



Mulcahy Memo - Jan. 27, 2011

Published for clients and friends of the Mulcahy Law Firm, P.C.

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Medical Marijuana in Community Associations a Smoking Hot Issue...

In late 2010, Arizona residents voted via Prop 203 to legalize medical marijuana. This new law will allow qualifying patients with certain debilitating medical conditions (such as cancer, HIV/AIDS, hepatitis C and multiple sclerosis) to receive up to 2 1/2 ounces of marijuana every two weeks from dispensaries or cultivate up to 12 marijuana plants if they live 25 miles or farther from a dispensary. Arizona became the fifteenth (15) state to approve medical marijuana. The approval of Prop 203 was a surprise, having passed by approximately 4, 300 votes out of 1.67 million votes cast and being behind by 7,200 votes on Election Day in November, 2010.

The state health department released its first draft of medical-marijuana rules in December, 2010. The rules outline who may qualify for medical marijuana, establish operating criteria for dispensaries and provide strict guidelines for doctors who may recommend marijuana. The state health department must finish drafting the rules by April 13, 2011. The agency will then review applications from people who want to use medical marijuana or operate a dispensary. The program should be fully functioning by summer 2011, when dispensaries have had time to grow the plants.

Our firm has received questions regarding how this law will apply to community associations. At present, it is our firm's opinion that this is a complicated issue and as association rules conflict with a unit/lot owners' use of medical marijuana the issue will become more entangled. *A major concern is that marijuana is not legal under federal law.*

A few questions association boards should consider and discuss:

1. Should association boards allow residents to smoke medical marijuana on association common areas?

It is our firm's position that association boards can pass rules pursuant to their association documents to prohibit smoking of medical marijuana on association common areas. It is important to note that under Arizona law, an owner would be allowed to smoke medical marijuana within the confines of their unit or lot.

2. Should association boards allow owners to grow medical marijuana on association common areas?

It is our firm's position that growing of medical marijuana on association common areas can be prohibited by the association so long as rules to that effect are passed by the board.

3. What can the association do if neighbors complain about medical marijuana use by another owner within that owner's unit?

This is a complicated situation and will need to be evaluated on a case by case basis. Is the medical marijuana use prohibiting the peaceful enjoyment of the use of their unit by the complaining owner?

4. Can a commercial space, in mixed use communities, be used as a medical marijuana dispensary?

Medical marijuana dispensaries may try to rent space in mixed use associations. Will other tenants complain about the type of individuals who patronize them? It is our firm's opinion that an association would NOT have the right to prohibit the rental of space to medical marijuana dispensaries.

These are all tough questions. As this issue comes to the forefront for associations our firm suggests that boards and managers consult with our firm to discuss options and risks regarding use of medical marijuana within associations.