

Rydstrom Law

Don't Sign That Commercial Cannabis Lease Without Using the Smart Cannabis Addendum™!

Only Work with the Best Real Estate Brokers & Cannabis Tax Preparers!

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New Cannabis Laws Make Cannabis Businesses Legal: The new California laws made medical and recreational marijuana use legal, effective January 1, 2018. That's what Cannabis Tenants have been waiting for. Cannabis Tenants need to lease a commercial location before applying for the new licenses available in California. Tenants are now rushing to sign commercial leases. Tenants have two choices: Go to the very best commercial brokers or just wing-it! The best commercial brokers will find the best property available on the market and they will also advise Tenants to (a) not use a dual-broker arrangement [(See, e.g., *Vice v. Thacker* (1947) 30 Cal.2d 84, 90 [[W]here an agent has assumed to act in a double capacity. . . may void the transaction.)] and (b) to hire a commercial lease attorney to safeguard them in this new and risky Cannabis business.

New Industry Risks: New industries require new laws and new relationships which often conflict. At this time, the Federal government and the state governments ("California") are in a state of conflict, and during such periods, it is advisable to take every precaution to avoid the pitfalls of conflicting law and the lack of safe harbor best practices. In this environment, the best commercial real estate brokers understand the inherent risks to them and their clients, and advise their clients to hire an attorney to ensure that the transaction is made knowingly as safe as possible for the client's interests.

Smart Cannabis Addendum™: But what can an attorney do to protect interests which conflict with the federal government? An attorney along with the help of a commercial real estate broker can fashion an Addendum which establishes the lawful and factual foundation upon which a client may legally enter the lease safely, and in cases of the tenant who is a prospective Cannabis licensee, ensure that the terms and conditions do not violate the vast new Cannabis licensing regulations proposed November 17, 2017 and Cannabis tax regulations proposed November 19, 2017.

Commercial Real Estate Practices Conflict with Cannabis Regulations: Common commercial real estate best practices conflict with the new acceptable Cannabis regulations (MCRSA and AUMA ("MAUCRSA")). AUMA stands for The Adult Use of Marijuana Act (AUMA) (Proposition 64), and MCRSA stands for the Medical Cannabis Regulations and Safety Act. Combined they stand for the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRS). A lease which violates the many traps contained therein will be vulnerable to attack by the Landlord and Tenant and or by the governments (federal, state and local). Attack of a lease, which is a written contract in California, may include rendering it void or subject it to rescission - with all monies paid on the lease, now due and owing to the other side! That can be very costly. Additionally, the licensee may lose the license and or the landlord and tenant may become

de-facto partners by ownership, control or access. This is a very serious matter. But it can be solved by the smart cannabis Addendum.

Conflicts Which Must Be Addressed & Knowingly Waived by Client: The commercial real estate broker must know the conflicting issues and obtain a knowing waiver from client. The broker must also know how to steer around the license and regulation traps of the tenant Cannabis licensee. For example, is the tenant seeking licensure for Cultivation, Manufacturing, Distribution, Testing, Dispensary, or Transportation, and any variations including the Microbusiness license. If these traps are not avoided, the tenant (and or landlord) may be injured or damaged in the process. Some of the topics which must be addressed in the Addendum (as well as the body of the agreement) include but are not limited to:

1. What are the new proper entity structures available for Cannabis tenants;
2. What percentage ownership/control require licensure and Tenant/Landlord approval;
3. How can we deconflict California and Federal law, if at all;
4. How can we address Nuisance Breach/Defaults;
5. How can we address Illegal Unlawful Breach/Defaults;
6. How can we address Unlawful Use Breach/Defaults;
7. How can we address compliance with local & California law;
8. Should we, and to what extent, have a Tenant share in pass-thrus/CAM Charges;
9. Should Landlord share in profits of Tenant;
10. How much control may Landlord retain;
11. Should there be more than one licensee per parcel;
12. How far away must premises be from schools and parks;
13. Must premises be in an Industrial location;
14. Should Landlord retain or be granted access for repairs and inspections;
15. Should Landlord or Tenant agree to Work Lists or Build-outs;
16. Should Work Lists or Build-outs be conditioned on compliance with Use;
17. Should Tenant and Landlord certify compliance with Local and State Laws (conditional use permits);
18. Should Landlord and Tenant agree to select law and facts including protections in bankruptcy;
19. Are there *legal* methods to protect wealth and retirement cash flow from the Cannabis industry?

Cannabis Tax Practices Differ from Common California Business Standards: Art Huerta says: general California business tax practice requires reporting all income for all activities whether legal or illegal under IRC 61, with ordinary and necessary expenses offsetting such income under IRC 162. However, with a Cannabis tax return, pursuant to IRC 280E, the client is not permitted to deduct as IRC 162 expense items that which are realized from illegal activities including Cannabis, as the federal government unlike California, regard same as illegal as a controlled substance. Patty Huerta says: that some cases have allowed such expenses but *usually for separated activities* which are not considered illegal, for example caregiving or paraphernalia, but not from the sales of cannabis. Art also notes that deductions are generally allowed for the Cost of Goods Sold (COGS), but impeccable records must be kept.

Art and Patty say: 280E is the elephant in the room regarding California Cannabis taxation practices. Special care and practices are required for Cannabis tax preparation. Art and Patty run **Mar Vista Services** in Santa Ana, California and offer several services including tax and document preparation, and related government filing services. You can reach them at 714-541-2013 or Marvistaservices902@yahoo.com

Hire an Attorney Experienced in Real Estate, Asset Protection and also Litigation: New industry conflicts require experienced attorneys who have led the way during times of conflicting laws. Commercial real estate and litigation experience is necessary to help solve the conflicts facing the Cannabis Tenant and Landlord in California at this time. Richard Rydstrom, Esq. has a record of leading the way through conflicting times nationally and in California. Richard was Chairman of CMIS Mortgage Coalition (DC) reconciling diverse disparate interests of the banks and the consumer borrowers in developing neutral solutions to the Great Recession of 2007, including the HAMP mortgage modification program and the commercial tax modification regulations with or for the U.S. Treasury and the foreclosure and consumer interest groups. When the 110th Congress wanted a neutral analysis and congressional statement regarding the problems and solutions of the pre Great Recession, they chose Mr. Rydstrom. When the banks and consumer groups wanted a formal explanation and speech regarding the first HAMP Mortgage Modification Program outline from President Obama and the U.S. Treasury, they chose Mr. Rydstrom. Mr. Rydstrom also served as a settlement officer for all California Superior Courts in Los Angeles. Richard is also a member of the Mediator Registry created when Los Angeles lost its funding to settle lawsuits in its VSO Program. Mr. Rydstrom has been quoted or published by: United States Congress, The Los Angeles Times, USA Today Magazine, MortgageOrb, Mortgage Daily News, Orange County Register, Tax.org, National Business Institute, CMISfocus eMagazine, Pepperdine University (Law, Business Journal), AIR Commercial Real Estate Association, Constructor Magazine for the AGC Association, Society of California Accountants, various Landlords and Real Estate Owners associations and others. Richard is a frequent keynote speaker, moderator, panelist, and CLE instructor for National Business Institute for lawyers, judges, banks, and servicers.

Superb Attorney Rating by AVVO: With more than 27 years of legal experience, Richard Rydstrom is rated Superb, 10 out of 10 by Avvo – the world’s largest rating directory of lawyers. He has vast experience representing commercial tenants and landlords, plaintiffs, defendants, business owners, and consumers.



Free Initial Consultation: Attorney Richard Rydstrom is accepting select clients for representation in the new California Cannabis industry. Richard is available at 1-877-946-4968 or Email direct: (procouncil2017@gmail.com); Websites: (www.RydstromLaw.com) <http://calicannabislawyer.com>; www.SmartCannabisPlan.com

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