

TITLE COMPANIES AND MARIJUANA BUSINESS IN OREGON

Cannabis-ness is expanding in the Pacific Northwest as a result of state laws decriminalizing recreational marijuana. Marijuana entrepreneurs are looking in part to real estate transactions, because they need land for growing marijuana, for its processing and storage, and for its retail sales.

One challenge that these entrepreneurs face is banking. Press reports identify this as problematical. Because marijuana business is illegal under federal law, many banks refuse to engage in banking services for marijuana-related businesses. Difficult access to banking services pushes marijuana businesses to cash-based business practices. That poses security risks for a title company asked to provide services of an escrow agent. A title company acting as a licensed escrow agent is simply not in a position to handle large amounts of cash.

Furthermore, a bank's unwillingness to provide banking services for businesses directly involved with marijuana may extend to businesses indirectly involved in the marijuana business, such as a business that sells marijuana paraphernalia. A bank that declines its services for a business indirectly involved in the marijuana business could decline or withdraw its services to an escrow agent who uses its escrow bank account for funds connected to transactions for real estate used in marijuana business.

In the Pacific Northwest, the companies of the Fidelity National Title Group (FNTG) are taking a cautious approach in this regard. They are unwilling to put their banking relationships at risk by providing escrow services for land with a known connection to marijuana business.

The concerns for escrow services do not apply to a Fidelity company's role as issuer of title insurance. Title insurance relates to the title of land, that is, its ownership, not its use. Therefore, for orders without an escrow component, an FNTG company may be willing to provide title insurance for land when informed that the land is, will be or has been the site of marijuana growing, processing or sales. When informed of such a connection, an FNTG title company will insert in its preliminary title reports and commitments

a note that is the same or substantially the same as the following:

NOTE: Land used for marijuana growing, processing or sales is subject to state and federal law related to these activities. Violations may subject the owner and others to civil or criminal penalties or to forfeiture. A title insurance policy excludes coverage against the exercise of governmental powers over such activities and its consequences. As a result this note is an informational courtesy and will not appear in a policy.

Summary. An FNTG title company will use the following guidelines for orders involving real estate with a known connection to marijuana business:

1. It will decline an escrow order (purchase or refinance) for land known to be used currently in marijuana business.
2. It will decline an escrow order in which the escrow agent anticipates receiving a large amount of cash into escrow.
3. With county manager approval, it may accept an escrow order for land that is leased in whole or part to a marijuana business if the tenant is not a principal in the escrow.
4. With county manager approval, it may accept an escrow order for land that is not used currently in marijuana business but there is disclosure that it will be so used in the future.
5. With county manager approval, it may accept a title-only order for land with a connection to marijuana business.

COURTESY OF TICOR TITLE COMPANY OF OREGON, A FIDELITY NATIONAL TITLE GROUP COMPANY

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Guidelines Are Subject to Change without Notice

