

Legal Issues Facing the Medical Marijuana Industry



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Outline

- Federal Prohibition
- Identifying and securing real estate
- Navigating local politics
- Securing financial investment
- Structuring your business entity (or entities)
- State Regulatory Timelines

But first....



Problems Caused By Federal Prohibition

The 2013 Cole Memo

- Federal government would not interfere if state systems did not implicate 8 enforcement priorities:
 - Prevent distribution to minors
 - Prevent revenue to criminal enterprises
 - Prevent diversion to other states
 - Prevent its use as a pretext
 - Prevent violence and use of firearms
 - Prevent drugged driving
 - Prevent growing on public lands
 - Prevent use/possession on federal property
- Sean Spicer said on Thursday that we can probably expect greater enforcement in recreational markets

Other Federal Issues

- FDA regulation
 - Drug vs. Dietary Supplement
- USDA regulation
 - Food additives (edibles)
- Patent/trademarking
- Securities laws
- Banking laws
 - 2014 FinCEN Memo allows banks to work with marijuana companies, but subject to increased compliance burdens
- Tax liability

Real Estate

- Statutory requirement to be outside of 500 feet from a school, church, public library, public playground, or public park.
- R.C. 3796.29 allows localities to prohibit or limit medical marijuana companies – the dreaded “moratorium”
- Licenses are specific to locations – so you must identify *before* applying
 - What if you are not awarded a provisional license?
 - Make your purchase or lease agreement contingent on obtaining the license
- Think long-term instead of short-term

Local Politics

Moratoriums

- Many municipalities have enacted temporary bans on medical marijuana companies doing business in their city
- Even a temporary moratorium can exclude a locality due to fast-approaching deadlines
- The licensing scheme is currently a “de facto moratorium”
- Marijuana is *already* in their communities
- What is the benefit to the community? Jobs? Tax revenue?

Community Buy-In

- Be a meaningful *partner* of the community in which you are seeking to do business
- Get to know the local councilperson or trustee
 - This can be easier in smaller communities
 - Sit down with the Mayor, ward councilperson, economic development team, police chief, etc.
- Be prepared for any and all presentations (public or private)
 - Do not simply dismiss out-of-hand concerns of local leaders
- Constantly be thinking about the perception of this industry

Securing investment

- High financial barriers to entry in the cannabis space – chose the right people to be on your team
- Your investors have to be in compliance with federal and state regulations
 - Cannot have been convicted of a disqualifying offense
 - Cannot have a *financial interest* in more than one cultivator or processor
 - This is a *broad* definition by design – be *very careful* about people advising you to work with multiple applicants on a “handshake” basis
- Ensure you have adequate NDAs in place to protect your proprietary information
- Document and paper everything when soliciting investors
 - Do not raise money before taking the proper steps
- Raising money is harder than it looks!

Structuring Your Entity (or Entities)

- You need at least 1 business entity, and the type of entity you choose can have an enormous impact on your business
 - The impact of 280E and personal tax liability
 - Additional vehicles for investment
 - Certain structures can be more attractive to some investors
- Determining the structure is often done in conjunction with your tax advisor
- Liability concerns may lead you to place real estate holdings in a separate entity
- Prepare the proper business documents and comply with corporate requirements under Ohio law
 - Probably makes the most sense to form as an Ohio company

Questions?

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