

# ***You're Begging to be Sued!***

***... If You Sign That Commercial Cannabis Lease Without Using the Smart Cannabis Addendum™ & Waiver!***

*By Richard Ivar Rydstrom, California Attorney at Law, J.D. Law, Bachelor of Science in Public Accounting;*

*Over 27 Years Transactions, Asset Protection, Business & Real Estate Litigation*

*Serving Newport Beach, San Diego, Los Angeles, Silicon Valley*

*1-877-Win-4-You™ | [www.rydstromlaw.com](http://www.rydstromlaw.com)*

*Call 949-678-2218 for Live Presentation at Select Commercial Brokerages*

New Cannabis Laws Make Cannabis Businesses Legal: The new California laws made medical and recreational marijuana use legal, effective January 1, 2018. That's what Cannabis Tenants have been waiting for. Cannabis **Tenants need to lease a commercial location before applying for the new licenses available in California**. The licensing process started online this week in California. Tenants are now rushing to sign commercial leases. Since California and Federal law conflict in permitted USE definitions and taxation, the Landlord and the Tenant who sign a lease without knowing the repercussions prior to signing, likely exposes the commercial brokerage to great liability. None of this exposure is necessary if the Landlord or Tenant is represented by an experienced commercial lease attorney who also knows the Cannabis regulations. Certain issues must be disclosed and waived in writing by the client. Federal law cannot be ignored, nor changed, but many other strategies are available that may mitigate such conflicts, and also safe guard the brokerages in the transaction. See page two of this article for a conceptional short list of new issues facing the commercial broker.

New Industry Risks: New industries require new laws and new relationships which often conflict. At this time, the Federal government and the state governments ("California") are in a state of confliction, and during such periods, it is advisable to take every precaution to avoid the pitfalls of conflicting law and the lack of safe harbor best practices. In this environment, the best commercial real estate brokers understand the inherent risks to them and their clients, and advise their clients to hire an attorney to ensure that the transaction is made knowingly as safe as possible for the client's interests.

Smart Cannabis Addendum™: But what can an attorney do to protect interests which conflict with the federal government? An attorney along with the help of a commercial real estate broker can fashion an Addendum which establishes the lawful and factual foundation upon which a client may legally enter the lease safely, and in cases of the tenant who is a prospective Cannabis licensee, ensure that the terms and conditions do not violate the vast new Cannabis licensing regulations proposed November 17, 2017 and Cannabis tax regulations proposed November 19, 2017, as well as set the foundation and mechanisms for a lease that complies with federal and state law.

Commercial Real Estate Practices Conflict with Cannabis Regulations: Common commercial real estate best practices conflict with the new acceptable Cannabis regulations (MCRSA and AUMA ("MAUCRSA")). AUMA stands for The Adult Use of Marijuana Act (AUMA) (Proposition 64), and MCRSA stands for the Medical Cannabis Regulations and Safety Act. Combined they stand for the Medicinal and Adult-Use

Cannabis Regulation and Safety Act (MAUCRS). A lease which violates the many traps contained therein will be vulnerable to attack by the Landlord and Tenant and or by the governments (federal, state and local). Attack of a lease, which is a written contract in California, may include rendering it void or subject it to rescission - with all monies paid on the lease, now due and owing to the other side! That can be very costly. Additionally, the licensee may lose the license and or the landlord and tenant may become de-facto partners by ownership, control or access. This is a very serious matter. But it can be solved by the smart cannabis Addendum.

Conflicts Which Must Be Addressed & Knowingly Waived by Client: The commercial real estate broker must know the conflicting issues and obtain a knowing waiver from client. The broker must also know how to steer around the license and regulation traps of the tenant Cannabis licensee. For example, is the tenant seeking licensure for Cultivation, Manufacturing, Distribution, Testing, Dispensary, or Transportation, and any variations including the Microbusiness license. If these traps are not avoided, the tenant (and or landlord) may be injured or damaged in the process. Some of the topics which must be addressed in the Addendum (as well as the body of the agreement) include but are not limited to:

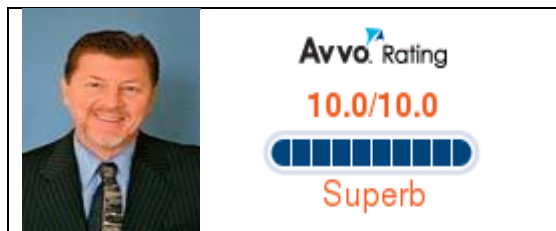
1. Federal law may prohibit key tax deductions or expenses to both the Tenant and Landlord;
2. The Tenant may need to understand that certain unique build-out issues exist which may require permissions by the Landlord in the Lease, prior to signing;
3. What are the new proper entity structures available for Cannabis tenants;
4. What percentage ownership/control require licensure and Tenant/Landlord approval;
5. How can we deconflict California and Federal law, if at all;
6. How can we address Nuisance Breach/Defaults;
7. How can we address Illegal Unlawful Breach/Defaults;
8. How can we address Unlawful Use Breach/Defaults;
9. How can we address compliance with local & California law;
10. Should we, and to what extent, have a Tenant share in pass-thrus/CAM Charges;
11. Should Landlord share in profits of Tenant;
12. How much control may Landlord retain;
13. Should there be more than one licensee per parcel;
14. How far away must premises be from schools and parks;
15. Must premises be in an Industrial location;
16. Should Landlord retain or be granted access for repairs and inspections;
17. Should Landlord or Tenant agree to Work Lists or Build-outs;
18. Should Work Lists or Build-outs be conditioned on compliance with Use;
19. Should Tenant and Landlord certify compliance with Local and State Laws (conditional use permits);
20. Should Landlord and Tenant agree to select law and facts including protections in bankruptcy;
21. Are there *legal* methods to protect wealth and retirement cash flow from the Cannabis industry?

Cannabis Tax Practices Differ from Common California Business Standards: Tax preparer Art Huerta says: general California business tax practice requires reporting all income for all activities whether legal or illegal under IRC 61, with ordinary and necessary expenses offsetting such income under IRC 162. However, with a Cannabis tax return, pursuant to IRC 280E, the client is not permitted to deduct as IRC 162 expense items which are realized from illegal activities including Cannabis, as the federal government unlike California, regard same as illegal as a controlled substance. Some cases have allowed such expenses but *usually for separated activities* which are not considered illegal, for example

caregiving or paraphernalia, but not from the sales of cannabis. However, these deductions may generally be allowed for the Cost of Goods Sold (COGS), but impeccable records must be kept. The *design and construction* of the unit is also key to setting a foundation for success in the Cannabis business. Knowing how to classify 1245 and 1250 Property is required before approving a design and construction of the build-out.

About the Author: New industry conflicts require experienced attorneys who have led the way during times of conflicting laws. Commercial real estate and litigation experience is necessary to help solve the conflicts facing the Cannabis Tenant and Landlord in California at this time. Richard Rydstrom, Esq. has a record of leading the way through conflicting times nationally and in California. Richard was Chairman of CMIS Mortgage Coalition (DC) reconciling diverse disparate interests of the banks and the consumer borrowers in developing neutral solutions to the Great Recession of 2007, including the HAMP mortgage modification program and the commercial tax modification regulations with or for the U.S. Treasury and the foreclosure and consumer interest groups. When the 110th Congress wanted a neutral analysis and congressional statement regarding the problems and solutions of the pre-Great Recession, they chose Mr. Rydstrom. When the banks and consumer groups wanted a formal explanation and speech regarding the first HAMP Mortgage Modification Program outline from President Obama and the U.S. Treasury, they chose Mr. Rydstrom. Mr. Rydstrom also served as a settlement officer for all California Superior Courts in Los Angeles. Richard is also a member of the Mediator Registry created when Los Angeles lost its funding to settle lawsuits in its VSO Program. Mr. Rydstrom has been quoted or published by: United States Congress, The Los Angeles Times, USA Today Magazine, MortgageOrb, Mortgage Daily News, Orange County Register, Tax.org, National Business Institute, CMISfocus eMagazine, Pepperdine University (Law, Business Journal), AIR Commercial Real Estate Association, Constructor Magazine for the AGC Association, Society of California Accountants, various Landlords and Real Estate Owners associations and others. Richard is a frequent keynote speaker, moderator, panelist, and CLE instructor for National Business Institute for lawyers, judges, banks, and servicers.

Superb Attorney Rating by AVVO: With more than 27 years of legal experience, Richard Rydstrom is rated Superb, 10 out of 10 by Avvo – the world’s largest rating directory of lawyers. He has vast experience representing commercial tenants and landlords, plaintiffs, defendants, business owners, and consumers.



Free Initial Consultation: Attorney Richard Rydstrom is accepting select clients for representation in the new California Cannabis industry. Richard is available at 1-877-946-4968 or Email direct: ([procouncil2017@gmail.com](mailto:procouncil2017@gmail.com)); Websites: ([www.RydstromLaw.com](http://www.RydstromLaw.com)) <http://calicannabislawyer.com>; [www.SmartCannabisPlan.com](http://www.SmartCannabisPlan.com)

Licensed Insured Good Standing Over 27 years; All Rights Reserved ©™ 2017, Richard Rydstrom; SmartCannabisLease™ and CannabisAddendum™ are trademarks of Richard Rydstrom;

Terms & Use Conditions: This site features legal articles by Attorney Richard Rydstrom regarding California Law only. All Rights Reserved 2000-2017 **Nothing from this site should be considered advice or info on how to avoid federal jurisdiction, or how to hide from or hinder any federal law inquiry or action, or engage in any activity considered unlawful or illegal; all topics are strictly concerned with California Law only and its lawful activities.** ATTORNEY LEGAL NOTICE: Warning: YOU MUST HAVE A

SIGNED LEGAL RETAINER AGREEMENT WITH THIS LAW OFFICE OR ATTORNEY AUTHOR OF SELECT ARTICLES PUBLISHED IN THIS SITE TO BECOME A CLIENT, OTHERWISE YOU ARE NOT A CLIENT AND WE ARE NOT TAKING ANY ACTIONS TO PROTECT YOUR RIGHTS. **THIS SITE OR ATTORNEY AUTHOR OF SELECT ARTICLES DOES NOT REPRESENT ANY PERSONS OR ENTITIES THAT ARE ENGAGED IN ANY UNLAWFUL OR ILLEGAL ACTIVITIES WHETHER STATE OR FEDERAL; AND OTHERWISE SAME SHOULD CONTACT A CRIMINAL ATTORNEY.** YOU ARE WARNED TO OBTAIN LEGAL REPRESENTATION IMMEDIATELY TO PROTECT YOUR RIGHTS (YELLOW PAGES, STATE BAR AGENCIES, ETC.) THERE ARE NO REPRESENTATIONS OF OUTCOME AS EACH CASE IS UNIQUE. CONFIDENTIALITY NOTICE UNAUTHORIZED INTERCEPTION IS PROHIBITED BY FEDERAL LAW [Electronic Communications Privacy Act of 1986, 18 U.S.C. 2701(a) and 270(a)] WE DO NOT GIVE ADVICE OR OPINIONS ON FREE CONSULTATIONS. We do NOT PERFORM MORTGAGE MODIFICATION SERVICES. This message is intended exclusively for the individuals and entities to which it is addressed. We do not give free case analysis, reviews or opinions. Articles sent are not legal, tax or financial advice; may be deemed an advertisement from the State Bar. Attorney obligations automatically cease under Legal Retainers where a Client fails to pay the required Deposit or make the required payments.

**WARNING AND NOTICE: IRS CIRCULAR 230 DISCLOSURE NOTICE:** To ensure compliance with IRS requirements, we inform you that any U.S. federal tax advice contained in this communication is not intended or written to be used, and cannot be used by any taxpayer, for the purposes of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

**NOTHING IN THIS ARTICLE SHALL BE TAKEN OR USED AS CANNABIS, BUSINESS OR TAX ADVICE. LAWS ARE IN CONFLICT AND THIS ARTICLE EXPLORES NON-EXHAUSTIVE ISSUES THAT ARE EMERGING; ALL SUBJECT TO AND LIKELY TO CHANGE. ARTICLE MAY BE CONSIDERED NEWS AND OR ATTORNEY ADVERTISEMENT BY CALIFORNIA BAR.**

Permission for distribution/copying of this article is hereby granted to Chambers of Commerce, Licensed Commercial Brokerages and Tax Preparers;

///