

Kimball, Tirey & St. John LLP

Marijuana Law for California Residential Landlords

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Proposition 64 legalized recreational use of marijuana in California. Under the new law, (codified in California Health and Safety Code §11362 et seq.), people 21 years of age and older may possess, process, transport, purchase obtain or give away (without compensation) up to 28.5 grams of non-concentrated cannabis and up to 8 grams of concentrated cannabis and possess, plant, cultivate, harvest, dry or process up to 6 living plants. Under the law, cannabis (including the living plants), may be stored within a person's private residence, or on the private grounds of a private residence, in a locked space which is not visible from a public place by normal unaided vision. Private residences include single family residences as well as multi-family properties. Additional limitations apply as specified within the law.

In response to the passage of Proposition 64, several cities are adopting and/or considering local certain bans on recreational marijuana. Proposition 64 allows cities to pass ordinances banning marijuana businesses from operating in the city and banning outdoor cultivation of marijuana (even for personal use).

Marijuana possession, distribution, and use, regardless of purpose, remains illegal under Federal law (Controlled Substances Act (U.S.C. title 21)).

While the full impact this new law will have on landlords and residential properties remains to be seen, marijuana use in residential properties will increase, which will create challenges for landlords. In response, landlords may choose to prohibit marijuana smoking and cultivation. However, landlords who choose to prohibit marijuana smoking and cultivation should expect to continue to encounter issues with residents claiming they need to smoke or cultivate marijuana for medical purposes, which raises issues relative to disability-related accommodations. Proposition 64 did not change California's medical marijuana laws. (For information about reasonable accommodation requests related to medical marijuana, contact Kimball, Tirey & St. John's Fair Housing Department at KTSFairHousing@kts-law.com.)

Under Civil Code § 1940.10, tenants in single family homes and duplexes have the right to engage in "personal agriculture" in portable containers approved by the landlord in the tenant's "private area", if certain conditions are met. Similarly, homeowner's associations may not restrict "personal agriculture" under Civil Code §4750. However, because Civil Code §1940.10(a)(3) specifically excludes marijuana (and any other unlawful crops or substances), they do not prevent landlords from prohibiting marijuana.

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Action Items:

- Properties with no-smoking provisions should review their lease to ensure their provisions will allow landlords to prohibit or control marijuana use, as well as tobacco and e-cigarettes. (Many smoke free provisions do not address marijuana or e-cigarettes).
- Properties that do not currently prohibit smoking, may want to consider going smoke free, or prohibit marijuana smoking.
- Landlords may wish to add provisions to their leases prohibiting marijuana plants.

For assistance with lease provisions or notices of change of terms of tenancies to address these issues, contact Kimball, Tirey & St. John LLP attorney Jamie Sternberg at jamie.sternberg@kts-law.com or (619)744-0863.

- Landlords who don't already have procedures and policies to address smoking complaints (marijuana or otherwise) should consider creating them. For assistance, contact Kimball, Tirey & St. John LLP attorney Alejandra Mendez at alejandra.mendez@kts-law.com or (619)231-1422.

Text of Applicable Laws:

Information from the California Secretary of State regarding Proposition 64 is available at <http://vig.cdn.sos.ca.gov/2016/general/en/pdf/text-proposed-laws.pdf#prop64>.

The text of Civil Code 1940.10 is available at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=1940.10.

The text of California Civil Code 4750 is available at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4750.&lawCode=CIV.

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