTER DEFINITION UNDER UPCOMING RULES. POTENTIALLY, PAIN IS A CATEGORY MANY MAY CLAIM.**




SUMMARY OF OMML

- STILL PROHIBITED: SMOKING MARIJUANA AND GROWING MARIJUANA
 - OHIO CREATED A MEDICAL MARIJUANA CONTROL PROGRAM WITH ITS WEBSITE AT WWW.MEDICALMARIJUANA.OHIO.GOV. THE PROGRAM RULES ARE NOT AVAILABLE YET.
 - THE PROGRAM MUST BE FULLY OPERATIONAL BY SEPT. 2018.
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SUMMARY OF CSA

- CSA PROHIBITS ALL MARIJUANA, INCLUDING PRESCRIBED MARIJUANA, AND CLASSIFIES IT AS A SCHEDULE 1 DRUG WITH NO MEDICAL USE LIKE HEROIN AND CRYSTAL METH.
- U.S. GOVERNMENT'S POSITION ON LAW ENFORCEMENT EST. 2009: DEPT. OF JUSTICE WILL NOT FOCUS FEDERAL RESOURCES ON PROSECUTING CRIMES THAT WERE LEGAL IN MEDICAL MARIJUANA STATES.
- ON AUG. 11, 2016, THE DRUG ENFORCEMENT ADMINISTRATION (DEA) ANNOUNCED IN THE *FEDERAL REGISTER* THAT IT WILL KEEP MARIJUANA AS A SCHEDULE 1 DRUG THAT DOCTORS ARE NOT ALLOWED TO PRESCRIBE. WHY? STUDIES DONE TO DATE FOUND NO CURRENTLY ALLOWED MEDICAL USE.



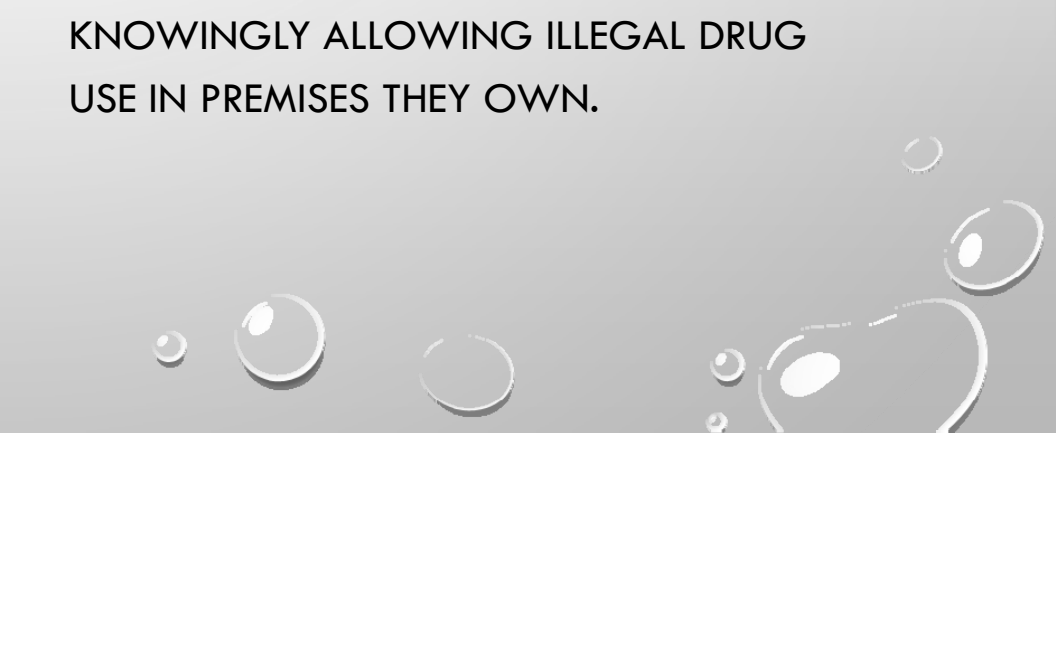
21 UNITED STATES CODE SECTIONS 846 & 881(A)(7) OF CSA


APPLIES TO A LANDLORD WHO,
PARTICULARLY WITH KNOWLEDGE, LEASES
RENTAL HOUSING TO A USER, POSSESSOR,
OR CULTIVATOR OF MEDICAL OR
RECREATIONAL MARIJUANA OR RENTS TO A
COMMERCIAL TENANT CULTIVATING,
POSSESSING, DISPENSING, OR SELLING
MEDICAL OR RECREATIONAL MARIJUANA

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- MAY BE FEDERALLY PROSECUTED FOR AIDING AND ABETTING
 - MAY FACE CIVIL FORFEITURE OF ITS REAL PROPERTY UNDER FEDERAL LAW
 - BECAUSE OHIO'S LAW IS SO NEW, IT WILL TAKE YEARS FOR PEOPLE TO FILE LAWSUITS LIKE THEY HAVE DONE IN OTHER STATES TO AVOID STATE AND FEDERAL PROSECUTION AND PENALTIES.
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PROBLEMS FACED BY RESIDENTIAL AND COMMERCIAL LANDLORDS

- FEDERAL LAW TRUMPS STATE LAW YET LAW ENFORCEMENT MAY NOT ENFORCE FEDERAL LAW.
 - OTHER TENANTS MAY NOT WANT TO LIVE OR WORK NEXT TO MEDICAL MARIJUANA USER. THIS IS MOST COMMON WITH MARIJUANA SMOKERS, ESPECIALLY WITH NEIGHBOR WITH DISABILITIES DISTURBED BY MARIJUANA SMOKE.
 - MARIJUANA-IMPAIRED DRIVERS USING ROADS IN DENSELY POPULATED BUILDINGS, NEIGHBORHOODS, OR COMMERCIAL AREAS
 - BOTTOM LINE: OWNERS ARE NOT ALLOWED TO VIOLATE THE FEDERAL CSA BY KNOWINGLY ALLOWING ILLEGAL DRUG USE IN PREMISES THEY OWN.
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SOLUTIONS FOR RESIDENTIAL OWNERS & LANDLORDS

CHANGE LEASES

ADD LEASE CLAUSE OR CREATE A SEPARATE ADDENDUM PROHIBITING ALL FORMS OF MARIJUANA


YOU MAY PROHIBIT HOOKAH PIPES AND OTHER SUCH PARAPHERNALIA IN COMMON AREAS


REVISE ADMISSION STANDARDS

REVISE TENANT SELECTION CRITERIA (MARKET RATE) OR TENANT SELECTION PLAN (HUD-ASSISTED LANDLORDS) TO PROHIBIT USERS OF ANY FORM OF MARIJUANA

CREATE REQUEST PROCESSING SYSTEM

ALL REASONABLE ACCOMMODATION AND MODIFICATION REQUESTS SHOULD BE PROCESSED WITH A HUD-COMPLIANT SYSTEM





SOLUTIONS FOR RESIDENTIAL OWNERS & LANDLORDS

MARKET RATE OR OTHERWISE NO HUD ASSISTANCE

MAY EVICT EXISTING TENANTS

SAFEST: EVICT ALL

IF YOU USE CASE BY CASE BASIS, YOU MUST HAVE OBJECTIVE AND NEUTRAL CRITERIA WITHOUT A DISPARATE IMPACT ON A PROTECTED CLASS OR SUBJECTING A PROTECTED CLASS TO DISPARATE TREATMENT.

PROJECT-BASED HUD HOUSING PROGRAMS

EXISTING TENANTS DO NOT HAVE TO BE EVICTED.

SAME AS TO THE LEFT.

PUBLIC HOUSING AUTHORITIES

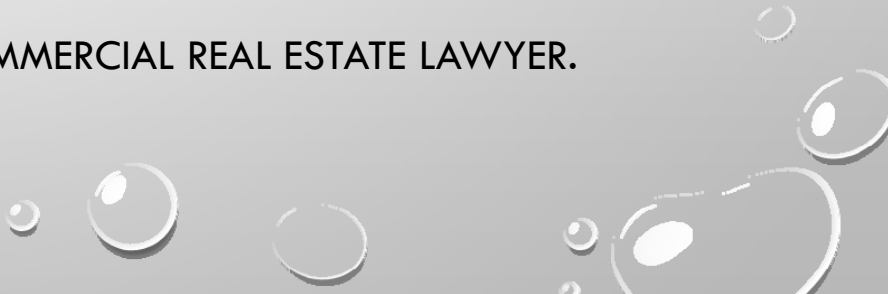
EXISTING TENANTS DO NOT HAVE TO BE EVICTED AND CONSIDER THEM ON CASE BY CASE BASIS.

SAME AS TO THE LEFT.






COMMERCIAL OFFICE BUILDING LANDLORDS

- NON-SMOKING LEASE CLAUSES ALSO NEED TO PROHIBIT MARIJUANA SMOKING
 - LEASE CLAUSES NEED TO PROHIBIT THE TENANTS' ILLEGAL DRUG USE UNDER FEDERAL, STATE, AND LOCAL LAWS.
 - SPECIFICALLY PROHIBIT ALL FORMS OF MARIJUANA IN A LEASE CLAUSE AS WELL AS ITS PERSONAL AND COMMERCIAL CULTIVATION.
 - CHECK LOAN COMPLIANCE REQUIREMENTS: THEY USUALLY REQUIRE COMPLIANCE WITH ALL FEDERAL, STATE, AND LOCAL LAWS.
 - FOR SPECIFIC ADVICE, CONSULT AN EXPERIENCED COMMERCIAL REAL ESTATE LAWYER.
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IS MEDICAL MARIJUANA USE AN ACCOMMODATION THAT OHIO'S LANDLORDS MUST GRANT?

- OHIO IS ONLY STATE TO LIMIT MEDICAL MARIJUANA USE TO “CANNABIS EXTRACTS” WHEREAS THE OTHER 24 STATES CURRENTLY ALLOWING MEDICAL MARIJUANA PERMIT MARIJUANA THAT IS SMOKED OR GROWN/CULTIVATED.
 - IN THE 6TH CIRCUIT FEDERAL COURT OF APPEALS, A 2014 DECISION RULED THAT LANDLORDS DO NOT HAVE TO ALLOW MEDICAL MARIJUANA USE BY A TENANT WITH ALLEGED DISABILITIES WHO SMOKES MARIJUANA BASED ON (1) THE REQUEST'S UNREASONABLENESS AND (2) FEDERAL LAW TRUMPS MICHIGAN'S MEDICAL MARIJUANA LAW.
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FOREST CITY RESIDENTIAL MANAGEMENT, INC. V. LASHAWN BEASELEY, ET AL.

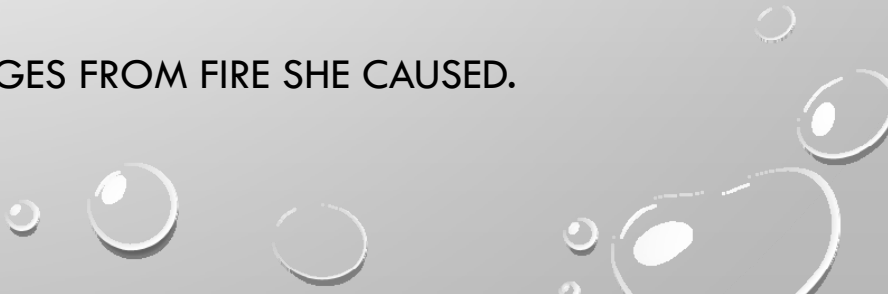
- CASE REPORTED AT 71 F.SUPP.3D 715 (U.S.D.C., E.D. MICHIGAN) DEC. 3, 2014
- THIS WAS MY CASE WHEN EMPLOYED AT FCRMI.
- MY STRATEGY WAS TO FILE A FEDERAL DECLARATORY JUDGMENT ACTION IN U.S.D.C. IN DETROIT, MI EXPLAINED LATER.
- MS. BEASELEY (AGE 26) WAS CAUGHT SMOKING MARIJUANA IN HER SECTION 8 APARTMENT WITH HER SMALL CHILD IN DETROIT.
- HUD FORBIDS DRUGS IN HUD-ASSISTED HOUSING, AND ITS GENERAL COUNSEL ISSUED A 2011 MEMO THAT MEDICAL MARIJUANA IS NOT A REASONABLE ACCOMMODATION

FCRMI V. BEASELEY

- MI'S ATTORNEY GENERAL ALSO ISSUED AN OPINION THAT ANY MICHIGAN LANDLORD DID NOT HAVE TO GRANT MEDICAL MARIJUANA USE AS A REASONABLE ACCOMMODATION.
- FCRMI INITIALLY FILED AN EVICTION LAWSUIT FOR LEASE VIOLATION BASED ON ILLEGAL DRUG USE IN HER HOUSING.
- TENANT REPRESENTED BY DETROIT LEGAL AID & ASKED FOR REASONABLE ACCOMMODATION FOR HER ALLEGED MS TO USE MEDICAL MARIJUANA AFTER SUED.
- TENANT PRESENTED EXPIRED MI MEDICAL MARIJUANA CARD.
- DECISION MADE TO FILE DECLARATORY JUDGMENT LAWSUIT AGAINST TENANT.



U.S.D.C.'S RULING & CASE OUTCOME

- IT WAS NOT REASONABLE FOR LANDLORD TO PERMIT BEASELEY TO USE MARIJUANA, BECAUSE THE FEDERAL CSA PROHIBITED IT. JUDGE SEAN COX ALSO CITED THE FEDERAL FAIR HOUSING ACT AND SECTION 504 (APPLICABLE ONLY TO TENANTS WITH DISABILITIES IN HUD-ASSISTED HOUSING) WHICH BOTH STATE THAT CURRENT USE OF ILLEGAL DRUGS IS NOT PROTECTED.
 - MICHIGAN'S MEDICAL MARIJUANA LAWS WERE NOT CONTROLLING. THE FEDERAL CSA PREEMPTED THEM.
 - THE TENANT'S COUNSEL DID NOT APPEAL.
 - TENANT EVICTED LATER FOR NON-PAYMENT OF DAMAGES FROM FIRE SHE CAUSED.
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WHAT ABOUT OHIO'S LANDLORDS?

APPLICANT/TENANT SELF-DISCLOSURE OF MEDICAL MARIJUANA USE

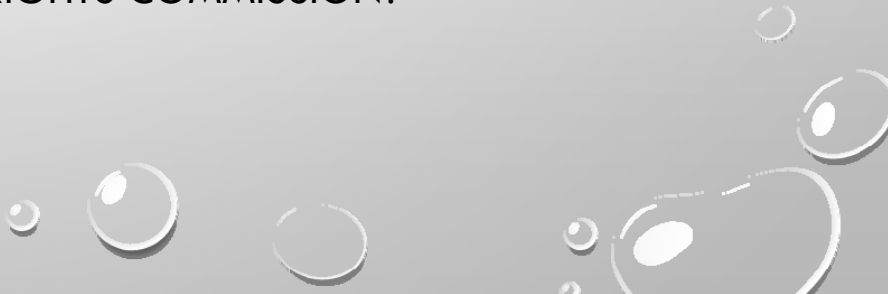
- LANDLORDS MAY ASK IF APPLICANTS CURRENTLY USE ILLEGAL DRUGS AND YOU NEED TO NAME MARIJUANA SPECIFICALLY OR ALL SCHEDULE 1 DRUGS (I.E., THEY HAVE NO MEDICAL USE).
- APPLICANTS MAY ARGUE OHIO MAKES USE LEGAL AND THEY DID NOT KNOW THEIR USE WAS ILLEGAL UNDER FEDERAL LAW.

OTHERWISE, LANDLORD DISCOVERS USE OF MARIJUANA EXTRACTS

- LEASES AND TENANT SELECTION CRITERIA (MARKET RATE) AND TENANT SELECTION PLANS (HUD-ASSISTED) NEED TO SPELL OUT THAT ILLEGAL DRUG USE IS PROHIBITED AND CAUSE FOR TENANCY TERMINATION

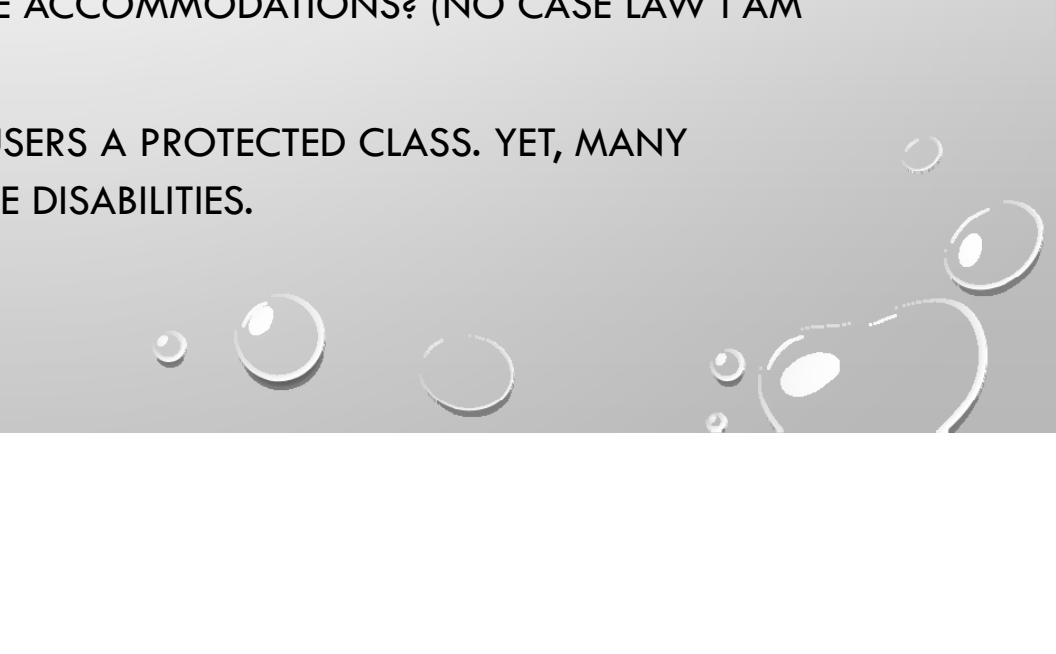


WHAT ABOUT EMPLOYEES LIVING ON SITE?

- WHAT HAPPENS IF AN EMPLOYEE (E.G. CUSTODIAN) LIVES ON-SITE IN EMPLOYER'S HOUSING AND WANTS TO USE MEDICAL MARIJUANA IN HIS APARTMENT OFF-DUTY?
 - IN THE WORKPLACE, EMPLOYER CAN DENY USE OF MEDICAL MARIJUANA—SEEK AN EXPERIENCED LABOR & EMPLOYMENT LAWYER FOR YOUR FACTUAL SCENARIO.
 - MORE TROUBLING: WHAT IF AN EMPLOYEE'S SPOUSE OR CHILD WANTS TO USE MEDICAL MARIJUANA IN THE EMPLOYER-OWNED HOUSING AND FILES A FAILURE TO REASONABLY ACCOMMODATE CHARGE WITH HUD OR OHIO CIVIL RIGHTS COMMISSION?
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BE PROACTIVE AND CONTINUE TO RESEARCH

- **RESOLVE PROBLEMS WHEN THEY COME UP.** FEW PROBLEMS GO AWAY. THEY USUALLY GET BIGGER OR WORSEN. INCREASINGLY, TENANTS GO TO SOCIAL MEDIA LIKE YELP AND APARTMENTS.COM AND TAKE THEIR ANGER TO THE WORLD.
 - STILL UNCLEAR FOR OHIO AND OTHER PARTS OF THE COUNTRY THAT ALLOW EDIBLE CANNABIS: WILL COURTS TREAT EDIBLES AND TINCTURES DIFFERENTLY THAN SMOKEABLE MARIJUANA WHEN IT COMES TO REASONABLE ACCOMMODATIONS? (NO CASE LAW I AM AWARE OF AT THIS WRITING)
 - OHIO HAS NOT MADE MEDICAL MARIJUANA USERS A PROTECTED CLASS. YET, MANY UNDERLYING MEDICAL CONDITIONS LIKELY ARE DISABILITIES.
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TENANCY TERMINATION DONE RIGHT

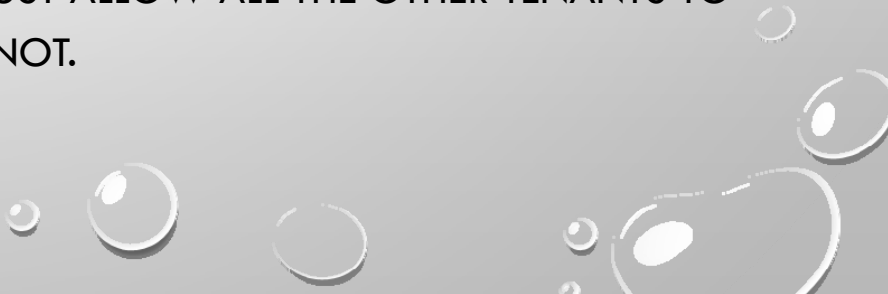
- SEND AN O.R.C. SECTION 5321.11 NOTICE TO CURE WHEN ILLEGAL CANNABIS EXTRACTS ARE SELF-DISCLOSED OR DISCOVERED. THIS IS **NOT** THE ADVICE FOR SMOKING AND GROWING MARIJUANA.
- DETERMINE IF LOCAL LAW ENFORCEMENT WILL WORK WITH YOU.
- IF THERE IS NO CURE AFTER 30 DAYS, SEND THE APPROPRIATE NOTICE TO TERMINATE THE TENANCY.
- IF MARKET RATE TENANT AND LEASE SOON TO EXPIRE, NON-RENEW THE LEASE. IF MARKET RATE TENANT AND MONTH-TO-MONTH TENANCY OR LEASE EXPIRATION TOO FAR AWAY, SEND 3-DAY NOTICE TO VACATE.

TENANCY TERMINATION DONE RIGHT

- IF TENANT IS HUD HOUSING CHOICE VOUCHER HOLDER, REVIEW HUD TENANCY ADDENDUM FOR ADDITIONAL PROCEDURES IF THE TENANT IS STILL IN THE 1ST YEAR OF TENANCY.
- FOR PUBLIC HOUSING, SECTIONS 8/236/202/811, OR ANY OTHER ASSISTED HOUSING PROGRAMS, FOLLOW THE LEASE, APPLICABLE *CODE OF FEDERAL REGULATIONS*, AND APPLICABLE HUD HANDBOOK OR GUIDEBOOK WHEN DRAFTING TENANCY TERMINATION NOTICE.
- EXAMPLE-SECTION 8 NEW CONSTRUCTION PROGRAM: SEND A 30-DAY NOTICE AND PROVIDE RIGHT TO A MEETING REQUESTED IN 10 DAYS. THE NOTICE MUST CONTAIN CERTAIN REQUIRED LANGUAGE, TOO. IF THE TENANTS REQUEST A MEETING, HOLD IT AND PROMPTLY ISSUE A DETERMINATION OF WHETHER THE EVICTION WILL PROCEED.

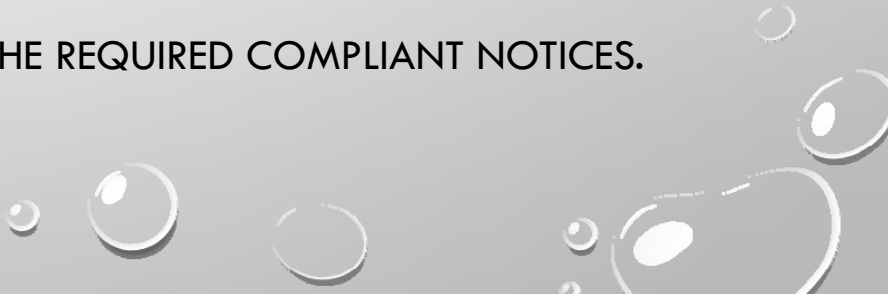


MANAGEMENT DONE RIGHT

- DON'T TELL A REQUESTER VERBALLY THAT THE LANDLORD WILL NOT ALLOW MEDICAL MARIJUANA USE. THE PERSON MUST BE ALLOWED TO SUBMIT A REQUEST.
 - HAVE ONE DECISION MAKER FOR ALL THE RENTAL HOUSING/MANAGEMENT COMPANY. ISSUE A DENIAL LETTER IN WRITING AND CITE THE APPLICABLE LAWS, CASES, ETC. ALSO OFFER A RECONSIDERATION AS YOU WOULD WITH OTHER ACCOMMODATION REQUESTERS.
 - BE CONSISTENT WITH ALL TENANTS. IF YOU LET A 70-YEAR-OLD FAITHFUL RENT PAYER WITH A CLEAN APARTMENT USE MEDICAL MARIJUANA, YOU MUST ALLOW ALL THE OTHER TENANTS TO DO SO. IT IS A FAIR HOUSING VIOLATION IF YOU DO NOT.
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KEY TAKEAWAYS

- BE PROACTIVE: PLAN, PREPARE, AND PROCEED EFFECTIVELY & CONFIDENTLY.
 - OHIO ALLOWS A LIMITED FORM OF MEDICAL MARIJUANA ONLY.
 - A CASE FROM THE 6TH CIRCUIT HELD A MICHIGAN LANDLORD IS NOT REQUIRED TO GRANT THE USE OF MEDICAL MARIJUANA (SMOKING) FOR A TENANT WITH ALLEGED DISABILITIES. WILL THIS ALSO HOLD TRUE FOR MARIJUANA EXTRACTS IN OHIO?
 - IF YOU OPT TO ALLOW MEDICAL MARIJUANA FOR 1 TENANT, YOU MUST DO SO FOR ALL AND REALIZE THAT THE CSA IS STILL BEING VIOLATED.
 - IF YOU OPT NOT TO, DON'T TAKE SHORTCUTS. SEND THE REQUIRED COMPLIANT NOTICES.
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