

## Marijuana- What is a Landlord to do?

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## Oregon- Current State of Law

- Criminal
  - Manufacture: Class A felony
  - Delivery:
    - Ranges from class A felony to violation depending on amount and if for consideration
  - Possession:
    - Class B felony if over one ounce
    - Violation if less than one ounce

## Oregon- Current State of Law

- Medical
  - Cardholder may possess up to six mature plants, 18 immature plants and 24 ounces of usable marijuana
  - Use must be in a private (not public) location
  - Cardholder may designate a care provider and/or grower who can cultivate for up to four cardholders

## Oregon- Current State of Law

- Fair Housing/ Employment
  - Emerald Steel Fabricators v. BOLI (2010)
    - Held that federal law preempts state law in employment area on reasonable accommodation of medical marijuana
  - BOLI Position
    - Federal preemption of medical marijuana law so BOLI will not investigate claims of discrimination based on medical marijuana

## Washington- Current State of the Law

- Criminal
  - Legal for person 21 or older to possess:
    - One ounce or useable marijuana
    - 16 ounces of marijuana-infused product in solid form
    - 72 ounces of marijuana-infused product in liquid form
  - Cannot open a package containing, or consume, useable marijuana or marijuana-infused products “in view of the general public.”

## Washington- Current State of the Law

- Criminal
  - Liquor control board will license
    - Producers
    - Processors
    - Retailers

## Washington- Current State of the Law

- Medical Use of Marijuana Act
  - Cardholder may possess up to 15 plants and 24 ounces of usable marijuana
  - Use must be in a private (not public) location
  - Cardholder may designate a grower who can have twice the amounts listed above

## Washington- Current State of the Law

- Fair Housing/ Employment
  - Roe v. Teletech Customer Care Management (2011)
    - Held not a reasonable request in employment to ask employer to accommodate use of controlled substance that violates federal law
  - Human Rights Department position
    - Applies same analysis to fair housing requests for reasonable accommodation- not a reasonable request

## Possible Approaches

- Both Oregon and Washington
  - Prohibit possession and use of any drugs illegal under Federal or State law
    - Current version of Multifamily NW rental Agreement

## Possible Approaches

- Allow drugs to extent legal under state law
  - Oregon
    - Medical
  - Washington
    - Use only in unit

## Possible Approaches

- Allow any non-smoking use of marijuana
  - Oregon
    - Non-smoking ingestion by medical marijuana cardholders
  - Washington
    - Use by anyone 21 or over in their unit
  - Vaporization?

## Producing & Processing

- Oregon
  - By medical card holder
    - Damage to the unit
  - By others
    - Not a disability so no reasonable accommodation
- Washington
  - Must be licensed
  - Unlikely State will allow licensed producing/processing in residential units

## What will the courts do?

- State law applies to evictions
  - Material non-compliance with rental agreement
  - Subsidized tenants
    - Federal programs