



## **Prop 64 Attorneys Corner DRAFT VERSION (1.5)**

In this new era of regulated canna-business those who have any association with cannabis have questions about the laws and how to best navigate these complex and ever changing rules and regulations. Now that Prop 64 and subsequent amendments have been passed what should someone be looking for when deciding on legal counsel? What questions should they be asking of those attorneys who would represent them?

We ask any licensed California attorneys who would like to introduce themselves and describe their cannabis related legal services to participate in this questionnaire. Once completed your post will be time/date stamped and uploaded to our website where it will be listed in alphabetical order with the other responses we receive.

We will be running a general blog for all the posts in this section and an individual blog associated with your post so that others might reach out to you with their specific comments or questions. When anyone posts on your personal blog you will be immediately notified by email so you can respond. If at any time you wish to have your post edited or removed from our site, simply notify us and we will be happy to accommodate those requests.

### **SECTION ONE: ATTORNEY INTRODUCTION**

- 1.1) Name: Required
- 1.2) CA State Bar License Number: Required
- 1.3) Law Firm Name and Address: Optional
- 1.4) Website: Optional
- 1.5) Email: Required
- 1.6) Types of Law Practiced: Required
- 1.7) Geographical Areas Served: Required
- 1.8.1) Approximately how many cannabis related cases have you worked on? Required
- 1.8.2) How many of these were criminal defense cases? Required
- 1.8.3) How many of these were non-criminal cannabis related matters? Required
- 1.9) What cannabis centered organizations are you a member of or do you participate in? Optional

## SECTION TWO: PROP 64 CLIENT QUESTIONS AND ANSWERS

With the passage of the Adult Use of Marijuana Act (AUMA -Prop 64) and the subsequent amendments to it, what would be your responses to the following questions?

- 2.1.1) Has your practice changed to meet the needs of your clients under Prop 64? YES or NO options
- 2.1.2) If you answered yes to the previous question what changes have been made? 500 word response field
- 2.2) What advice would you give to unlicensed cannabis enterprise that does not wish to become licensed? 500 word response field
- 2.3) If a local government allows and licenses certain types of cannabis activities that later become contrary to state regulations and law, does the licensee have recourse to me made whole by the local government that approved the activity? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings
- 2.4) Does the language of Prop 64 distinguish between regulating recreational and medical cannabis enough to warrant hiring an attorney who has more experience in one area of these laws over the other? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings
- 2.5) Had you read Prop 64, in depth, prior to its passage? YES or NO options
- 2.6) Did you approve or disapprove of the language used in the initiative? YES or NO options
- 2.7.1) Did you publicly endorse its passage? YES or NO options
- 2.7.2) Did the language of Prop 64, Division 10, Chapter 1, General Provisions Section 26001(2)(dd) warn potential cannabis investors that with its passing those who would consider investing in any cannabis related business venture would be doing so despite what is being described as; **“Unreasonably impracticable” means that the measures to comply with the regulations require such a high investment of risk, money, time or any other resource or asset, that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent business person?** YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings
- 2.7.3) If Prop 64 had been a contract between two or more parties would you have advised your client to sign it? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings
- 2.7.4) With the advantage of hindsight, if Prop 64 were being presented on an upcoming vote would you still approve of it? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings
- 2.8.1) Do you believe that those attorneys who publicly endorse Prop 64 misrepresented what the effects of Prop 64 were going to be? YES or NO options
- 2.8.2) If you answered yes to the previous question do you feel that a reasonably competent attorney should and/or would have known how those effects were being misrepresented? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings

### SECTION THREE: PROP 64 CHALLENGES AND COMMENTS

3.1) In March 2017, Stanford Law School Law and Public Policy produced a paper they titled Implementing Proposition 64; Implementing Marijuana Policy in California that delved into the conflicts that exist between "AUMA" and "MCRSA" policies. As stated within the paper; 'Since approved statutes and amendments are almost immediately operational and presumptively valid, a court does not have an opportunity to interpret or evaluate their constitutionality until a party brings a suit. Generally, a party who has suffered or will suffer an injury from the enforcement of a particular statute may bring a suit to challenge its validity. Hence, understanding how to appropriately amend the AUMA is a critical component to regulating the industry'. Do you agree with their assessment that the courts will be the final arbitrators over how these laws and regulations are created, passed and administered? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings

[https://law.stanford.edu/wp-content/uploads/2017/04/Implementing\\_Prop\\_64\\_Stanford\\_Law\\_School.pdf](https://law.stanford.edu/wp-content/uploads/2017/04/Implementing_Prop_64_Stanford_Law_School.pdf)

3.2) Did Prop 64, as it was submitted to the voters, meet all of the legal requirements, including Section 8(d) set forth in ARTICLE II: VOTING, INITIATIVE AND REFERENDUM, AND RECALL [SECTION 1 - SEC. 20] of the California State Constitution? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=11](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=11)

3.3.1) The language contained within SECTION 11: CONSTRUCTION AND INTERPRETATION of Prop 64 claimed it was not a document that could be "interpreted or construed" to create a "positive conflict" with any portion of federal law, including the Controlled Substance Act. Was this an accurate statement of fact? YES or NO options

3.3.2) If you answered no to the previous question, should a reasonably competent attorney have known this *prima facie*? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings

[https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20\(Marijuana\)\\_1.pdf](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20(Marijuana)_1.pdf)

3.4.1) Does Prop 64, SECTION 11 represent a positive conflict with federal law insofar as the USA's obligations under the United Nations Single Convention Treaty, Article 49, para 2 (f), which allows cannabis only for medical, industrial and research purposes? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings

[https://151farmers.org/wp-content/uploads/2018/07/convention\\_1961\\_en.pdf](https://151farmers.org/wp-content/uploads/2018/07/convention_1961_en.pdf)

3.4.2) Does Prop 64, SECTION 11 represent a 'positive conflict' with the federal governments classification of cannabis as a Schedule One (c)(10) drug as defined within the Controlled Substance Act? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings

[https://www.usbr.gov/recman/temporary\\_releases/pectrmr-63.pdf](https://www.usbr.gov/recman/temporary_releases/pectrmr-63.pdf)

3.4.3) Does Prop 64, SECTION 11 represent a 'positive conflict' with the federal governments classification of cannabis as a Schedule One drug when water resources for licensed cannabis cultivation relies on water originating in full or in part from outside of California whereby the federal Bureau of Reclamation has written policy that prohibits the use of that water for cannabis cultivation? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings

[https://www.usbr.gov/recman/temporary\\_releases/pectrmr-63.pdf](https://www.usbr.gov/recman/temporary_releases/pectrmr-63.pdf)

3.4.4) Can cannabis based private party contracts be created that protect those parties interests and obligations in the event that when conflicts arise between state and federal law those parties would not be negatively impacted by federal preemption laws? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings

<https://litigation.findlaw.com/legal-system/the-supremacy-clause-and-the-doctrine-of-preemption.html>

3.5) Prop 64, SECTION 12: SEVERABILITY states, “should any provision in this Act found to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.” Would this survive a challenge should it negatively impact a licensee’s investment, or, would the state be held “immune” as a result of the language of Division 10, Chapter 1, General Provisions Section 26001(2)(dd), where potential licensees were forewarned that such investments might be considered “unreasonably impractical?” YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings

[https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20\(Marijuana\)\\_1.pdf](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20(Marijuana)_1.pdf)

3.6.1) Prop 64, SECTION 4. PERSONAL USE, Health and Safety Code Section 11362.45 (i), where it states, ‘nothing in section 11362.1 shall be construed or interpreted to amend, repeal, affect, restrict or preempt: Laws pertaining to the Compassionate Use Act of 1996’. Does this adequately protect the medical cannabis patients’ rights as they were legally interpreted under Prop 215? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings

[https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20\(Marijuana\)\\_1.pdf](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20(Marijuana)_1.pdf)

3.6.2) Prop 64, SECTION 5. USE OF MARIJUANA FOR MEDICAL PURPOSES amends laws pertaining to medical cannabis patients’ rights. Does that put this section in conflict with the prior SECTION 4. PERSONAL USE as granted within Health and Safety Code Section 11362.45(i) whereby the medical cannabis patients’ rights are not subject to amendment? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings

[https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20\(Marijuana\)\\_1.pdf](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20(Marijuana)_1.pdf)

3.6.3) Would you consider the Prop 64 amendment and passage of SB 94, SECTIONS 134-148, to be in conflict with the medical cannabis patients protections as they were described in Prop 64 H&S Code Section 11362.45(1)? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB94](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB94)

3.7) Would you advise traditional lending and banking institutions, when considering expanding their business portfolio with investments in cannabis projects, to do so under ideal conditions where the lendee is properly licensed and securitized, when considering the effects Prop 64 and subsequent approved amendments may have on that lendee? YES or NO options and/or with a 500 word response field. Please cite relevant statutes and rulings