

## LANDLORDS AND MEDICAL MARIHUANA

### I. INTRODUCTION

In 2008, the voters in the State of Michigan passed the Michigan Medical Marihuana Act, MCL 333.26421 ("MMMA"). The Act protects from prosecution, qualifying patients and registered caregivers who engage in the medical use of marihuana. In order to qualify for these legal protections, patients and caregivers must apply for and receive a registry identification card from the Department of Licensing and Regulatory Affairs.

Many REALTORS® have inquired as to whether under the MMMA, a landlord must allow registered patients or caregivers to use and/or grow marihuana in their apartments. While there is no express provision on point in the statute, and there is no case law directly on point, the Michigan Attorney General has recently opined that the answer to that question is "no."

On September 15, 2011, Attorney General Bill Schuette issued the following opinion:

An owner of a hotel, motel, apartment building, or other similar facility can prohibit the smoking of marihuana and the growing of marihuana plants anywhere within the facility, and imposing such a prohibition does not violate the [MMMA].

2011 Mich. OAG No. 7261.

In his opinion, the Attorney General points out that in another context, the Michigan Court of Appeals has stressed that the possession, use, sale and manufacture of marijuana remains criminal in Michigan:

The MMMA does not codify a *right* to use marijuana; instead, it merely provides a procedure through which seriously ill individuals using marijuana for its palliative effects can be identified and protected from prosecution under state law. Although these individuals are still violating the Public Health Code by using marijuana, the MMMA sets forth particular circumstances under which they will not be arrested or otherwise prosecuted for their lawbreaking. In so doing, the MMMA reflects the practical determination of the people of Michigan that, while marijuana is classified as a harmful substance and its use and manufacture should generally be prohibited, law enforcement resources should not be used to arrest and prosecute those with serious medical conditions who use marijuana for its palliative effects.

In that opinion, the Attorney General also points out that the possession and manufacture of marihuana is illegal under the Federal Controlled Substances Act, 21 USC § 801. Under federal law, a property owner who allows their properties to be used by registered patients or caregivers for the purpose of using or growing marihuana could face

prosecution and/or civil forfeiture (*i.e.*, loss of property).

While the Michigan Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.* requires a landlord to accommodate persons with disabilities, the Attorney General has concluded that this statute does not require a landlord to permit a registered patient or caregiver to use or grow marihuana on its property:

[T]he refusal to rent, lease, or provide accommodation to a registered patient who engages or proposes to engage in the medical use of marihuana would not be based on a patient's disability, but rather on the patient's decision to treat that condition with marihuana.

While decisions of the Michigan Attorney General are not binding on the courts, certainly the analysis is considered with court decisions to date. For example, it has been held that the MMMA does NOT require an employer to "accommodate the ingestion of marihuana in any workplace or any employee working under the influence of marihuana." *Casais v Wal-Mart Store, Inc.*, 764 F Supp 2d 914 (WD Mich, 2011).

## **II. CONCLUSION**

The MMMA is fairly new and certainly there are a number of issues yet to be resolved. What does appear clear, however, is that Michigan courts (and the Attorney General) view this statute quite narrowly and do not believe that it affords anyone protection from interference with their use of marihuana. Accordingly, landlords can and, in fact, should prohibit marihuana on their property in order to avoid violating federal law.