

Real Estate Law Says That Legality Doesn't Necessarily Mean It's "Allowed"

by Isaac Benmergui, Esq on August 27, 2014



Why do you think many restaurants don't allow smokers? Even those restaurants allowing smoking would have specific smoking sections permitted, but *that's it*. Other than that, bringing in something that could disturb others would be at the discretion of the owner of the establishment, regardless of whether or not the disturbance, whatever it may be, is legal. Case in point: we have this subject of marijuana on our plate.

More and more states have jumped on the bandwagon to legalize pot one way or another, but that doesn't mean homeowners' associations can't stipulate that you must *not* smoke or even grow the plant on your premises, even if you do have a supposed 'license.' It's perfectly within the realm of real estate law for an association to simply say: "that's not okay, and we don't allow it." I know that would get many marijuana smokers up in a rage over that after showing that they can *legally* smoke a joint wherever they like, but let's face the facts: even associations would have specific 'rules' on what kind of colors you can use to paint your house!

As it stands, 23 states have some form of legalization. That doesn't stop associations from putting their feet down, because the fact is pot does stink a bit, and it can be a disturbance to neighbors. It's infectious. Imagine that stuff wafting over to playgrounds and porches. The kids playing wouldn't be playing much in a matter of minutes – just lying down, doing nothing, and everyone would be wondering what was wrong.

It's a practicality issue. Even behind closed doors, remnants of marijuana could easily escape, and it's just good form to not ever smoke in your home if the association says so. Thankfully, though, if you were to put your own foot down and say, "no, I will NOT let go of my POT," you most likely would face nothing more than a lawsuit, and not a conviction. A pricey lawsuit, but a lawsuit, nonetheless.

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