LANDLORDS AND MEDICAL MARIHUANA

Hello, Michigan Realtors® and welcome back to the "Letter of the Law". I'm Brian Westrin and today we're going to build upon last month's installment. Last month we looked at some timely risk reduction trends in real estate relative to the purchase and sale of real property used for the cultivation or sale of medical marihuana. This installment sticks with a similar topic as we look at issue from the property management side of the coin.

The treatment of Marihuana, for medical or recreational purposes, continues to garner significant attention in Michigan – especially from a business perspective. As you all know, in 2008, the voters in the State of Michigan passed the Michigan Medical Marihuana Act (which we'll hereafter refer to as the MMA). The Act allows qualifying patients and registered caregivers to legally engage in the medical use of marihuana. In order to qualify for this legal protection, patients and caregivers must apply for and receive a registry identification card from the Department of Licensing and Regulatory Affairs. Additionally, in 2016, Michigan enacted the Medical Marihuana Facilities Licensing Act which created a licensing process for growers, processors and transporters.

{Issue}

Since the MMA took effect, we've received many questions from Realtors® asking if and how the legislation will affect the real estate industry. The biggest concern seems to be whether or not, under the MMA, residential landlords are required to allow registered patients to use and/or grow marihuana on the premises. In January of 2017, the MMA was amended to specifically provide that a landlord is NOT required to lease residential property to a person who smokes or cultivates marihuana on the premises, so long as there is a specific written

provision in the lease prohibiting that conduct. This legislation went into effect on April 10, 2017, and codified a 2011 Opinion of the Michigan Attorney General, Bill Schuette.

{Attorney General Opinion}

An argument was posed that under the Michigan Persons with Disabilities Civil Rights Act, landlords are required to accommodate persons with disabilities. The 2011 Attorney General opinion concluded, however, that the Persons with Disabilities and Civil Rights Act does not bar a landlord from refusing to rent or provide accommodation to an individual who engages in the medical use of marihuana under the MMA. The rationale behind this conclusion is that the MMA doesn't codify the *right* to use medical marihuana, but instead the *option* to use medical marihuana. In other words, a landlord's refusal to provide accommodation for the use of medical marihuana is not based on the patient's *disability*, but rather the patient's *decision* to treat their condition with marihuana.

{Federal Concerns}

Another commonly asked question concerns the MMA and civil forfeiture laws. As many of you may be aware, civil forfeiture laws allow law enforcement agencies to seize both real and personal property linked to a crime – even if the actual owner of the seized property is never charged or convicted of the crime. This, of course, poses the question of whether or not commercial landlords who choose to lease to individuals who operate "marihuana facilities" on the leased premises run the risk of finding themselves in a civil forfeiture situation. There are two sides to this answer, bringing both good and bad news for landlords.

The good news is that if you are a landlord in this situation, you are protected from civil forfeiture at the state level. Michigan law specifically provides that a person who owns or

leases real property upon which a "marihuana facility" is located and who has no knowledge that the licensee violated the law **is not subject to seizure of any real or personal property or anything of value based on the marihuana-related offense**.

At the federal level, however, landlords might not be so lucky when it comes to criminal prosecution and civil forfeiture. The sale and possession of marihuana is still a federal crime under the Controlled Substances Act. This means that the federal government is free to criminally prosecute Michigan citizens who violate that Act, regardless of whether or not they're registered patients or caregivers under the MMA. As a result, landlords who allow marihuana facilities to operate on their property could be viewed as aiding and abetting an illegal activity or facilitating an illegal transaction. Thus, subjecting them to federal civil forfeiture or other penalties under the Controlled Substances Act.

Federal legislation was introduced last year to exempt real property from federal civil forfeiture laws in situations of medical marihuana-related conduct in states that permit the medical use of marihuana. The draft bill has been referred to various committees for further study. The current political climate suggests that it is highly unlikely this bill will be enacted into law in the foreseeable future. This means that landlords who allow marihuana facilities to operate on their properties are technically still on the hook when it comes to federal civil forfeiture laws – even if the property is in a state that allows marihuana to be used and cultivated for medical purposes.

{Conclusion}

Remember, the recently-amended MMA allows residential landlords to prohibit the use or cultivation of marihuana on their properties, even if the tenant has a disability and is properly registered to use marihuana for medical purposes. To legally prohibit such use on a

leased premise, there **must** be language in the written lease that prohibits that conduct. Don't forget that landlords who lease commercial property to a licensed "marihuana facility" are protected from civil forfeiture under Michigan law, but not under federal law. At least not as of right now.

As always, thank you for tuning in and watching this installment. If you have questions or would like to suggest topics for future videos, please send suggestions to the email below. Again, thanks for watching and see you next time.