

I appreciate the opportunity to be a member of this panel today. I'm a real estate and land use lawyer and I represent one of the four licensed growers in Connecticut. You can learn something every day in this rapidly evolving area of the law and I'm pleased ABA has taken the initiative to produce this webinar for the benefit of all of us.

Jack Minan did a great job in starting us off and at this point I only want to highlight what he said by reiterating that the fundamental driver behind this highly Balkanized system of state by state planning and regulation of medical cannabis is that cannabis remains a schedule 1 drug under the Controlled Substances Act because the federal government has determined that it has no medical use. It is in the same category as crystal meth, LSD and heroin among others. Even if the federal government were to make cannabis a schedule 2 drug, putting it with pharmaceuticals like morphine and codeine, we would still be left with all of the problems of state and local planning and regulation and many of the real estate issues that we address at this point.

In many respects we are dealing with what our former Secretary of Defense, Donald Rumsfeld, characterized as a field of known unknowns and unknown unknowns.

Fundamentally, as I noted, it remains illegal under federal law to cultivate, possess, distribute, and use cannabis. Consequently, regardless what the states do in terms of legalization, and what policies the federal government chooses to follow in terms of nonenforcement some imperatives remain. For example, if you are the dependent of a military service member living in base housing and you have been prescribed cannabis legally under state law for treatment of some form of say

wasting disease, as a matter of federal law you can't have that drug in your possession on the base. The same problem arises under the drug-free school zone workplace laws as exemplified by one notorious case of an Iraq war veteran suffering from PTSD who was prescribed medical cannabis under state law but could not possess and use it while on his college campus.

Let's do some issue spotting. Heads up. There are numerous issues affecting owners, landlords, and lending institutions, as Julie just so ably covered, when it comes to real estate. This is a typical lease addendum prohibiting violation of federal law as to drug-related illegal activity. By its very terms it prohibits someone who lawfully possesses and uses medical cannabis under state law from possessing and using it under the terms of the lease. This creates a nightmare of enforcement, risks for owners and landlords, and intractable tenant relationship problems.

Here's a practice pointer: Get proactive and pull out all those old leases and their boilerplate addenda, you haven't looked at them in years, and make sure they make sense in today's wild world of cannabis.

But let's look at the other side, what about the landlord who wants to protect herself from a grow operation or dispensary as a potential tenant? Here's just one example of the type of lease addendum or provision that you might want to consider in some form or another. It makes clear that regardless of what the state law is that the cultivation, dispensing, and possession of cannabis on the property is not permitted.

There are so many other issues landlords must consider with regard to managing real estate and minimizing their risk. They include the need to know what your insurance covers or doesn't cover, the requirement for extra security at the property, mold in grow operations, and what about excessive usage of utilities especially electricity -- grow operations use lots of electricity. Under your state law is it possible that having a cannabis tenant is a "material fact" for which you must make disclosure. It does appear that there is no legal obligation however to permit a tenant or patient to possess and use marijuana on a property. They don't usually fall under protections of the Americans with Disabilities Act and the Fair Housing Amendments Act and therefore it does not appear, at least in the current state of law, that there is any requirement to provide a so-called "reasonable accommodation."

What do you do with a tenant who requests a reasonable accommodation? You can release them from the lease without penalty or may wish to allow them to remain but to provide for certain mitigation measures to avoid adversely affecting other tenants.

Lots of people come and go from dispensaries. Do you need to provide for additional parking? How will you regulate this traffic? What is your risk with regard to claims of quiet enjoyment by other tenants. The law is not settled with regard to cannabis by any means and sometimes landlords are going to be left with the dilemma of how to protect the right to quiet enjoyment of other tenants while respecting the obligations of good faith. Another practice pointer here: you need to address the issue of potential negligent behavior by the cannabis tenant in your leases.

The typical ways of minimizing liability must be considered in business planning in terms of providing some corporate insulation and in tax planning that comprehends the problems inherent in dealing with cannabis.

Beyond the landlord issues are those of concern to the buyer and tenant. They must take special care to review covenants and restrictions in the deed and in the lease and to incorporate affirmative protections as necessary.

I point out here that need for special attention in the real estate transaction to banking issues, but Julie has done a fabulous job in addressing those.

Finally, there are just so many planning and land-use regulatory issues involved with both medical marijuana and recreational use. Jack Minan and I are working on a book for the ABA to address these in detail, but take a look at the ones that I have highlighted here for you. Will you treat a cannabis use like adult entertainment and require separation or distancing from other uses? Will you limit, as some states and many municipalities have, the number of grow operations and dispensaries? Can dispensing occur at a grow site and can patients take their prescribed cannabis at the dispensary or nearby? Security has been a serious issue given the value of the product and the fact that there is often a lot of cash around. Where will allow such uses? Will they be relegated to industrial and commercial areas or allowed in other districts? Let me conclude with this. If you want to see the most comprehensive and detailed regulations that I know of in the country, go to Los Angeles. With that, I turn it over to you, Katherine to talk about the very important and difficult employment law issues.