



For Customers of Ross Business Development, Inc.

# RBDFASTFACTS USE OF MARIJUANA

MARY ROSS  
ROSS BUSINESS DEVELOPMENT, INC  
[WWW.RBDNOW.COM](http://WWW.RBDNOW.COM)

# FASTFacts Use of Marijuana

Copyright 2022 Ross Business Development, Inc.  
All rights reserved. Not for duplication.

All other brands and product names are trademarks or registered trademarks of their respective owners.



Ross Business Development, Inc.  
3134 Shumard Way  
Marietta, GA 30064  
770-424-1806  
[www.rbdnow.com](http://www.rbdnow.com)  
[info@rbdnow.com](mailto:info@rbdnow.com)

## Disclaimer

"The material contained in this document is not comprehensive of the continually emerging issues surrounding policies in The Multifamily Housing industry. In addition, the handbook guidance is derived from The HUD Handbook 4350.3 Rev 1 Change 4 released in August 2013 and in December 2013 and subsequent notices and memos from HUD.

These materials were updated 9/2022.

The reader should understand that these materials are not designed for, nor should be relied upon, as a source of legal guidance or as a final authority with respect to any particular circumstance.

Ross Business Development makes no warranty of merchantability or fitness for a particular purpose or any other warranty of any type with regard to these materials.

Owners and management should seek competent legal advice in developing and carrying out housing policies and procedures.

We have been diligent in our efforts to provide comprehensive and accurate regulatory instruction; Ross Business Development shall not be responsible for errors or inaccuracies."

# FASTFacts Use of Marijuana

## INTRODUCTION

Since the 1990s, several states have legalized the use of marijuana specifically for medicinal purposes. More recently, some states have begun broadly legalizing its use for recreational purposes.

At the end of 2014, HUD released a memo from the Deputy Assistant Secretary (DAS) that explains how owner/agents should address marijuana use by applicants and by residents.

Regardless of the purpose for which legalized under state law, the use of marijuana in any form is illegal under the CSA and therefore is an illegal controlled substance under Section 577 of QHWRA.

This RBD FASTFact has been developed to help owner/agents understand their responsibilities and the current HUD rule.

This RBD FASTFact document was created using guidance available in the DAS Memo [Using Marijuana in HUD Multifamily Housing Assisted Properties](#) and [HH 4350.3 R1, Chapter 4 and Chapter 6](#)

## USE OF MARIJUANA – APPLICANTS

The Controlled Substances Act (CSA), 21 U.S.C. Section 801 et. seq., categorizes marijuana as a Schedule 1 substance and therefore the manufacture, distribution, or possession of marijuana is a federal criminal offense.

Because the CSA prohibits all forms of marijuana use, the use of "medical marijuana" is illegal under federal law even if it is permitted under state law.

With regard to questions concerning the use of marijuana in HUD's Multifamily Housing programs in states that have decriminalized the use of marijuana, the controlling authority is Section 577 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA), P.L. 105-276 (October 21, 1998), 42 U.S.C Section 13662.

Owners of federally assisted housing are required by QHWRA to deny admission to any household with a member who the owner determines is, at the time of application for admission, illegally using a controlled substance as that term is defined by the CSA.

This means that owner/agents of any federally funded property MUST reject the application of anyone they know is using marijuana in any form...this is true even if:

- ✧ The state has legalized use of marijuana
- ✧ The state has legalized use of medical marijuana and the resident has a prescription for medical marijuana.

Since this is the case, the owner/agent must address use of marijuana when creating documents that support the application and tenant selection process. Since use of marijuana is a reason to reject an application, owner/agents should describe the rule in the property [Tenant Selection Plan](#).

Owner/agents should also consider whether the question should be added to the property [Application or Pre-Application](#).

If the owner/agent does not add the question to the application, there should be some method to ensure that the owner/agent, at some point, made the inquiry before making a final eligibility determination.

## FASTFacts Use of Marijuana

### USE OF MARIJUANA – EXISTING RESIDENTS

As for existing residents, here is what HUD says.

*Notwithstanding any other provision of law, a public housing agency or owner of federally assisted housing (as applicable) shall establish standards or lease provisions for continued assistance or occupancy in federally assisted housing that **allow** the agency or owner (as applicable) to terminate the tenancy or assistance for any household with a member-*

*(1) Who is illegally using a controlled substance; or*

*(2) Whose illegal use (or pattern of illegal use) of a controlled substance ... is determined to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.*

Unlike the **admission** standards which prohibit admission to federally assisted housing for any household with a member who the owner determines is illegally using a controlled substance (e.g., marijuana) or the owner/agent has reasonable cause to believe that the illegal use may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents, the **continued occupancy** standards "allow" termination by the owner.

In other words, QHwRA provides owners with the discretion to determine, on a case-by-case basis, when it is appropriate to terminate the tenancy.

Owner/agents may not establish lease provisions or policies that affirmatively permit occupancy by any member of a household who uses marijuana.

For example, an owner/agent **may not establish language that says something like:**



*Residents with a prescription may use medical marijuana if such use does not interfere with the peaceful enjoyment of the property by other residents.*

Some owner/agents have a *No Marijuana Use Rule*, but if someone is drinking marijuana tea or is using the patches, etc. how will the owner/agent know? It's usually smoking marijuana or using marijuana vape pens that cause issues.

This language should be included in the property [House Rules](#). HUD does not provide specific language so it is up to the owner/agent to decide how to document HUD's requirement.

Owner/agents should also prepare a lease violation and/or termination Notice that addresses illegal use of marijuana.

### MARIJUANA & THE MEDICAL EXPENSE DEDUCTION

The next questions from owner/agents are usually about medical expenses and the Medical Expense Deduction.

Obviously, the cost of medical marijuana is not to be included when calculating a qualified family's Medical Expense Deduction.

For the medical expense deduction, owner/agents may only include CBD products or other marijuana derivatives specifically approved by the FDA.

The FDA has, approved one cannabis-derived drug product: **Epidiolex (cannabidiol)**, and three synthetic cannabis-related drug products: **Marinol (dronabinol)**, **Syndros (dronabinol)**, and **Cesamet (nabilone)**.

These approved drug products are only available with a prescription from a licensed healthcare provider.

## FASTFacts Use of Marijuana

If a resident insists that the cost of medical marijuana should be included when determining the Medical Expense Deduction, owner/agents should be prepared to provide the resident/applicant with the HUD DAS memo. Residents can be referred to the property Contract Administrator or HUD Account Executive if they have additional questions.

Owner/agents cannot make any decision to override HUD guidance.

### **SUMMARY**

This RBD FASTFact provides basic information about HUD's guidance regarding applicant/resident's use of marijuana on HUD's Multifamily Housing properties.

Owners must deny admission to assisted housing for any household with a member determined to be illegally using a controlled substance, e.g., marijuana. Further, owners may not establish lease provisions or policies that affirmatively permit occupancy by any member of a household who uses marijuana.

Owners must establish policies which allow the termination of tenancy of any household with a member who is illegally using marijuana or whose use interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents. Section 577 of QHWRA affords owners the *discretion* to evict or not evict current tenants for their use of marijuana.

Owner/agents will be reviewed for compliance with these requirements during the Management & Occupancy Review.