

Medical Marijuana Lease Could Result in Charges

By: Don Harris, Prosecuting Attorney, Montana Board of Realty Regulation

On May 21, 2012, Jonathan Janetski of Whitefish, Montana, was sentenced to federal prison for a year in connection with his plea of guilty to federal charges of maintaining drug-involved premises. Such a conviction would not ordinarily draw the attention of the real estate community or the Board of Realty Regulation; however, Mr. Janetski's case is apparently the first of its kind in the United States and should concern anyone in the business of leasing real property. This article will describe the drug-involved premises offense, the facts that led to Janetski's conviction, and the relevance of the conviction for all real estate licensees.

Governing Law Under 21 U.S.C. § 856(a), it is unlawful to: "(1) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance; [or] (2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance." Marijuana is a controlled substance according to federal law. 21 U.S.C. § 812.

Since voters approved an initiative in 2004, Montana law has recognized certain legal medical uses of marijuana (Mont. Code Ann. § 50-46-301) and provided for its use and legal distribution, (Mont. Code Ann. § 50-46-319). Although limited use and distribution of marijuana is permitted under the Montana Medical Marijuana Act (MMA), federal law does not provide an exemption from the Controlled Substances Act for medical uses of marijuana. Therefore, as pointed out in a memorandum sent to all United States Attorneys by the Department of Justice, "[p]ersons who are in the business of cultivating, selling or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law."

Facts

Molly Priddy in the Flathead Beacon noted that Mr. Janetski is a general contractor and the owner of a commercial building in Kalispell. In September 2010, he rented his building to the owners of a medical marijuana business which provided marijuana to patients with medical marijuana cards under the MMA. According to Priddy, Janetski "had no part in the growing or selling of the drug,"; however, he "use[d] his skills as a general contractor to make modifications to the electrical system to fit his tenants' needs." Mr. Matthew Frank of the Missoula Independent noted in an article on March 29, 2012, that Mr. Janetski reportedly believed his tenants "would eventually buy the building."

On March 14, 2011, federal law enforcement agents executed a search warrant at the location where Janetski's tenants ran their operation, and the agents discovered and confiscated approximately 718 marijuana plants.

As a result of the federal investigation, Mr. Janetski was charged with conspiracy to manufacture marijuana, conspiracy to distribute marijuana, possession with intent to distribute marijuana, and maintaining drug-involved premises. In December 2011, he pled guilty to the premises charge, and the United States Attorney agreed to dismiss the remaining charges. Janetski was convicted of maintaining a drug-involved premises for leasing his building to the medical marijuana business in March 2012, and on May 21, 2012, United States District Judge Donald Molloy sentenced him to twelve months and one day in prison, ordered him to pay \$100, and added three years of supervised release to the end of his prison term.

Relevance to Licensees

Mr. Janetski's situation should serve as a cautionary tale to any licensee who would consider leasing a client's property to a medical marijuana business. While the extent of Janetski's involvement in the marijuana business was not clear, his attorney insisted that he was not involved in growing or selling the drug. Thus, his culpability for the premises crime stemmed solely from his activity as a landlord who knowingly leased property to a business that distributed a controlled substance. A real estate licensee should be advised that he or she could be held criminally responsible for maintaining a drug-involved premises if the licensee were to "manage or control any place, whether permanently or temporarily, either as an owner, lessee, [or] agent. . .

and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of manufacturing, storing, distributing, or using a controlled substance." 21 U.S.C. §856(a)(2). The broad scope of this statute would encompass the situation wherein a licensee, acting as an agent for a property owner, knowingly leases a place where marijuana is grown, stored, supplied, or used.

In addition, the license of a broker, salesperson, or property manager who commits the crime of maintaining a drug-involved premises could also be disciplined for unprofessional conduct, including but not limited to being charged with the following violations of statute or rule:

- Montana Code Annotated section 37-1-316(1) – The following is unprofessional conduct for a licensee or license applicant governed by this part: conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending.
- Montana Code Annotated section 37-1-316(18) – The following is unprofessional conduct for a licensee or license applicant governed by this part: . . . conduct that does not meet the generally accepted standards of practice.
- Administrative Rule of Montana 24.210.828(3) – In addition to all other provisions contained in the statutes and rules administered by the board, the following are considered unprofessional conduct:

. . . (b) violating laws and rules affecting any transaction in which the licensee acts.

Conclusion

A licensee who knowingly leases property to a tenant who uses the space to grow, make, distribute, or use controlled substances in violation of federal law could be disciplined for unprofessional conduct, in addition to being charged with a federal crime. Specifically, a broker, salesperson, or property manager who rents to a medical marijuana business may be in violation of laws regulating real estate professionals, whether or not this activity is ostensibly permitted under Montana's Medical Marijuana Act