

Turk & Quijano, LLP

Attorneys At Law

CONNECTICUT LEGAL UPDATE RECREATIONAL MARIJUANA July 28, 2021

On July 1, 2021, the State of Connecticut enacted legislation legalizing the purchase and possession of recreational marijuana. Pursuant to this new law, a person over 21 years of age may possess up to one and a half ounces of marijuana for their personal use. The statute also removes records of prior convictions for marijuana offenses and authorizes retail sales of marijuana. For the residential housing industry, however, this statute continues to permit landlords to prohibit the “use” of marijuana in rental housing. In addition, as discussed below, this statute now prohibits landlords from considering past convictions for marijuana offenses as a basis for denying an application for housing pursuant to their resident selection plans.

As an initial matter, it is important to note that this legislation does not affect federal law, which, pursuant to the Federal Controlled Substances Act, continues to deem the use and/or possession of any quantity of marijuana for any purpose to be illegal. Where federal law has deemed such conduct illegal, there is a strong argument that the possession of marijuana would still constitute drug-related criminal activity prohibited by the lease, even if legal under state law. The United States Department of Housing and Urban Development (“HUD”) has affirmed this position and specifically prohibits housing providers from permitting residents to possess or use marijuana in federally financed properties. The issue of whether this federal law would “preempt” state law, and therefore allow a landlord to deem possession of any quantity of marijuana illegal, notwithstanding any state law, continues to be an unresolved issue and is being litigated in several federal courts. For now, however, the federal government has made it clear that owners of HUD financed properties may not permit the use or possession of marijuana, regardless of any state law to the contrary.

The new Connecticut statute, while permitting the use and possession of a specific amount of marijuana, does recognize a landlord’s right to prohibit smoking on their properties. Specifically, effective July 1, 2022, a residential landlord may NOT prohibit tenants from possessing marijuana in their apartments, but MAY prohibit tenants from smoking and vaping marijuana in their apartments. As such, effective July 1, 2022, tenants may keep up to 1.5 ounces of marijuana in their apartment. However, so long as you have a lease provision which prohibits smoking of marijuana, landlords can prohibit residents from smoking or vaping marijuana in their apartments and on the property. It is therefore imperative that, to the extent you desire to prohibit the smoking of marijuana in your building, you include a No Smoking Addendum or other



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provision addressing this issue in your Lease. It should also be noted that the Statute does allow for the consumption of edibles in residential housing.

The other major effect of this Statute is its impact on the application and screening process. Pursuant to this Statute, effective July 1, 2022, landlords and property managers are now prohibited from rejecting an application or discriminating against a prospective tenant or an existing tenant based on a prior conviction for possession of a cannabis-type substance or for a prior conviction for possession of four or fewer ounces of cannabis plant material and any equivalencies and combinations thereof. Although we have never had a client do so, owners are also prohibited from requiring tenants to submit to a drug test. Please note that Section 90, the section addressing landlords, does not go into effect until July 1, 2022. It is therefore extremely important that owners review their resident selection plans to ensure that they do not consider any such convictions in the application process. Likewise, to the extent you utilize a third-party screening company, you should ensure that the screening criteria are updated to reflect this change.

Finally, based on our past experience with legalized marijuana in other states, there is likely to be considerable confusion among residents as to their ability to smoke marijuana in their apartments. Likewise, there is likely to be an increase in complaints regarding the odor of marijuana and its impact on quiet enjoyment. In order to avoid such issues, many owners have found it beneficial to remind tenants that smoking of marijuana, even if permitted by state law, is still prohibited in the building. Such a “friendly” reminder will ensure that tenants are both aware of the ongoing prohibition on smoking and their obligations pursuant to the lease.

The foregoing article is intended for informational purposes only and should not be considered or relied upon as legal advice. Please feel free to contact our office if you have specific questions or if you require legal assistance.

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WELCOME OUR NEW ASSOCIATE IMAN FARIMANI

Turk & Quijano is pleased to announce that Attorney Iman Farimani has joined the firm as an associate in the firm's Landlord/Tenant and Condominium/Community Associations Departments. Iman is admitted to practice in both Connecticut and Massachusetts and has extensive experience advising both commercial and residential landlords and property managers in all aspects of their operations including eviction actions, fair housing, contract disputes, business and corporate litigation, and general litigation matters. He also maintains significant experience working with community associations.

Iman is a Connecticut native and received his undergraduate degree from the University of Connecticut before attending Western New England University School of Law. We are excited to have Iman join the Turk & Quijano team!



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