

Marijuana

While marijuana remains an illegal substance under federal law according to the Controlled Substances Act, state governments are decriminalizing the drug and regulating its lawful use for medical and recreational purposes. Whether by ballot measure or legislation, the legalization of marijuana is becoming more prevalent at the state level. It is vital that policymakers consider the implications on the apartment industry as a whole as they navigate this process. Apartment owners and operators must be empowered to protect their communities and residents as much as possible within legal frameworks. Further, more work is needed to ensure industry stakeholders can balance conflicting federal and state laws in the operation of their business.

Regardless of a property's rules and policies against smoking in an apartment unit or at the community in general, owners must remember that some residents possess the right to use marijuana for medical reasons, according to specific state fair housing laws. Some states have addressed property owners' concerns by including provisions in their legislation. These favorable provisions permit owners to prohibit residents who are qualifying patients from smoking marijuana on leased property. This does not, however, restrict the patient from consuming marijuana in other forms, such as edibles or vaporization. Additionally, some lawmakers have passed regulations that allow owners to restrict smoking marijuana on the property if smoking, in general, is prohibited in the lease. This balances the legislation considerably, enabling owners to exercise their right to decide whether marijuana may be smoked on their property and assess the competing interests of neighboring residents.

There are justifiable concerns and confusion regarding the home cultivation of marijuana in apartment properties as states begin to allow qualifying patients to grow a number of marijuana plants at home. Policymakers must work with industry leaders to minimize confusion as they develop applicable regulations. Laws that set clear parameters protect residents and owners alike.

Growing marijuana indoors requires a large amount of light and humidity, which may lead to health issues and increased utility cost across the community, if utilities are included in the rent. Research shows that growing marijuana indoors increases the level of mold spores to ten times the amount found in outdoor samples.¹ Such a policy may pose as a severe health hazard for residents, as exposure to mold can lead to

¹ Martyny, John W., et al. "Health Effects Associated with Indoor Marijuana Grow Operations." Colorado Drug Investigators Association, www.cdiausa.org/html/Press%20report%20_1b.pdf

serious upper respiratory tract problems.² States have tackled this issue by including specific wording in their laws to protect apartment owners against the risks of home cultivation. For example, some regulations specify that residents who are qualifying patients must receive written permission from the owner before home cultivation is permitted. Policies like this allow owners to prioritize residents' health and safety.

It is important to note that while marijuana legalization is on the rise, it remains classified as a Schedule 1 drug under federal law, as listed in the Controlled Substance Act (CSA).³ Many states have language in their marijuana laws that permits an owner to refuse to lease to a qualifying patient if doing so would cause the owner "to lose a monetary or licensing related benefit under federal law or regulation." This is crucial if the property receives federal funding. The U.S. Department of Housing and Urban Development released a memo in 2014 specifying that owners of federally funded properties must "deny admission to any household with a member who the owner determines is, at the time of application for admission, illegally using a controlled substance as that term is defined by the CSA" as required by the Quality Housing and Work Responsibility Act of 1998.⁴ State law must make safe harbors clear, allowing owners to prohibit the use of marijuana on properties and ensuring that owners are able to abide by federal law to keep their federal funding or tax status.

NAA Viewpoint While the national trend toward relaxing marijuana policy at the state level is clear, policymakers should remember marijuana remains illegal under federal law. State laws should set clear expectations for owners and residents and carefully balance the risks associated with permitting an illegal substance on community property.

² "Mold." *Centers for Disease Control and Prevention*, Centers for Disease Control and Prevention: www.cdc.gov/mold/dampness_facts.htm

³ "Drug Scheduling." *DEA*: www.dea.gov/drug-scheduling.

⁴ Metcalf, Benjamin T., "Use of Marijuana in Multifamily Assisted Properties." *HUD*: <https://www.hud.gov/sites/documents/USEOFMARIJINMFASSISTPROPTY.PDF>