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***FAIR HOUSING:
IT'S THE LAW!***

A nonprofit organization protecting and advancing the legal rights of people with mental disabilities.

Fair Housing Tip of the Month

Tip #4 – Medical Marijuana

TENANT: “*I’ve used medical marijuana in my apartment building for 5 years and it’s never been a problem. Today, the landlord put out a notice to remind tenants that any illegal drug use by tenants or their guests will result in eviction. I know the landlord only did this to try to address concerns about increased illegal drug activity around the neighborhood. Does this rule apply to me if I only use marijuana to help with my medical condition?*”

The law says: There is a conflict between federal law and California state law. California legalized medical marijuana several years ago and then, more recently, legalized the use of marijuana for recreational purposes. However, federal law still makes it a federal crime to use marijuana, even if it is for a medical purpose and even if a state has legalized it. Because marijuana use is still a federal crime, landlords who have a rule against marijuana use in their building have the option to grant an accommodation for medical marijuana, but are not required by fair housing laws to do so. However, a landlord cannot use the federal law criminalizing marijuana as a pretext for denying an accommodation or evicting tenants on the basis of a protected characteristic. For example, it would violate fair housing laws for a landlord to evict tenants with disabilities for using marijuana, while ignoring marijuana use by other tenants.

Marijuana use is still prohibited in federally-subsidized housing, like public housing and Section 8. Therefore, new applicants to such housing will be denied if they use marijuana. However, in states where medical marijuana has been legalized under state law, public housing agencies (PHA), which operate the public housing and Section 8 programs, can adopt their own policy to decide on a case-by-case basis whether to evict or terminate housing assistance to already existing residents based on their use of medical marijuana.

What to do: If your landlord is threatening to evict you because of your use of medical marijuana, you should still request a reasonable accommodation for the landlord to make an exception for you because your use is for reasons related to a disability. Some landlords may be willing to grant this accommodation, particularly if the tenant’s use will not interfere with the rights of others. However, if you suspect the landlord’s real reason for trying to evict you is based on a protected characteristic, you can file a housing discrimination complaint on that basis.

If you are already an existing resident of federally-subsidized housing, you should find out your PHA’s policy on medical marijuana use.

Individuals who believe they have experienced housing discrimination may file a complaint with a local fair housing agency, the California Department of Fair Employment and Housing (DFEH), or the U.S. Department of Housing and Urban Development (HUD).

To file a complaint with HUD, call 800-669-9777, or visit www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process

To file a complaint with DFEH, call 800-884-1684, or visit www.dfeh.ca.gov/complaint-process/file-a-complaint/

Fair housing laws prohibit discrimination in housing based on the following characteristics: Race, religion, national origin, color, sex, marital status*, ancestry*, familial status, disability, sexual orientation*, source of income.*

*Indicates a prohibited basis for discrimination in California, but not under federal law.

Disclaimer: The Fair Housing Tip of the Month is for educational purposes only and does not constitute legal advice. If you have a legal question, please contact MHAS, your local fair housing council or another attorney of your choice.

The Fair Housing Tip of the Month is funded by a grant from HUD’s Fair Housing Initiatives Program (Grant #FEO1180041-01-00).