**12.18 Controlled Substance—Maintaining Drug-Involved**

**Premises (21 U.S.C. § 856(a)(1))**

The defendant is charged in [Count \_\_\_\_\_\_ of] the indictment with knowingly and intentionally [opening] [leasing] [renting] [using] [maintaining] any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using a controlled substance in violation of Section 856(a)(1) of Title 21 of the United States Code. For the defendant to be found guilty of that charge, the government must prove beyond a reasonable doubt that the defendant knowingly [opened] [maintained] a place for the purpose of [manufacturing] [distributing] [using] a controlled substance.

[“For the purpose of manufacturing, distributing, or using a controlled substance” means that manufacturing, distributing, or using a controlled substance is one of the primary or principal uses to which the residence is put.]

“Maintaining” a place includes facts showing that over a period of time, the defendant directed the activities of and the people in the place.

**Comment**

In *United States v. Shetler*, 665 F.3d 1150, 1162 (9th Cir. 2011), the Ninth Circuit held that “in the residential context, the manufacture (or distribution or use) of drugs must be at least one of the primary or principal uses to which the house is put” (quoting *United States v. Verners*, 53 F.3d 291, 296 (10th Cir. 1995)). *See also* *United States v. Mancuso*, 718 F.3d 780, 794-96 (9th Cir. 2013) (following *Shetler* and holding that “primary or principal use” instruction should have been used for count alleging unlawful use of dental office, as well as use of house).

*See United States v. Basinger*, 60 F.3d 1400, 1405-06 (9th Cir. 1995) (analyzing dominion and control over a shed).

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