

How Medical Marijuana Can Threaten Access to Public Housing

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Advising the Disadvantaged Client
Minnesota CLE
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1. Biography

<http://povertylaw.homestead.com/Biolarrymcdonough.html>
http://www.dorsey.com/McDonough_Larry/

2. General Housing Resources

Poverty Law Website

<http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html>

Housing Law Links

<http://povertylaw.homestead.com/files/Reading/links.htm>

Residential Eviction Defense and Tenant Claims in Minnesota

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm

Pro Justice MN

<http://www.projusticemn.org/>

Manual, Forms and Scanned Unreported Decisions Filed under Library, Housing, Eviction Defense

Housing Fact Sheets

<http://www.lawhelpmn.org/issues/housing>

3. Public and Subsidized Housing Resources

a. Sections from Residential Eviction Defense and Tenant Claims in Minnesota

Program Descriptions

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_30

Comparison Tenancies Table

<http://povertylaw.homestead.com/files/Reading/a0atenancytable.pdf>

Notice and Grievance Processes

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_240

Grounds for Eviction

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_280

Federal Criminal Activity Claims

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_289

State Unlawful Activity Claims

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_312

Preemption

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_11

b. Eviction Answers for Public and Subsidized Housing Evictions

Answers A3-A8

http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html#anchor_10

In Forma Pauperis Forms

<http://povertylaw.homestead.com/IFP.html>

c. National Resources

HUD Housing Programs: Tenants' Rights (National Housing Law Project, 5th ed. 2018), also known as the Green Book

Hard Copy

<https://www.nhlp.org/products/green-book/>

Subscription Digital Version

<https://nhlp-library.nclc.org/user>

4. Marijuana Laws

a. Federal

Schedule I Controlled Substance: 21 U.S.C. § 812

<https://www.law.cornell.edu/uscode/text/21/812>

Possession Misdemeanor: 21 U.S.C. § 844 - imprisonment of not more than 1 year and minimum fine of \$1,000

<https://www.law.cornell.edu/uscode/text/21/844>

Civil penalty for possession of small amount: 21 U.S.C. § 844a - \$10,000

<https://www.law.cornell.edu/uscode/text/21/844a>

Manufacturing or Distribution Felony: 21 U.S.C. § 841 – range from 5 years imprisonment and fine of \$ 250,000 up to life imprisonment and fine of \$ 1,000,000, depending on amount

<https://www.law.cornell.edu/uscode/text/21/841>

Felony Forfeiture: 21 U.S.C. § 853 - real and personal property use in or derived from felony activity

<https://www.law.cornell.edu/uscode/text/21/853>

Comparison Table of Penalties

<https://norml.org/laws/item/federal-penalties-2>

b. Minnesota

Schedule I Controlled Substance: Minn. Stat. § 152.02

<https://www.revisor.mn.gov/statutes/cite/152.02>

Possession of Small Amount, up to 42.5 grams: Minn. Stat. §§ 152.027, subd. 4, 152.01, subd. 16 - petty misdemeanor, which does not constitute a crime and for which a sentence of a fine of not more than \$300 may be imposed under Minn. Stat. § 609.02

<https://www.revisor.mn.gov/statutes/cite/152.027>

<https://www.revisor.mn.gov/statutes/cite/152.01>

<https://www.revisor.mn.gov/statutes/cite/609.02>

Felony Possession: Minn. Stat. §§ 152.021-152.025 - range from 5 years imprisonment and fine of \$ 10,000 up to 30 years imprisonment and fine of \$ 1,000,000, depending on amount

<https://www.revisor.mn.gov/statutes/cite/152>

Possession of Drug Paraphernalia: Minn. Stat. §§ 152.092, 152.01 - petty misdemeanor, which does not constitute a crime and for which a sentence of a fine of not more than \$300 may be imposed under Minn. Stat. § 609.02

<https://www.revisor.mn.gov/statutes/cite/152.092>

<https://www.revisor.mn.gov/statutes/cite/152.01>

<https://www.revisor.mn.gov/statutes/cite/609.02>

Comparison Table of Penalties

<https://norml.org/laws/item/minnesota-penalties-2>

Therapeutic Research Act; Medical Cannabis

Minn. Stat. §§ 152.21-152.37

<https://www.revisor.mn.gov/statutes/cite/152>

Medical marijuana use in compliance with the act is legal. Minn. Stat. § 152.32

<https://www.revisor.mn.gov/statutes/cite/152.32>

Minnesota Medical Cannabis Program

<https://www.health.state.mn.us/people/cannabis/index.html>

5. Federal Eviction Laws for Public Housing Concerning Drug-Related Criminal Activity

a. Grounds

Lease termination for (1) serious or repeated violations of material terms of the lease or (2) other good cause for eviction. 21 C.F.R. § 966.4(1)(2)

<https://www.law.cornell.edu/cfr/text/24/966.4>

Lease termination for (A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or (B) Any drug-related criminal activity on or near such premises. Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit. 24 C.F.R. §§ 966.4(f)(12), 966.4(l)

<https://www.law.cornell.edu/cfr/text/24/966.4>

b. Process

Written Termination Notice: 24 C.F.R. § 966.4(1)(3)

<https://www.law.cornell.edu/cfr/text/24/966.4>

Grievance Hearing Process: 24 C.F.R. § 966.4(1)(3)(iv-v)

<https://www.law.cornell.edu/cfr/text/24/966.4>

Bypassed or Expedited Grievance Procedure: 24 C.F.R. §§ 966.51, 966.53 – for criminal activity that threatens health, safety or peaceful enjoyment of the landlord's tenants or employees or violent or drug-related criminal activity on or near the premises

<https://www.law.cornell.edu/cfr/text/24/966.51>

<https://www.law.cornell.edu/cfr/text/24/966.53>

c. Defenses

Activity not criminal under state law: Residential Eviction Defense and Tenant Claims in Minnesota

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_295

Actor was a visitor not under the tenant's control.

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC2_275

d. Cases

Minnesota: Residential Eviction Defense and Tenant Claims in Minnesota

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_289

Around the Country: HUD Housing Programs: Tenants' Rights (National Housing Law Project, 5th ed. 2018), also known as the Green Book

<https://nhlp-library.nclc.org/gb/1102040401>

(Subscription Required)

6. State Eviction Laws Concerning Unlawful Activity on the Property

a. Grounds

Eviction for unlawfully allowing controlled substances in those premises or in the common area and curtilage of the premises: Minn. Stat. § 504B.171

<https://www.revisor.mn.gov/statutes/cite/504B.171>

b. Defenses

(1) There was no unlawful activity on the property or (2) the tenant did not know or have reason to know that there was unlawful activity on the property: Minn. Stat. § 504B.171

<https://www.revisor.mn.gov/statutes/cite/504B.171>

The tenant could not prevent the illegal drugs from being brought on the property: Minn. Stat. § 609.5317, subd. 3.

<https://www.revisor.mn.gov/statutes/cite/609.5317>

c. Cases

Residential Eviction Defense and Tenant Claims in Minnesota

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_312

7. Preemption of State Laws that Protect Tenants more than Federal Law

More protective Minnesota statutes include those covering illegal activity eviction defenses, small amount of marijuana, drug paraphernalia, and medical marijuana use.

Types of Preemption: express preemption, field preemption, and conflict preemption. There is no express preemption or field preemption.

There are no Minnesota decisions finding conflict preemption.

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_11

Around the Country: decisions are mixed. HUD Housing Programs: Tenants' Rights (National Housing Law Project, 5th ed. 2018), also known as the Green Book

<https://nhlp-library.nclc.org/gb/1102040407>

(Subscription Required)

8. Other State Defenses

a. Service Defenses

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_90

b. Precondition Defenses

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_97

c. Substantive Defenses

Materiality

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_324

Waiver of breaches by acceptance of rent

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_269

Laches

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_276

Retaliation

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_322

Cure

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_326

Equitable power to provide relief from forfeiture to avoid eviction

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_334

Eviction of one tenant but not the other

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_340

Domestic Violence

http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_344

d. Answer Form

Answer A8

http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html#anchor_10