



Landlord Letter

December 2018

Medical Marijuana – Prop 2 & It’s Replacement

In November 2018, Utah voters passed Proposition 2 concerning the use of medical cannabis in Utah, which the Utah legislature then replaced Prop 2 with House Bill 3001, the Utah Medical Cannabis Act (“UMCA”). Landlords are wondering how these changes will impact them. Let’s talk about some of the common questions we’ve received.

First, the bill itself is 220 pages! There’s a lot to the bill and everyone involved is still learning what it allows/disallows and how the laws will be implemented and enforced. But let’s talk about some of the highlights as it re-

lates to landlords and tenants.

The most common question we have received is whether landlords have to allow marijuana smoking in their units. The quick answer is No. The language of the bill specifically states that the UMCA “does not authorize a medical cannabis cardholder to smoke or combust cannabis or to use a device to facilitate the smoking or combustion of cannabis.” This means that if a tenant is smoking marijuana, they are likely violating the UMCA and their lease agreement.

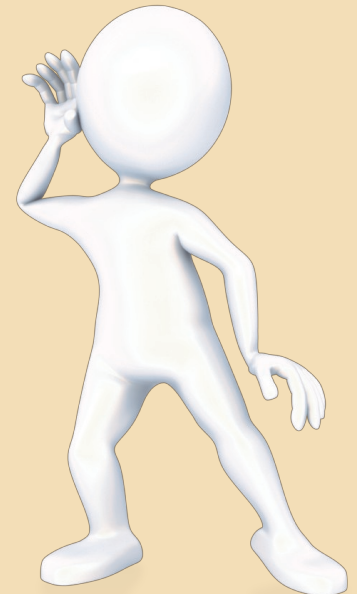
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What people are saying about US!!!

Jeremy Shorts and his team are right on top of my situation. I hate to have to be in a position of kicking someone out, but sometimes you don't have a choice.

~Scott —Google Review



Know Your Notice

• Abandoned Personal Property •

Purpose: Addresses personal property left behind by a tenant .



This is a recent change under Utah law when handling abandoned personal property.



Instead of storing items for 30 days, the law requires the landlord to store the items for fifteen days.

If the landlord is going to sell, donate or dispose of any items, they must give a notice of sale to the tenant at least five days prior to the sale.

A landlord does not have to store hazardous materials, animals, garbage, perishable items, etc.



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If you have a tenant that is smoking marijuana you should contact an attorney to discuss your specific situation, but the first place an attorney will want to look is your lease to see if smoking is allowed. Even if the UMCA permitted the smoking of medical cannabis, landlords have an argument that the lease could be used to restrict smoking within the unit. Think of tobacco – It’s legal under the law to smoke, but landlords are still within their rights to restrict smoking within the unit.

Also, the initial draft of the UMCA specifically stated that a landlord could not refuse to lease to a person based on their status as a medical cannabis card holder. That was removed and is not in the version that became law, but it’s important not to overreact. If medical cannabis is being used by a tenant in accordance with the UMCA, it’s highly

unlikely that the landlord would ever even know about it. How many landlords are aware of what prescription medications their tenants are taking? It is likely to be the same scenario when it comes to medical cannabis use, the landlord is probably never going to know about it.

Finally, do you need to update your lease to address medical cannabis? Probably not. The most common abuse will be smoking marijuana which is already prohibited by the UMCA and most leases. There is no need to have your lease address specific prescription medications that your tenants are taking, so it’s unlikely that medical cannabis needs to be addressed in your lease. Continue to refer to your lease and enforce it if you see any violations. The big takeaway here is for landlords not to overreact, we aren’t expecting UMCA to drastically impact how landlords and tenants operate.

Quick Tips ... Record Keeping & Evidence

Quick Tips if you suspect potential legal problems:



Memories fade, so document EVERYTHING when it's fresh.



A picture is worth a thousand words (1,000 pictures = 1M words).



Don't want to track paper files? Use a scanner.



Get witness statements and contact information in case they move.



Dear Attorney,



**FREE 15 Minute
Landlord Consultation
(801) 610-9879**

Q:

I just purchased a home through a foreclosure sale and need to proceed with an eviction. How do I move forward?

A:

whether the tenants are the prior owners or if they are tenant with a “bona fide lease”.

If they're the prior owners, then the foreclosure sale terminates their right to occupy the property. You should give them a “Five Day Notice to a Tenant at Will”. If they fail to vacate after the fifth day, you can file an eviction with the court.

The first thing you'll need to do is determine

A tenants have a bona fide lease if (1) they are NOT a child, spouse or parent of the prior owner, (2) the lease was the product of an arm's-length transaction, and (3) the lease requires them to pay rent “that is not substantially less than fair market rent” for the property. If each of these is true, you may have to honor the lease until it expires.

These cases can be very technical, so you will want to contact an attorney to address your specific situation.

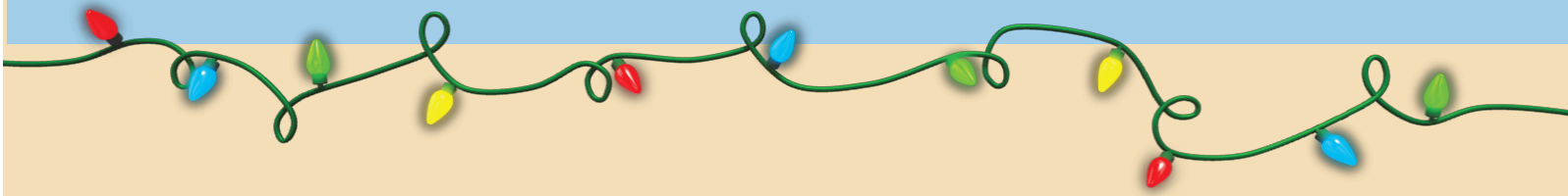


Landlord Laughs — An Addendum for WHAT?

It's critical to have a strong lease and good addenda. We've seen addenda covering pets, garages, parking, etc. These can be very helpful to address situations that are specific to your property or your particular tenant. But we recently came across one addenda that we hadn't seen before.

One landlord and tenant entered into a "Sexual Harassment Addendum". If you're thinking that the Sexual Harassment Addendum outlined their sexual harassment policy, you're wrong. The addendum made it clear that the landlord and tenant were entering into a voluntary and consensual sexual relationship.

Surprise, surprise, things went south between the landlord and tenant and legal action was threatened (that's kind of an awkward breach of contract claim). Even though this was the first time we had seen an addendum like this, we have no plans to add this to our form bank.



We have a new Attorney—Meet David Gardner!

Originally from Fort Collins, Colorado

Married with 5 adorable children

Bachelor's Degree from UVU (2009)

**Law Degree St. Mary's University –
San Antonio (2013)**

**Enjoys basketball, football,
and oil painting**



The articles or other writings found in this newsletter are not a substitute for an attorney. They may or may not be appropriate for your situation. You must contact an attorney to receive legal advice based on your specific circumstances.