

Five Tips for Landlords of Cannabis-Related Businesses

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As more states take steps to legalize cannabidiol (CBD) and marijuana, there are many outstanding questions for potential [landlords of cannabis-related businesses](#). Right now, states and the federal government have differing rules that landlords will need to navigate. For example, while marijuana remains illegal under federal law, [Illinois has legalized marijuana for recreational and medical use](#), and New York has decriminalized marijuana but has not legalized it.

So how can landlords adequately protect themselves when leasing to cannabis-related businesses? If a landlord believes that the benefits of leasing to a cannabis-related business outweigh the risks, here are five tips for leasing to cannabis-related businesses with a focus on how federal, Illinois, and New York law may apply.

1. Be specific about tenant's permitted use. The use clause of a lease is intended to set forth the tenant's intended use of the space. If a tenant intends to sell CBD oil, the lease should have a use provision that specifically allows for the sale of CBD oil. A narrowly drafted use provision is especially important, because cannabis laws are constantly changing. As a result, landlords who insist on a specific use provision can ensure that what is being sold in their building is permitted by law and that the tenant obtains insurance that covers the specified use.

2. Check your mortgage. If the property being leased is collateral for a bank mortgage, the mortgage will likely have a clause that requires the borrower and its tenants to use the property in compliance with all applicable laws, rules, and regulations (state and federal). This clause may cause a problem for landlords, because at the federal level, marijuana is a Schedule 1 controlled substance. Schedule 1 controlled substances are illegal to possess, use, buy, sell, or cultivate in any federal jurisdiction. Federal law also makes it a felony to lease or rent any place for the purpose of manufacturing, distributing, or using any controlled substance, including cannabis. For that reason, if a landlord leases to a cannabis-related business, the landlord may be required to obtain a modification to its mortgage so that a default is not triggered by the lease.

3. Understand state and local zoning restrictions. Landlords should make sure state and local zoning laws permit cannabis-related businesses in the area where the property is located. Some municipal governments do not allow cannabis-related businesses to open in their jurisdiction. For

example, while New York State has decriminalized possession of marijuana and CBD, New York City has prohibited the sale of all food and drinks that contain CBD as an ingredient. Other states have less restrictive laws. In Illinois, anyone over the age of 21 can legally purchase up to 30 grams of marijuana for recreational purposes, and CBD is legal as well.

4. Protect yourself with a strong indemnification provision. Given the nature of cannabis-related businesses, leasing to them is riskier than leasing to, for example, a restaurant chain. For instance, (i) a landlord could find itself named in litigation brought against the cannabis-related business for accidents that occur when someone is under the influence of the tenant's products or (ii) the federal government could initiate an enforcement action against the landlord for leasing to a cannabis-related business. For these reasons and others, a lease to a cannabis-related business should contain an indemnification provision that extends beyond the scope of the indemnification provision found in a typical lease.

5. Check your [bank's policies on handling of cannabis-related funds](#). Finally, banks that are federally insured must file a Suspicious Activity Report with the Financial Crimes Enforcement Network when a deposit is made that banks consider "suspicious activity." Because the sale of cannabis violates federal law, if a cannabis-related business were to deposit money coming from the business, the bank would have to report it. As a result, banks have historically stayed away from cannabis-related businesses. And because banks typically won't accept their money, many cannabis-related businesses are "cash only" businesses. This could lead to increased security risks for landlords if the business is a target for theft. Additionally, some banks may not accept rent checks from businesses that violate federal law. Landlords should find out in advance if leasing to a cannabis-related business will cause an issue with the bank that maintains the landlord's operating account.

Recent marijuana and CBD legalization creates opportunities for landlords to lease to cannabis-related businesses. However, the constantly changing legal landscape in this area will continue to pose challenges. These five tips should help landlords avoid some of the major pitfalls associated with leasing to cannabis-related businesses.

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