



ALTUS LEGAL LLC

CONDO AND HOA LAW

LEGAL TIPS

Marijuana Issues in the Association (Condos)

8 states now permit recreational marijuana use in the United States. Medical marijuana is already legal in the Land of Lincoln and the state is moving towards legalizing recreational use as well. Thus, as the use of pot continues to “spread like a weed,” **how are boards to deal with regulating the use in a condo association, with a user claiming medical need and other owners claiming nuisance or second-hand smoke concerns?**

The good news for board is that while medical cannabis is not criminalized in Illinois, that does not mean a unit owners with a medical use card can flout the association’s rules that prohibit noxious and offensive activity. Marijuana smoke is pungent and bothersome, especially if it’s seeping into adjacent units or the common element hallways. It doesn’t matter if the unit owner is smoking for legitimate medical reasons; if smoke is seeping into the hallways or neighboring units, **the board has a duty to act**. Second-hand smoke risks from marijuana are the same as those from tobacco; heart disease, lung cancer, asthma in children and myriad of health risks. All smoking by combustion has the potential to create a nuisance for other occupants of a condominium association.

The solution? A Board may consider one of the following four methods to limit marijuana smoke from causing problems for other unit owners while *still* allowing those with medical use cards to get high as needed:

- 1.) Illegality – The association’s declaration no doubt prohibits anyone from doing anything illegal within the association. In Illinois, the Medical Cannabis Act prohibits smoking anywhere where it can be “reasonably observed by others” or “in close proximity to anyone under the age of 18”. This means that anyone smoking pot in the common elements, such as the patio, pool, or even the balconies may be violating the Medical Cannabis Act *and* the declaration to boot. **In sum, to be legal, it has to stay behind the closed doors of a unit.**
- 2.) Consider a Smoke-Free Building Amendment – **The association can consider amending the declaration to prohibit all smoking (marijuana, cigarettes, etc.) in units and common elements without violating the rights of any medical marijuana users.** There are myriad ways to get high without traditional smoking via combustion; people can purchase “edibles” (i.e. cannabis-infused food products), topical ointments with THC or use vaporization to ingest marijuana (i.e. heating the marijuana to a high temperature and inhaling the vapor, which makes far less odor).
- 3.) Existing Declaration and Rules – Most declarations and rules prohibit noxious and offensive activity, which can certainly include smoke seeping into units and hallways. A board can treat marijuana odor in the common elements exactly as it would prohibited Sunday morning construction noise, rowdy guests in the hallway, or a blaring television disturbing residents late at night – send the occupant a violation, levy a fine and to force the smoker to get high in a more communal and neighborly fashion.

4. Adopt Smoke Transmission Rules – Unlike a complete smoking ban via declaration amendment, which requires owner approval, the Illinois Condominium Property Act (“ILCPA”) allows the board to adopt rules without unit owner approval. The board can thus simply pass a rule requiring smokers (tobacco or marijuana) to mitigate transmission via certain techniques, including sealing their unit with caulk, using air filtration systems and smokeless ashtrays, or limiting smoking to one particular room within the unit where it’s less likely to bother others. Violation of the rule allows the board to fine the smoker, which ought to keep him/her in line.

In sum, the board is able to balance the demands of anti-marijuana owners with those who have the legal right to use cannabis in their home without fearing harassment. If the individual smoking pot is not doing anything illegal, violating the declaration or rules and not bothering anyone, the board should leave the matter alone (after all, harassing an owner may expose the board to some liability). **However, the board need not be scared by the fact the individual has a medical need for marijuana – if that person is violating the declaration by bothering other people, the board must act to stop the behavior.**