

Frequently Asked Questions for Property Owners: Asset Forfeiture and Medical Marijuana

Why should I rent space to a dispensing collective?

Dispensing collectives provide an incredibly important service both to medical marijuana patients and to the community at large, which has an interest in caring for its sick and dying members. Without dispensing collectives, many of California's almost 300,000 medical marijuana patients would have no way to get their legally sanctioned medicine and would be left without relief. Renting facility space to dispensing collectives also assists in implementing both California law (Prop 215) and the will of the people (a 2002 Time/CNN poll found that 80% of Americans support safe and legal access to medical marijuana).

What are my risks as a landlord who rents to a dispensing collective?

The major risk is that, if the federal government chooses to, it can raid the dispensing collective facility, and at some point, it could initiate asset forfeiture proceedings or criminally prosecute even the landlords of such facilities. Medical marijuana is legal in twelve states, but federal law still prohibits its use under any circumstances. Until federal law changes, people who use or provide medical cannabis are at risk of federal prosecution – even if their conduct is legal under state law and sanctioned by local government.

However, the risk of asset forfeiture proceedings against a landlord who is not the owner/operator of the facility is remote and highly improbable. Although the Drug Enforcement Administration's latest intimidation tactic has resulted in the dissemination of nearly 300 threatening letters to landlords who rent to dispensing collectives throughout California (in Los Angeles, Santa Barbara, Santa Cruz, San Mateo, San Francisco, Alameda, Marin, Sacramento, and Mendocino Counties), the federal government has yet to follow through on any of its threats in the wake of these letters, as it lacks the capacity to do so. In fact, in the 11 years in the DEA's War on Medical Marijuana, **ASA is only aware of one (1) instance where the federal government has been even partially successful in an asset forfeiture case against a non-owner/operator landlord** (In that case, after the defendant raised a lack of proportionality defense, the government agreed to cease its attempt to seize the property in exchange for defendant's payment of a fine).

What is asset forfeiture?

Asset forfeiture refers to a civil or criminal action in which the state or federal government confiscates assets that were acquired with proceeds of a criminal act or were used to

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commit a criminal act. Congress and state legislatures created asset forfeiture laws to target large-scale narcotics trafficking operations, but they are most often used against small-scale offenders. Asset forfeiture laws generate a tremendous financial windfall for law enforcement agencies, and widespread abuse of these statutes led to federal reform measures in 2000.

What would this have to do with my property?

For the last six months, the DEA has sent notices to property owners across the state informing the owners that they may face criminal prosecution or asset forfeiture for knowingly renting their property to a medical cannabis facility. The notices do not indicate that any property owner is being charged with a crime or is now subject to asset forfeiture. As these notices do not initiate any particular action against the property owner, there is **no requirement** that the property owner respond to the notice or take any action.

Is this legal?

Yes. Although asset forfeiture charges are controversial, they have been upheld in court. The US Attorney's office can file criminal charges or initiate asset forfeiture charges if it can prove that a landlord knew that the actions of the tenant were illegal and did not take reasonable measures to stop those actions. Only the US Attorney can file these charges. The DEA notices do not indicate that any charges have been filed.

Why is this happening now?

The DEA has been active in trying to close and intimidate medical marijuana facilities in states where it is legal. Until now, the DEA's primary tool to do this was to raid a handful of facilities and confiscate the medical marijuana inside. Few of these raids resulted in criminal prosecutions, and most raided facilities simply reopened. ***Sending notices to landlords is a cynical new tactic designed to intimidate property owners into evicting the tenants without the cost and inevitable public backlash of raiding facilities. This tactic is also meant to discourage landlords from renting to collectives at all, in an effort to deny safe access to patients.***

Does the US Attorney intend to prosecute property owners?

It is highly doubtful. The US Attorney's office has the authority to prosecute property owners, but there is no indication as to whether or not they intend to do so. There has so far been no evidence of the US Attorney moving to prosecute a property owner as a result of these threatening letters. It is important to remember that the notices recently sent to landlords are from the DEA and give no indication whatsoever that the US Attorney's office will initiate criminal or civil proceeding.

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What should a landlord do upon receiving a notice?

Property owners who receive a notice from the DEA have not been charged with a crime. Nevertheless, the landlord may wish to consult with his or her attorney or an asset forfeiture specialist about a landlord's rights and responsibilities under the law. Lawyers will likely advise you not to make any statement to the DEA indicating knowledge of or agreement with a tenant engaged in illegal activity. Doing so may mean giving up important rights in the unlikely event of later charges. There is no need to act immediately if one receives a notice, and there may never be a need to act at all. Any legal action that might be initiated would take months to unfold, so a landlord should take time to consider the issue, talk with the tenant, before making up his or her mind. Always remember that the DEA is trying to intimidate and manipulate landlords into evicting these tenants as soon as possible. Landlords do not have to succumb to this pressure without undue consideration of their own financial interest in maintaining the lease and their rights as a property owner.

What if a landlord was unaware of the tenant's actions?

Federal asset forfeiture laws provide for an "innocent owner" defense for property owners who were unaware of the illegal activity and subsequently take reasonable steps to stop the activity. In some instances, this may involve initiating eviction procedures or requiring tenants to refrain from violating the law. A landlord should discuss how the innocent owner defense applies with his or her lawyer or asset forfeiture specialist.

Where can landlords get help on this issue?

Americans for Safe Access (ASA) is working in Congress and throughout California to ensure that landlords' rights are protected and that medical marijuana facilities can remain open. Please contact our Oakland office at 510-251-1856 if you have further questions so that we can keep you posted about our work on this topic. ASA is the nation's largest organization of patients, medical professionals, scientists and concerned citizens promoting safe and legal access to marijuana for therapeutic use and research. We have already won important court victories on medical marijuana issues and are leading the campaign to change federal medical marijuana laws by 2010. Visit AmericansForSafeAccess.org for more information about ASA.

You can find a list of lawyers who may be able to advise you about asset forfeiture issues by viewing the Attorney's Directory published by Forfeiture Endangers Americans Rights (FEAR) at www.FEAR.org (This organization operates independently of ASA).

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