



The Weedman Cometh to an Association Near You



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Written by: David Firmin on Monday, January, 13th, 2014

January 1, 2014 has come and gone with initial reports estimating sales at over one million dollars in marijuana for the first day. Commencing early in the morning, lines began to form and wrap around marijuana retail outlets.

Going hand in hand with the high (pun intended) sales figures, law enforcement officials from neighboring states have warned that marijuana is still illegal in Wyoming, Utah, Kansas, and every other state in the Union with exception of Washington and that marijuana is still not legal to smoke in public. This leads to questions such as while it is legal, where is it all going to be consumed? Most of the marijuana purchased will be taken home and used in the private residences of the purchasers. With the large influx of a previously illegal substance that has a very distinctive smell, Associations are questioning what they can do to balance the rights of owners to use the newly legal substance with the rights of those owners that do not want to partake, but also do not want the smell permeating their own unit.

In responding to the questions being asked, depending upon the area in question, some answers are easy whereas others not so much. Starting with the easy answers, in most cases, the Association, through the Board of Directors, has the authority, without further owner approval, to regulate the use of the Common Elements. This includes, to some extent, the limited common elements. This means, the Association can adopt uniform rules regulating the smoking of marijuana in parking lots and landscaped areas owned by the Association. The Association may also regulate the smoking of marijuana on common element balconies and decks which are owned by the Association or are not otherwise part of the individual units. This authority, along with the provisions of the Colorado Clean Air Act which prohibits any smoking in indoor hallways, stair cases and elevators, the only place left for a marijuana user to enjoy their recently purchased weed, is in their units.

Absent a specific amendment to the Association's Declaration to prohibit smoking of marijuana within a unit, the Association has very limited right or ability to regulate the consumption of a legal product on or in the private property of an owner. Courts have been very reluctant to permit an Association to regulate legal behavior in a unit without specific authority in the Association's Declaration. This includes use of the Association's existing nuisance provision, while this provision would seem to permit the Association to regulate a nuisance odor emanating from one unit from entering into another unit. However, the adage one person's nuisance is another person's treasure applies. Just because the smell may annoy one owner, as the conduct is legal, without more than a mere annoyance, courts have refrained from extending the force of law to curb the legal behavior.

As this new world continues to unfold, Associations, Owners, Board Members, Property Owners as well as the courts will find their way through the haze of smoke over the Rockies.

See the original article and responses at:

<http://www.hindmansanchez.com/blog/community-associations-miscellaneous/weedman-cometh-association-near-you/>