

Illegal Weed Stores – Ramifications for Owners

Following New York’s legalization of marijuana in 2021, we have seen a surge in retail dispensaries. It seems as if there is at least one on every block. Yet only six in the city have the proper licensing and are up and running.

Officials have reported that there are an estimated 5,000 unlicensed shops in the five boroughs. Whatever your opinion on the appropriateness of legalizing marijuana for adult recreational use - there are compelling arguments on all sides of the issue - there are pitfalls for building owners that need to be more fully thought through. For example, the New York City Council has put forth a bill that would affect owners whose commercial premises lease to illegal businesses.

By way of background - in 2022, New York State set up a program to enable licensed, regulated shops to sell marijuana for recreational use. Legal establishments were already dispensing marijuana for medical use. There were several requirements in the new recreational policy, including taxes, distance from schools, bans on selling to those under the age of 21, regulation and monitoring of products sold and equity on the license distribution. As reported by the New York Medical Cannabis Industry Association, laboratory results found these unregulated products contained several harmful contaminants, such as E. coli, pesticides, heavy metals, and salmonella in 40% of products purchased. There are serious health and safety reasons why businesses need to go through the proper licensure before selling. Despite this, loopholes in the law and (mostly) a lack of enforcement by city and state agencies have led to thousands of unlicensed stores selling and distributing unregulated products.

Governor Kathy Hochul has proposed New York authorities be given expanded powers to shut down illegal shops and levy fines of up to \$200,000 against these illegal business owners. Many of these illegal business owners, however, run their shops through LLCs and with cash-only handling, which makes determining ownership difficult if not impossible. With an understaffed Office of Cannabis Management (OCM) and Department of Taxation and Finance (DOTF), regulators need someone to take the fall and are coming down on building owners.

This past April, the City Council’s Committee on Public Safety introduced Int. 1001, a bill that would prohibit owners of commercial premises from knowingly leasing commercial spaces to unlicensed cannabis sellers and require the sheriff to produce a monthly report on enforcement relating to unlicensed cannabis sellers.

In addition to the city council’s efforts, Mayor Eric Adams and Manhattan District Attorney Alvin Bragg are seeking to leverage New York’s Real Property Actions and Proceedings Law (RPAL) to get property owners to evict these illegal

businesses. As per the law, building owners have the option to evict on the basis of lease violation. Landlords also have grounds for eviction per the RPAPL because these operations are illegal businesses.

However, as we have seen with the city’s efforts to crack down on Airbnb rentals- where even if landlords did not have knowledge their tenants were using the space as such, it is landlords who are held responsible - there are still more questions than answers here and still potential for building owners to be held liable.

We strongly encourage owners to do a thorough pre-screening before renting to commercial tenants who plan on businesses associated with THC, vaping, smoke shops, herbal wellness or dispensaries. It’s impossible to know for sure, but if you suspect a commercial tenant of yours is operating in a gray area of laws still not settled, please err on the side of caution. Potential liabilities and exposure are unknown. And as we have seen again and again, when the city or state decides to stop the music, it’s too often building owners who are left without a chair or leg to stand on. We advise you to consult your lawyer on these issues. ■

The RSA Legal Plan

Experienced Landlord-Tenant Attorneys
All Boroughs

Howard Stern, Esq., RSA Legal Plan Administrator

Participating Firms Include:

Hariri & Crispo

Horwitz & Zim Law Group, P.C.

To join **RSA’s Legal Plan Program** or for more information, call **Howard Stern, Esq., Plan Administrator** at **(212) 682-0505 / (914) 683-0505** or email **hsternesq@aol.com**.

2 William Street, Suite 304 | White Plains, New York 10601