

Legal Connections



POWERED BY THE COLUMBUS BAR ASSOCIATION

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"Honor the legacy of Dr. Martin Luther King, Jr. through compassion and justice for all people."



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A MIXED BAG: MEDICAL MARIJUANA & COMMERCIAL REAL ESTATE

In September 2016, Ohio established the Medical Marijuana Control Program by the passage of House Bill 523 (HB 523).

The legalization of medical marijuana affects many property owners. The passage of HB 523 places specific demands on property owners for authorized spaces to cultivate, process and dispense medical marijuana.

Ohio's legislation initially authorized a maximum of 336,000 square feet for the cultivation of marijuana. By comparison, Denver, Colorado has 4.2 million square feet of cultivation area, including the cultivation of marijuana for recreational use. Although Ohio's authorized use of marijuana is only for medicinal purposes, it appears if the initial cultivation area in Ohio will need to be expanded to accommodate Ohio's medical marijuana market.

I have received several calls from property owners asking, "should I lease space in my



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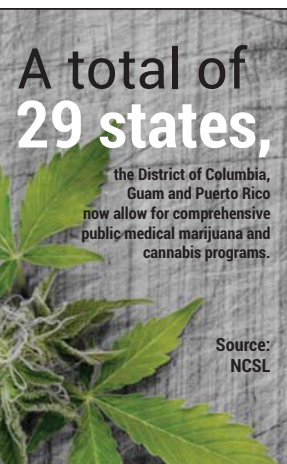
shopping center to a dispensary?" As with many legal issues, that answer depends on the circumstances.

In a discussion with a property owner on this topic, the property owner struggled with the stigma of marijuana dispensaries and the effect such businesses would have on other tenants in the shopping center. In this scenario, I would classify the shopping center as "Class B" space. In this particular shopping center, there is an insurance agency, restaurants and a "mix bag" of other retail/office use in the shopping center. Some of the issues we discussed included:

1. Increased traffic within the center and associated parking demands;
2. Tenant's payment of rent in cash, as banks are not currently providing banking accounts for businesses involved in cultivating, processing and dispensing marijuana because marijuana is illegal under Federal law;

3. Because marijuana is illegal under Federal law, it is subject to forfeiture and seizure and exposes the property owner not just the tenant to potential liability;
4. The costs of tenant improvements to build-out the tenant's space in compliance with the State guidelines;
5. Controlling the smell of marijuana;
6. The effect of the potential illegal use would have on the landowner's insurance and/or potential default under its loan; and
7. Whether the tenant would be able to obtain insurance on its product. If a tenant cannot obtain insurance on the actual product it is selling (i.e. marijuana) and a fire destroys the premises, the ability to pay rent goes "up in smoke."

On January 4, U.S. Attorney General Jeffrey Sessions issued a statement rescinding an Obama-era policy of non-interference with states that have legalized marijuana, which would allow federal prosecutors to determine which cases to prosecute.



Source:
NCSL

Needless to say, it will be very interesting to watch this process unfold in the coming years. ■

Interested in learning more about Real Estate? • Register for the Real Property Law Institute on February 1 & 2: cbalaw.org

REACTING IN AN IDENTITY THEFT CRISIS

Identity theft affects 17.6 million people in the United States each year, at a cost of \$15.4 billion in 2014. Eighty-six percent of identity theft victims experienced the fraudulent use of existing account information, such as credit card or bank account information. Most victims did not know how the offender obtained their information.

The Fair Credit Reporting act (FCRA) sets out rights for victims of identity theft, and responsibilities for businesses. Businesses are required to provide identity theft victims with copies of records relating to the theft, and are



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required to do so within 30 days, free of charge and without a subpoena. Businesses who do not comply could be subject to an administrative enforcement action by the FTC or a State Attorney General, but cannot be sued by a consumer for damages for willful or negligent noncompliance. The court can, however, impose penalties of up to \$2,500 per violation. So, it's good practice

to make sure you have policies in place for responding to victims' requests for records.

First, know what types of records you have. Do you have credit applications, account statements, receipts, notes?

You need to provide all types of records related to the identity theft. Also, understand that you cannot deny a victim's request because you previously provided the records to the victim. Finally, you may ask for proof of identity, such as a copy of a government-issued identification, before turning over the records. You may also ask for proof of a claim of identity theft, such as a police report or an FTC Identity Theft Report.

If you're ever stuck in the crosshairs of an identity theft crisis, consult a local business attorney. ■

EDUCATION & EVENTS

Tuesday, Jan 30 • 9 a.m. – 12:15 p.m.
2017 OVI Seminar: Part Two
Video Replay; 3.0 CLE & 1.0 Professional Conduct Hours

Thursday & Friday, Feb 1 – 2
2018 Real Property Institute
10.5 CLE & 2.0 Professional Conduct Hours

Tuesday, Feb 1 • 12 – 1 p.m.
Community Cultural Conversations
Free & Open to the Public

Thursday, Feb 8 • 12 – 1:30 p.m.
Technology PREP: Cybersecurity Boot Camp
1.5 CLE/NLT Hours

Saturday, Feb 10 • 9 – 10 a.m.
Notary Public: Seminar & Test

All classes listed are offered at the Columbus Bar Associations offices, 175 S. Third St. Ste. 1100. To register, call 614-221-4112 or enroll online at www.cbalaw.org.

6th Annual

Martin Luther King, Jr.
Memorial Civil Rights
Symposium

January 26, 2018 @ 9:00am Columbus Bar Association

50 YEARS LATER: The New Civil Rights Movement

Join us for compelling discussions on the evolution of the Civil Rights Movement. Learn how our current Supreme Court docket will shape our future.

Visit www.cbalaw.org or call (614) 221-4112 to register for this program.

