

DEAR READERS: Do you have a legal question that has been burning on your mind (but are afraid to ask an attorney...cha-ching; cha-ching)? If so, please send your questions to Debra A. Newby via email (contact information below). Your name will remain confidential. Although every inquiry may not be published, we will publish as many as possible. Finally, this Q & A Legal Column is intended as a community service to discuss general legal principles and does not create an attorney-client relationship.

Q: My brother has rented a small house for 15 years on private property. He considers himself friends with the Landlord, who also lives on the property in a separate house. His Landlord grows pot—somewhat legally, I believe, under a 215 (medicinal marijuana certification). The plants are now approaching a “Jack and the Beanstalk” size—towering 20 feet—and may be beyond the legal 215 limit. I’m worried about the property being raided. Is my brother in danger of getting “netted” with the Landlord/pot-grower by association? What should we do?

Signed: Caring Sis

A: Dear Caring Sis: Talk about a sticky wicket! Your question provokes undertones of landlord/tenant law, criminal law, and of course, the complex matrix of relationships!

Generally, your question can be broken down into whether a tenant is legally liable for the criminal actions of their Landlord. The law books are full of cases addressing the illegal acts of the tenant or third parties, but your scenario is unique. I’ll try to apply the legal concepts, coupled with a dash of common sense.

First, if the premises are being used for the **continual** illegal sale of “controlled substances” then California law specifically allows a three-day notice to quit to be served on the participant of the illegal activity. California law goes one step further and classifies the continual use of illegal drugs as a “nuisance” and allows the lease to be effectively terminated. (See Civil Procedure Section 1161(4) and Civil Code section 3479). The illegal use must be continual—hence an isolated loud bash/pot party won’t trigger the nuisance allegation. A Landlord who maintains a “drug house” or other illegal use that can be considered a nuisance may also be liable for any damages caused by the nuisance. Damages are measured by the depreciation in value of the premises caused by the illegal or forbidden use.

If the plants are so tall that the sight and smell is “indecent or offensive” to the senses, then your Landlord may be creating a “public nuisance”. Any member of the community or neighborhood may bring a civil action against him to “abate” or clean up the property (See Civil Code section 3491).

I bring up the above general legal concepts as a “back-drop” and offer you the following options:

1) Talk to your Landlord” and “puff-up” a bit (not on the dope). Tell your Landlord that a lawyer says that California law classifies the continual use of illegal drugs as a “nuisance”, and that he may be liable for any damages in the drop of property value (not

to mention the Landlord's exposure to criminal charges). Forcefully but kindly ask the Landlord to bring the property into compliance with the 215 so that you are not forced to bring in the lawyers (which may really cause your Landlord a "nuisance")!

2) Report the activity to the Sheriff, if your Landlord does not see the inherent danger of a raid. If you are reluctant to go to the Sheriff because of the friendship, remind your Landlord that any member of the community or neighborhood who takes a "whiff" of the plants can report it as a "public nuisance". In essence, shift the snitch to the neighbors.

3) In the interim, assuming that the pot is not growing in your brother's rental home or in an area where he enjoys a shared use, I do not believe you or your brother are at risk. It is a crime to **possess, sale, cultivate, or transport** marijuana (unless you have a 215 certification). I would stay "clean" though because if the Landlord is busted, the Sheriff may wish to search the entire property, including your brother's home.

New Flash...Just In...The California Supreme Court agreed on August 27, 2008 to revisit the question of how many plants are within the limit. The case is *People v. Kelly*—look for a future decision from our state Supreme Court. Also, just last month Attorney General Jerry Brown issued a new 11-page "Directive" for Medicinal Marijuana that is well written and clear. (Check out www.ag.ca.gov; type "marijuana" in the search bar).

This beanstalk is a difficult one to climb...unique situation. Good luck!

Debra A. Newby is a resident of Monte Rio and has practiced law for 27 years. She is a member of the California, Texas and Sonoma County Bar Associations and currently maintains an active law office in Santa Rosa. Her law practice emphasizes personal injury law (bicycle/motorcycle/motor vehicle accidents, dog bites, trip and falls, etc.) and expungements (clearing criminal records). Debra can be reached via email (debra@newbylawoffice.com), phone (707-526-7200), fax (526-7202) or pony express (930 Mendocino Avenue, Suite 101; Santa Rosa, 95401).