

MEASURE 91, THE CONTROL, REGULATION AND TAXATION OF MARIJUANA AND INDUSTRIAL HEMP ACT

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As most of you are aware, Oregon voters passed Measure 91, The Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act. In short, the Act legalizes Marijuana in Oregon, but the statute is very complex.

If you or anyone you know is going to get into the Marijuana business, then those people need specialized attorneys and accountants to walk you through the process. Again, the Act raises more questions than it answers for persons getting into the business. As landlords, you need to know that the Act may not be construed to:

- 1.) Amend or affect in anyway any state or federal law pertaining to employment matters;
- 2.) To affect or amend in anyway any state or federal law pertaining to landlord/tenant matters...
- 5.) To require a person to violate a federal law;
- 6.) To exempt a person from federal law or obstruct the enforcement of the federal law; or
- 7.) To amend or affect in any way The Oregon Medical Marijuana Act.

If you are thinking of renting land to a tenant who is going to grow marijuana, think again. I suggest you wait until the powers that be have gone through the Act and promulgated the rules and regulations that are set forth in the Act. This will be done by the Oregon Liquor Control Commission, the State Department of Agriculture and the Oregon Health Authority. The production, licenses, processor licenses, wholesale licenses and retail licenses are all controlled by the Oregon Liquor Control Commission with input from the other agencies. As you can imagine, this may take some time.

One of the main issues for the landlords is the marijuana tax. The statute imposes a tax upon the privilege of engaging in business as a marijuana producer. The taxes are set forth in section 33 of the Act. What the landlord needs to know is, if the tax is not paid, the tax constitutes a lien upon, and has the effect of execution duly levied against any and all property of the marijuana producer, attaching at the time the marijuana flowers become marijuana leaves, and immature marijuana plants subject to the tax were sold, and remaining until the tax is paid. *The lien is paramount to all private liens or encumbrances.*

What is unclear is what “any and all property of the marijuana producer” means. It is unclear, but the definition for “premises or license premises” means... (C) for location that the commissioner specifically licenses for the production of marijuana outside of a building, the entire lot or parcel, as defined in ORS 92.010, that the licensee owns, *leases or has the right to occupy*. From this reading, it would seem reasonable that the state could lien the landlord’s property if the tenant failed to pay the necessary taxes. As such, the state will lien your property and that lien will take priority over any other private liens or encumbrances. That means that the

lien will take priority over your mortgage, which means you are now in default under your mortgage. If the tenant vanishes in the middle of the night, then you are left with the lien and you must pay that tax or lose your property.

As I stated before, the Act will be interpreted by the agencies listed above, and they may give us more guidelines. But until then, it would seem that your property is in jeopardy, if the tenant fails to pay the taxes. In addition, most mortgages have a provision that you will not violate any federal law. Currently, marijuana is still listed as a Schedule 1 drug by the Feds, so the growing of marijuana is a breach of your mortgage. Hopefully, in the coming months the state agencies will promulgate the rules and give Oregonians more guidance. Until then, you proceed at your own risk.