



Primer on Title Insurance and the Colorado Marijuana Industry

Background

The laws of Colorado have been changed legalizing the retail sales of marijuana for recreational purposes. These laws became effective January 1, 2014. Essentially these laws remove many of the traditional criminal penalties associated with marijuana, and replace those criminal penalties with state licensing and regulation. The decriminalization of marijuana has created a market for the production, sale, and distribution of marijuana which was previously illegal under state law.

There are a myriad of unanswered questions and issues, not the least of these issues being the stance of the federal government regarding the enforcement of existing federal laws proscribing the growing, processing, sale and possession of marijuana and its various products. It is important to remember that these activities remain illegal under federal law, regardless of any given state's law.

The backdrop in regards to the marijuana issue is ever changing in Colorado (and several other states), and this creates complex constitutional, legal, and regulatory issues.

Title Insurance and the Marijuana Industry

All title insurance underwriters have notified title insurance agents that if the title insurance agent expects to provide title insurance on or to serve as the escrow / closing agent for a transaction in which the title/settlement agent has actual knowledge that the property is currently used or will be used for the production, sale, or distribution of marijuana, the title insurance underwriter is requiring that it be directly involved in the subject transaction for title insurance underwriting purposes. Such transactions are considered to involve special risks. Special risks also apply if it is discovered that tenants are conducting any such activities while in possession of the subject property under leasehold or rental agreements. Because of current banking regulations, much of the marijuana industry is generally an all cash business. Most (if not all) closing agents will not accept cash for funding a real estate transaction. That situation may trigger federal reporting obligations, and our industry is simply not equipped for handling cash as good funds for settlement.

Depending upon the information obtainable and the circumstances present, a title insurance underwriter in Colorado may decline to provide the coverages or services requested. Notwithstanding, most title insurance underwriters are instructing their issuing agents to include a Special Risk Exception to policies issued for properties used for marijuana-related activities. This requirement is based on the prospect that state law permits some of these types of operations (subject to multiple regulations), along with either the prohibition or acceptance of such operations by specific local ordinances, and the federal law conflict referenced above. To manage such risk, most underwriters believe a Special Risk Exception is an appropriate extension of coverage exclusions under such circumstances.



The following is a pro forma example of a Marijuana Special Risk title insurance Exception to coverage:

MARIJUANA EXCEPTION - EXAMPLE

Without limiting, modifying, abridging or negating any provision of the Exclusions From Coverage stated in this Policy or any other exception included in this Schedule B, and as a supplement and addition thereto, this Policy does not insure or provide title insurance coverage for or against any and all consequences and effects, legal, equitable, practical or otherwise, civil or criminal, of any violation or alleged violation of any federal, state, county, municipal or local laws, statutes, ordinances or regulations or any actual or threatened action, court order or mandate for the enforcement thereof, relating to or governing the use, processing, manufacture, growth, possession, distribution, sale or any other activity on, about, or relating to or concerning the Land, title thereto or any interest therein, of any controlled or regulated substance, including, without limitation, marijuana, and any component, derivative or product thereof.

AN INDEPENDENT AGENCY PROUDLY UNDERWRITTEN BY



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