



MEMORANDUM

TO: WPPA Members
FROM: Brandi Vena, WPPA
DATE: August 27, 2015
SUBJECT: Landlord-Tenant Lease Considerations: Cannabis Tenants

State law has not been amended where landlord-tenant law and legal cannabis business operations intersect. There should be some consideration of the issue, however, given the potential of siting cannabis production facilities at public port districts. Because of the uniqueness of a cannabis related business, considerations should center on the form of the lease and language in the following standard leasing provisions. Below are just some of those considerations. If your port is considering a cannabis related business as a tenant, consult your port attorney for advice on these issues.

Permitted Uses. A public port district that is considering allowing a cannabis producer as a tenant will likely need an addendum to the standard lease that will alter provisions regarding permitted uses and that will iterate it is the tenant's responsibility to comply with WSLCCB rules and regulations. The language should also make it clear that, as per state law, the WSLCCB will have to review expansion or changes in use of space.

Premises. The lease language should specify that the suitability of a space for the intended use is not the landlord's responsibility. "As-is" and "where-is" language should be added.

Tenant Improvements. A lease should make it clear that the landlord has the power to approve all aspects of tenant improvements.

Rent. Something a landlord should consider is whether it would like to allow a rent abatement period for improvements or to coincide with the cannabis grow cycle.

Security Deposit. The amount the landlord would like as a security deposit for a cannabis production tenant is another consideration. Some landlords with cannabis tenants ask for two months deposit.

Uses. This section of the lease should be revised to amend prohibition of “unlawful acts,” nuisance language, and language that discusses interfering with, injuring, or annoying other tenants. These sections should more accurately reflect the legality of doing business as a cannabis tenant under state law. The language should make it clear that compliance with federal law is not required if the tenant is in compliance with state law.

Alterations. When alterations are made to the premises, the WSLCCB might have to consent. This should be stated in the lease and that it is the tenant’s responsibility to confirm. Alterations that could be considered trade fixtures should be itemized. These can include the special alterations made to the HVAC system, the roof, or those made for odor control, i.e. alterations made specifically because of a cannabis grow or production operation.

Access/Right of Entry. Because the WSLCCB has extensive rules governing the security of cannabis grow and production facilities, it might be necessary for the lease to specify that the landlord be provided with a security badge and access to video footage of the premises.

Signage. Signage is governed by state law and the lease should specify that all signage should comply with those regulations.

Insurance. The lease should specify that the landlord and the WSLCCB be named as additional insured. It should also state that any premium increase is the sole responsibility of the cannabis tenant.

Escape Clause/Force Majeur. Because cannabis is still illegal under federal law, the lease should contain language clarifying that both the landlord and tenant have a right to terminate the lease where there is a change in governing law or if United States Justice Department decides to prosecute.