

# Seeing Through the Smoke

## The Impact of NJ Recreational Cannabis Legislation on Real Estate

by Ozge Otarsi-McCue

From a business standpoint, the legalization of recreational cannabis in New Jersey, if successful, is expected to be a booming industry. By 2020, the cannabis industry on a national level is anticipated to constitute a \$20 Billion business and, by 2026, a business with at least \$50 Billion in profit. Although the business trajectory for the Garden State appears promisingly clear, the impact of the legalization of recreational cannabis on the real estate industry in New Jersey is largely unknown. From a real estate standpoint, there are many issues which may arise in the event that New Jersey law (as opposed to federal law) permits the cultivation, production and sale of cannabis for recreational purposes.

First and foremost, financial institutions will need to tread carefully. Pursuant to federal law, marijuana is classified as a Schedule I drug under the Controlled Substances Act and, hence, remains illegal. The foundation of banking regulations is the requirement that lenders abide by federal laws. As a result, financial institutions will be unable to grant mortgage loans to cannabis industries without risking the violation of federal

laws. For instance, a loan granted to a cannabis industry would constitute money laundering pursuant to the Money Laundering Control Act of 1986, which prohibits financial transactions involving the proceeds of "specified unlawful activity." Further, federal laws aside, financial institutions will face difficulty in obtaining loan policies on land used for the cultivation, distribution, manufacture or sale of marijuana. Most underwriters have already issued bulletins to their title offices and agents, advising not to insure any such transactions. It has been noted that the following language has already been included in title commitments issued to-date: Notice: please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving land that is associated with these activities. Further, certain title companies have even refused to serve as escrow agent for the settlement of transactions in which cannabis-related businesses are involved. Of course, financial institutions will not stand alone in facing these concerns. Cannabis business owners will quickly realize that these foregoing issues will be the basis as to the inevitable difficulty in obtaining mortgage financing.

With regard to leasing transactions, both landlords and tenants will need to be mindful of boilerplate provisions as contained in lease agreements. Standard lease forms often require a tenant's "use" of leased premises to be compliant with applicable laws. As previously stated, mari-



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juana use remains illegal pursuant to federal law. Therefore, although a tenant's use of recreational cannabis may be compliant with applicable state law, that same use would constitute a default under federal law. Therefore, to be clear, languages in lease agreements will need to distinguish between compliance with state versus federal law as it relates to cannabis use. Further, landlords of multiple dwelling buildings may face additional concerns. The rise of recreational marijuana use may result in conflicts between tenants. Landlords concerned with growing vacancies may consider including additional provisions into lease agreements which specifically state that smoking (whether cigarettes or marijuana) is strictly prohibited. The landlord can therefore reserve the right to evict a tenant for violating this specific lease covenant.

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