



ATTORNEYS AT LAW

## REAL ESTATE MANAGEMENT ADVISORY November 2016

### *What To Do About Recreational Marijuana?*

Now that the ballot question on recreational marijuana has been approved, the question for landlords is what can they do about this and what rights do they have.

The new law takes effect on December 15, 2016. Parts of the statute established by the ballot question will be revised by the legislature, but the biggest immediate issue is that soon residents will be able to smoke marijuana without any worries about whether it is legal to do so in Massachusetts. Landlords will undoubtedly be faced with residents lighting up in apartments, and other residents complaining about the smell of marijuana wafting into their units and permeating the common areas.

In smoke-free buildings residents smoking marijuana shouldn't be a problem, because in these buildings residents cannot smoke marijuana, cigarettes or anything else in their apartments or in any of the indoor and outdoor common areas. Landlords should confirm that the language in the lease or smoke-free addendum is specific enough to cover marijuana.

In buildings where smoking is not prohibited, landlords should still be able to prohibit residents from smoking marijuana inside their apartments and in the common areas. This is because 1) the new statute provides that landlords may prohibit the smoking of marijuana; 2) residents smoking marijuana can interfere with the quiet enjoyment of other residents and cause a nuisance; and 3) the possession and use of marijuana is still a federal crime. To make this prohibition enforceable, the language in the lease has to be clear and specific.

Another issue raised by the ballot question is whether residents will be able to grow marijuana in their apartments. This is a more difficult issue, but landlords should be able to prohibit this with appropriate language in the lease based upon marijuana use and possession remaining a violation of federal law, as well as other factors.

## *Other News*

Ken Krems was again named a Massachusetts and New England Super Lawyer in the field of real estate, as featured in the November 2016 issue of Boston Magazine. Earlier this month he spoke about medical marijuana and criminal history screening at a Real Estate Bar Association (REBA) conference. He was also named co-chair of REBA's new residential landlord/tenant committee, and was elected to REBA's Board of Directors.

David Jackowitz was a faculty presenter at a recent Massachusetts Continuing Legal Education (MCLE) seminar entitled "How to Obtain Zoning Relief." David presented on Boston Zoning Practice and on Zoning from the Municipal Perspective as he is the vice-chair of the Natick Zoning Board of Appeals.

Scott Carman and Ken Krems co-authored the chapter on Collection Practice in Residential and Commercial Tenancies in MCLE Residential and Commercial Landlord/Tenant Practice in Massachusetts.

As always, please feel free to call or email any member of the Shaevel & Krems, LLP Real Estate Management Team with any questions.

### REAL ESTATE MANAGEMENT TEAM

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