



## Dear Landlords, Don't Lose Sleep over SQ 788 - Attorney Kayla Kuri

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With the passage of State Question 788, Oklahoma is now one of thirty states that have approved the use of medicinal marijuana. In the wake of SQ 788's passage, there is widespread concern among landlords regarding their rights to control what activities take place at their properties. SQ 788 expressly prohibits landlords from denying someone as tenant merely because of their status as a medical marijuana license holder. However, SQ 788 does not require landlords to relinquish all control over the actions of their tenants. Particularly, SQ 788 does not require that landlords allow tenants to smoke marijuana inside their home.

The Oklahoma State Department of Health has published a draft of their proposed emergency rules regarding the implementation of SQ 788. While these rules have not been enacted as of yet, they are helpful in evaluating the future of medical marijuana regulation. Under these emergency rules, smokable and vappable marijuana are subject to the same restrictions as tobacco under the *Smoking in Public Places and Indoor Workplaces Act*. While this Act does not specifically apply to the landlord-tenant relationship, the mere mention of it in the Health Department's emergency rules implies that smoking marijuana is no different than smoking tobacco products. This rational can be carried forward into the landlord-tenant context.

The Residential Landlord and Tenant Act authorizes landlords to enact rules and regulations regarding a tenant's use of the property so long as the rules promote a certain purpose. Of these proper purposes, two are of particular importance. First, landlords may enact rules to promote the convenience, peace, safety or welfare of the tenants in the premises. Second, landlords may also enact rules to preserve their property from abusive use. Under this Act, Landlords often include language in their leases prohibiting smoking inside the leased premises. This prohibition not only protects landlords from incurring smoke damage to their property, but also protects adjoining tenants from having to endure smoke odors emanating from their neighbors. Prior to SQ 788, this "no

smoking” language was intended to apply to tobacco products; now it will apply to marijuana as well. To make this prohibition clear, landlords should ensure that the language in their lease clearly states that marijuana may not be smoked inside the premises.

Smoking is one of the many ways that medical marijuana can be consumed. While landlords may not be able to entirely prohibit the use of medical marijuana by their tenants, they can prohibit tenants from smoking marijuana inside their homes by making minor changes to lease language. SQ 788 may not be a landlord’s dream, but they are not entirely unprotected under the law.

## Attorneys

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- Kayla M. Kuri

## Practices

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- Cannabis Law
- Real Estate