



Don't Let Your Client's Assets Go Up In Smoke When They Discover That Their Tenant Is Growing or Manufacturing Drugs In Their Rental Property

Hundreds of drug labs are discovered each year in America and they can cost landlords thousands of dollars in repairs or lost rent.

By Matthew D. Zumstein, Ropers Majeski Kohn & Bentley

Your next-door neighbors may look like normal, law-abiding citizens, but you never really know what they're hiding beneath their homes – like a large-scale marijuana grow operation, perhaps? One such operation was uncovered in a sleepy little town at the home of a contractor and his daughter. Located nearly 15 feet below ground was a full-scale marijuana grow house, concealed by a hidden entrance located inside a nondescript shed. With a flip of a switch, a custom-made hydraulic table inside the shed moved aside to reveal stairs which led down to the underground grow house. Over 160 marijuana plants were found in the grow house, with the potential to produce hundreds of thousands of dollars in profits as the renter was found to have been growing plants at that location for over a decade.

Unfortunately, this incident doesn't stand alone. Firefighters in California's Riverside County discovered a massive growing operation in a burning, vacant home in Reche Canyon. When the blaze was put out, authorities discovered that nearly three-quarters of the 4,000-square-foot home's first floor was being used to grow pot. At that point, most of the marijuana had already been destroyed by the flames.

Then there was the landlord who had tenants using his house and garage to grow over 200 marijuana plants, worth thousands of dollars. After the bust, the renters left the landlord with over

\$15,000 worth of damages to the home – including removed floorboards, holes in the roof, and dismantled fixtures. Such examples are only a handful of what some might say is a “budding trend” of home pot-growing operations – now more than ever, apparently. The vast inventory of foreclosures and otherwise vacant homes in states and rural counties hardest hit by the housing crisis have proven to be fertile ground for large-scale marijuana farms and “pot gardens.” In one raid in 2011, police in Las Vegas uncovered over 60 plants in a foreclosed four-bedroom home. In another nearby home, they confiscated nearly 900 plants worth approximately \$2.6 million. In Nevada alone – which suffered greatly from a run-up in speculative buying during the housing bubble – there were nearly 160 recorded grow operations and over 13,000 plants found. Even though there has been a recent rise in home purchases, not all of those are for residential use; many of those are being used as rental properties and investments.

UNWITTINGLY RENTED HOME TO MARIJUANA GROW OPERATION

Landlords who think that because they rent to “respectable tenants” they will avoid having their property turned into a cannabis farm may find their properties taken over by the government. This is because many operators use “Front Couples” to start off the tenancy according to latest police reports. Pot farms use

properties rented from unsuspecting landlords which are then converted to make them suitable for a full-scale grow production. These farms, often operated by criminal gangs, will involve large scale alterations to the property including removal of walls and changes to the electricity supply. The result is often tens of thousands of dollars of damage to a landlord's property. Recent estimates indicate that the costs to landlords could soon be approaching \$300 million a year.

Landlords may be legally required by state and local building codes, ordinances or security laws to protect other tenants or neighbors from any illegal activities of their tenants. If a landlord knowingly allows illegal activity, such as drug use, the landlord may be subject to state or local fines or penalties, and the property may be considered a public nuisance and/or confiscated by the government by way of forfeiture.

In 1984, the federal government, and subsequently state and local governments, used asset forfeiture as an effective tactic in the war on drugs. Any property that could be linked as an asset to known drug traffickers could be confiscated even if the property was owned by someone else. While property seizure proved to be a valuable weapon, it created serious property rights violations, in particular for owners of rental properties. In many

Continued on page 10

instances, authorities were able to seize, and at times even demolish, rental properties when the owner failed to prevent drug activity.

Asset forfeiture raised vital questions about the constitutional rights of property owners. Property owners were no longer “innocent until proven guilty”; instead, the onus was placed upon property owners and managers to prove that they did not consent to the illegal activity by showing that strong steps had been taken to halt the illegal activity.

In 2000, Congress passed the Civil Asset Forfeiture Reform Act (CAFRA) in part to protect those property owners who have made reasonable efforts to stop their property from being used for activities involving illegal drugs. A few of the reforms that were enacted by CAFRA are:

- The burden of proof shifted from the property owner to the government by requiring the law enforcement officials to show by a preponderance of evidence that they are justified in the property seizure;
- Property owners, who have taken reasonable steps to prevent illegal activities, cannot be subjected to forfeiture;
- The costly bond requirement was eliminated for owners who contest a property seizure;
- The time period in which a property owner has to contest forfeiture was extended;
- Innocent owners gained the right to file suit for negligence or loss of property due to forfeiture when the owner is not convicted of a crime; and
- The seized property was allowed to be returned to an owner pending final disposition when a court determines that a resulting hardship to the owner would occur, and that the hardship outweighs any governmental interest in the property.

In California, Health and Safety Code Section 11470(g) provides that even if a property owner is convicted of using their property to manufacture, sell, or otherwise distribute narcotics, if the property is used as a family residence or for any other lawful purpose, or if the property is owned by more than one person and one of those people had no knowledge of the unlawful activities, the real property will not be subject to forfeiture.

There are two types of forfeiture actions, criminal or civil forfeiture. The criminal forfeiture action is against an individual person. If that person is convicted, the punitive effect of forfeiture can be used against the property, if it is owned by the



convicted person. A civil forfeiture action is against the property and not the person. The two actions differ in: (1) the point in the proceeding, generally at which the property may be seized, (2) the burden of proof necessary to forfeit the property, and (3) the type of property interests that can be forfeited.

A criminal forfeiture action must be heard in court before a judge. In order to gain possession of the property, the government must meet the legal standard of beyond a reasonable doubt that is necessary to convict the defendant and to forfeit the property. Generally, the seizure of the property through a criminal forfeiture

may not occur until the property owner has been convicted and the property has been forfeited.

The civil forfeiture laws which are being used mostly by the federal and not the local authorities, generally name a specific property that is integrally connected with a specific prohibited activity (the property is being used to launder money, furnish money, or used to conduct other illegal activities i.e., sell and/or grow narcotics). A civil forfeiture action is conducted through an administrative or judicial procedure. The initial burden of proof on the government to seize property for civil, administrative, and judicial forfeiture is only the probable cause standard, or “a reasonable ground for belief of guilt.”

If the government successfully meets the probable cause standard, it will seize the property. The government must then determine whether the property can be forfeited. If it is found that the forfeiture action is valid, a complaint is filed which in effect charges the property with violating the law.

The burden is then on the government to prove that the property is subject to forfeiture by a preponderance of the evidence. If the government meets this standard, then the government may take the property, and likely sell it in order to recover its costs. A property owner should carefully include prohibitions against illegal activity in any lease agreements, and they may be able to evict a tenant who breaches any such provisions.

One property owner tells a chilling, and cautionary tale for landlords. An owner thought that for years she was renting her home to a nice woman with a child and her two younger brothers. Then, the home was raided by the Drug Enforcement Agency as part of an operation to takedown major marijuana growing operations. Her home was filled with pot plants and rigged with equipment to grow them. Now, the owner has learned that the woman she thought she was renting to actually lived in another state. The “tenant” was hired specifically to act as a tenant, this was her job – to go

Continued on page 11

and rent properties. The “tenant” checked out on every level: good credit, a job with references, and a good rental history.

The property owner had noticed some weird things occurring. For example, the neighborhood HOA asked that weeds in front of the home be removed. Her neighbor told her that the tenants pulled them up in the middle of the night using a car’s headlights to see what they were doing. After learning of the DEA bust, the owner thought all the things that had been odd finally made sense. The DEA believed that this house was part of criminal operation specializing in growing high-quality marijuana. This owner wasn’t allowed to enter her home to assess damage for months because the DEA was investigating whether she was involved in the scheme.

HOW DO YOU HELP YOUR CLIENTS IDENTIFY AND AVOID DRUGS BEING GROWN OR MANUFACTURED IN A RENTAL PROPERTY?

So what are some telltale signs that your neighbors are running a large-scale marijuana operation right under your nose? Turns out growing the green isn’t so green after all. Make sure you advise that your client hire a professional and experienced property manager who conducts regular inspections, as this is the biggest deterrent an owner can get. Ask you clients if they take an active interest in their tenants (without being seen as a stalker.) Have their property managers look out for tenants offering special terms and conditions that seem too good to be true, such as paying rent six months in advance (in cash!), or offering to put up new fences at their own cost. Landlords should avoid those tenants who show little interest in the actual living standard of their property. Owners should be particularly wary of those tenants upping the security of their property with such things as guard dogs, CCTV cameras, or extra locks on doors, especially those that only lock from the inside.

Ask your clients if they ever see black plastic on the windows, or a tampered

PG&E meter, as these are immediate telltale signs of a drug operation occurring on the property. A landlord should conduct quarterly property inspections and be sure to look for signs that the property is being lived in; drug manufacturers often don’t live at the properties they use to cultivate crops. Also, be aware of any unusual items that might not appear to have a practical use, such as rubber tubing, drums, chemical containers, fertilizer, or lots of cough and allergy medicines.

Another technique is simply to see if the unit passes the “smell” test. Police recommend that owners watch out for strong smells, regular buzzing noises (which could indicate the presence of fans or heaters), windows that are warm to the touch and people coming and going at all hours. Also, suspicious landlords should monitor electricity usage as drug cultivation requires high levels of power.



Simply put, advise your clients to use their nose. Drug manufacturing or marijuana cultivation can cause unpleasant or “unusual” odors or fumes that can often be smelled from the street.

Property owners should be advised that if a tenant refuses entry to a bedroom (“my grandma’s sleeping in there”), warning bells should start ringing. The landlord should be advised to ask when would be a good time later that same day to come back and talk to her. Or, offer to wait in the living room or in a car out front until she wakes up.

Remember that it’s not always drug-making operations that will damage your clients’ property. Regular loud parties, a menagerie of pets at the property or even drug users will leave their paraphernalia around which can cost plenty to clean

up. If owners can strike up a relationship with nosy neighbors, they will often help you keep an eye on things. Even a few simple acts of random kindness - such as small gifts at Christmas or Easter, or making unexpected improvements - can dramatically improve your relationship with most, but not all, tenants. A good insurance policy from a carrier that either increases the coverage amount, or even requiring your tenant to obtain renters insurance which names you as an Additional Insured are just a few of the vital steps that can and should be taken to protect against willful and accidental damage from tenants, as well as those who skip town without paying their rent. Making sure your clients have coverage for any damage caused to the property by tenants’ unlawful activities is also an important topic for your client to discuss with their insurance broker.

If one of your clients finds themselves in a situation where they are burdened by the bad luck of bad tenants, advise them not to take it personally. Chances are their tenants are not targeting your clients, the tenants are simply criminals taking advantage of an opportunity that was presented to them: your clients.

Advise your clients not to be alarmed if they find out there is a clandestine drug laboratory being run out of their prized investment property. It can happen to any landlord. The key is to be prepared: document everything that is going on with the property, note any changes that have occurred on the property, and be sure to get references on any references. Instruct your clients to make sure they, and/or their property managers, speak with the actual employer of the prospective tenant.

Also, getting the right insurance policy to make sure your clients are protected from financial loss is just as important as being on the lookout for signs of trouble. Remember, well maintained properties tend to attract the best tenants. Landlords who suspect their rental property is being used for drugs should contact their local law enforcement agency and not take matters into their own hands. 