

## Legal Issues Associated with Colorado's Growing Marijuana Industry

by Daniel J. Garfield

Do you have an interest in investing, owning, lending, or making any other financial commitment in Colorado's growing marijuana industry? Here are some legal issues to keep in mind:

- Marijuana possession and sale remain illegal under federal law. While the Department of Justice has indicated that it will not typically shut down marijuana businesses that strictly comply with state law, it is doing so to conserve limited law enforcement resources, not because it is legal under state law. No matter what legal or financial arrangement you make, you are always at risk of federal officials investigating you, taking your property and assets, and seeking your conviction. A few state court judges have been known to refuse to enforce contracts involving marijuana businesses because it is illegal under federal law.
- To be an owner, no matter how small the percentage, of a retail or grow facility, you must have been a Colorado resident for two years. Creative ways may exist for out-of-state investors to make a loan convertible to equity once the lender establishes Colorado residency for two years. Secured loans are difficult because the State of Colorado Marijuana Enforcement Division (MED) will consider a secured lender an owner because of the possibility of foreclosing on marijuana or other businesses assets as collateral. (One of the many reasons banks will not lend in this industry).
- Owning real estate with marijuana tenants is increasingly popular with investors who won't or can't directly invest in a marijuana business. However, rents based upon percentage of sales are verboten as the MED consider anyone who profits from a percentage of a marijuana business sales to be an owner, and therefore must be licensed under state and local law.
- Most legal arrangements involving marijuana have yet to be tested in court. You must always be aware that contractual provisions that are routine in other industries might not be enforceable (or might be enforced in unforeseen ways) where marijuana is involved. In case of dispute, mandatory arbitration might be preferable.
- Licensing of owners is required at both the state and city/county levels. State licensing is more straightforward, and Colorado residents without a felony criminal record and sufficient financial resources usually qualify at the state level. At the local level, however, licensing becomes more difficult, time-consuming, and expensive, because local governments, as they are with all real estate, are concerned about proper location (not too close to a school, church or other marijuana business), crime and security, neighborhood residents, and the like. After a long moratorium, the MED is again accepting applications for medical marijuana establishments. The MED will begin accepting applications for retail marijuana establishments for those not yet in the industry on July 1 for opening a business on or after October 1 (and will give priority for those applicants who file a notice of application prior to July 1). Similar types of deadlines vary in local jurisdictions, and many jurisdictions continue to opt out of medical, retail, or both. Aurora plans to

skip medical altogether and will likely begin taking applications soon for retail businesses seeking to open October 1 or later.

If you are seeking legal advice concerning the marijuana industry, Dan Garfield represents a number of marijuana business owners, investors, lenders, landlords, growers, and consultants (in and out of Colorado) and can assist you in all of these areas and others (along with many of his colleagues at FGMC). FGMC has many industry contacts that can provide you with professional advice in accounting, consulting, security, due diligence, and operational matters.