

COOP HOUSING LAW ALERT

December 2018

HOUSING COOPERATIVE POLICY ON RECREATIONAL MARIJUANA USE AFTER PASSAGE OF MICHIGAN PROPOSAL 1

As you are already aware, Michigan Proposal 1 passed and legalized, with limitations, the possession and use of marijuana for recreational purposes on November 6, 2018.

The recreational proposal as written generally permits the following:

- Allow individuals aged 21 and older to purchase, possess and use marijuana and marijuana-infused edibles and grow up to 12 marijuana plants for personal consumption.
- Impose a 10-ounce limit for marijuana kept at residences and require that amounts over 2.5 ounces be secured in locked containers.
- Create a state licensing system for marijuana businesses, including growers, processors, transporters and retailers.
- Allow municipalities to ban or restrict marijuana businesses.
- Permit commercial sales of marijuana and marijuana-infused edibles through state-licensed retailers, subject to a new 10-percent tax earmarked for schools, road and municipalities where marijuana businesses are located.

Ten days after the election results are certified, which should be by on or around December 6, 2018, marijuana will be considered legal but marijuana will not be commercially available for sale until probably early 2020, in part because the state must still put regulations in place and issue licenses for recreational sales. After certification, adults will no longer be arrested for simple possession and use of marijuana. But, there is no public consumption and no driving under the influence and there will be no commercial sales until businesses are licensed and approved.

Housing cooperatives, generally, can still prohibit prohibit smoking and growing plants on their properties. Police will still be able to arrest people they suspect are driving under the influence of marijuana or if they are lighting up in public. Employers can still do pre-employment and random drug tests on employees and maintain zero tolerance policies for their employees and fire or discipline employees who test positive for marijuana or refuse to hire those who test positive for marijuana.

The ballot proposal calls for LARA to take up to a year to develop the rules and regulations that will govern the recreational sales of marijuana in the state before it begins accepting applications for recreational licenses. Additionally, the Legislature could amend the proposal and make additional changes to the laws. The U.S. District Attorneys for the Eastern and Western Districts of Michigan also reported a joint statement that marijuana use is still illegal and fully criminalized under federal law and that they will continue prosecuting marijuana possession and under federal law and in spite of the fact that an individual may otherwise meet the requirements for use under Michigan's state laws. Housing cooperatives subject to federal subsidization and HUD regulations will still need to enforce existing drug policies.

The important takeaway from the passage of Ballot Proposal No. 1 is that housing cooperatives are still within their rights to find the smoking and growing of marijuana on the property a violation of the Occupancy Agreement, Rules and Regulations. Housing cooperatives subject to federal regulations will still be subject to federal regulations and laws governing the illegality, use and possession of marijuana. All housing cooperatives should continue to enforce a no smoking, no growing policy on the premises and fine and/or subject offending members to termination of membership and occupancy for violation of those rules.

It is advisable for all housing cooperatives to issue a notice via a newsletter or other form of official

communication reminding members at HUD/federally subsidized housing cooperatives that they are still subject to HUD and federal regulations regarding illegal drug use and will still be subject to termination of membership and occupancy. Cooperatives that are not subject to HUD and federal regulations should issue a similar newsletter or other form of official communication reminding members that smoking and growing marijuana on the premises is still a violation of the Occupancy Agreement, Rules and Regulations and will subject the offending Member to termination of membership and occupancy. Because the rules and regulations have yet to be published by the State and there is a period of time within which the Legislature may make some further changes to the law, housing cooperatives that wish to implement a new policy governing possession, use and growth are encouraged to do so. Properties that have a policy currently in place are in no danger of being in violation of the law as they are still permitted to have prohibitions on use and growth in place, but the policy should be revisited to ensure the use of non-traditional forms of marijuana are addressed.

Our firm continues to stay ahead of this law and its impact on our cooperative clients so we can ensure that they have the best policies in place. Should you have any concerns or questions about this law and how to address it, feel free to contact us to review your current policy and discuss options available for your community.

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The reader is encouraged to consult with competent legal counsel that is experienced in housing cooperative law.

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