

WFG Underwriting Bulletin



To: All WFG Policy Issuing Agents and Employees
From: WFG Underwriting Department
Date: October 19, 2018
Bulletin No. NB-2018-07
Subject: Marijuana or Cannabis Properties

For distribution in states which have legalized marijuana for medical or recreational uses or both.

As of 10/22/18, this includes: (22 states Medical)

1.Arizona, 2.Arkansas, 3.Connecticut, 4.Delaware, 5.Florida, 6.Hawaii, 7.Illinois, 8.Louisiana, 9.Maryland, 10.Michigan, 11.Minnesota, 12.Montana, 13.New Hampshire, 14.New Jersey, 15. New Mexico, 16. New York, 17.North Dakota, 18.Ohio, 19.Oklahoma, 20.Pennsylvania, 21. Rhode Island, and 22.West Virginia

(9 states Both)

1.Alaska, 2.California, 3.Colorado, 4.Maine, 5.Massachusetts, 6.Nevada, 7.Oregon, 8.Vermont, and 9. Washington, plus Washington D.C.

Many states have legalized the growing, processing, sale and use of marijuana for medical and recreational purposes. It has become big business and many properties are being acquired for use in for marijuana-related business enterprises.

Although some states have legalized marijuana for medical and/or recreational purposes and are issuing state-level licenses to entrepreneurs, marijuana remains absolutely illegal under the federal Controlled Substances Act, 21 U.S.C. §§801-971, (CSA) and other federal drug control acts. The federal drug enforcement regime employs powerful tools, including forfeiture of funds and real and personal property which it believes to be related to the federally illegal enterprise. Under federal forfeiture statutes, “[a]ll right, title, and interest in property ... vests in the United States upon the commission of the act giving rise to forfeiture under this section.”¹ This automatic forfeiture, which potentially relates back not just to first use in the state legal marijuana business, but all the way back to the initial acquisition of property with the intent to use it in a marijuana enterprise. This makes insuring ownership highly problematic.

¹ 21 U.S.C. §853(c)(criminal forfeiture); 18 U.S. Code § 981(f) (civil forfeiture)

Equally as imposing the CSA is federal anti-money laundering law, 18 U.S.C. §§1956 -1957 (AML), which requires banks, businesses and individuals in general, to refrain from knowing participation in transactions involving the proceeds of illegal activity. Several federal bank regulators have forcefully advised banks not to handle funds in any way related to “state legal” marijuana. This stringent regulatory environment under AML and the Bank Secrecy Act (BSA) potentially puts the escrow accounts of a title or escrow company handling such business at risk and could even jeopardize a company’s overall banking relationship.

Until the laws in this area have evolved further, WFG’s underwriting position is:

1. WFG will NOT, directly or through its agents, insure any property known to currently be used in connection with any aspect of the “state-legal (or illegal) marijuana business, whether “recreational” or “medical.” Nor is title insurance to be issued when WFG or its agent has reason to know that the property is being acquired or financed with the intent to move the property into marijuana a marijuana business or any expanded marijuana business. Similarly, no property information report or similar non-insurance report on status of title is to be issued on any such properties. Seek guidance from your underwriter if asked to insure a property which has previously been in use with a marijuana enterprise, but which is being moved out of that usage.
2. WFG will NOT handle the escrow, settlement or closing of any transactions known to be related to any existing or past marijuana-related business, whether “state legal” or not. This prohibition applies even if the property in question and/or the participants in the transaction have not previously been in a marijuana-related enterprise. A known plan to convert property for use in a marijuana-related enterprise shall preclude WFG from acting as an escrow or settlement officer.
3. No agent shall issue or request issuance of a Closing Protection Letter or similar closing assurance in connection with any such transaction. In addition, no agent should request WFG to handle funds on such transaction through any centralized disbursement service offered by the Company.

WFG urges its agents to consult their own legal advisors before deciding whether the agent will handle closings or escrows on transactions involving marijuana-related properties. To be charged with the violation of anti-money laundering statutes and/or aiding and abetting parties in the violation of state or federal drug laws may subject an agent to civil and criminal penalties, including fines, incarceration and/or the loss or suspension of various business and professional licenses. It may also put an agent’s key business and banking relationships at risk.

Because activity which may be legal under state law currently is not legal under federal law, WFG will not request potentially incriminating “non-marijuana” certifications or affidavits from its customers. We also recognize that no business or homeowner can reasonably be expected to certify that no-one has ever used, sold, or possessed legal or illegal drugs on their premises.

WFG is aware that transactions involving marijuana may be difficult to identify and does not charge anyone with doing detective work. In no event, however, are WFG employees or agents to ignore situations in which there is reason to believe a transaction may involve properties which have been or are presently in use as marijuana-related enterprises or which are being acquired for such uses. Be alert for transactions involving such things as: all cash acquisitions (sometimes at premium prices), entities bearing marijuana-related names, or orders involving persons or entities which publicize themselves or are locally known as being marijuana entrepreneurs, investors or lenders, or law firms which specialize

in advising cannabis businesses. In some states marijuana uses are reflected on the tax roll. When in doubt about a transaction, consult your local WFG underwriter for guidance.

In order to put WFG's potential customers on notice of WFG's position, effective immediately all commitments and preliminary title reports are to contain the following note:

Due to current conflicts or potential conflicts between state and federal law, which conflicts may extend to local law, regarding marijuana, if the transaction to be insured involves property which is currently used or is to be used in connection with a marijuana enterprise, including but not limited to the cultivation, storage, distribution, transport, manufacture, or sale of marijuana and/or products containing marijuana, the Company declines to close or insure the transaction, and this Commitment [or Preliminary Title Report, as the case may be] shall automatically be considered null and void and of no force and effect.

Similarly, any litigation or foreclosure guarantee or report shall contain the following note:

If the property which is the subject of this report or guarantee has been used, is being used, or was acquired with the intent that it be used in connection with a marijuana-related enterprise, including but not limited to the cultivation, storage, distribution, transport, manufacture or sale of marijuana and/or products containing marijuana, the federal government (or the state or local government if such use is deemed to be non-compliant with state or local law) may claim a preeminent right to the property automatically effective as of the date of the use which it deems illegal. Nothing in this report or guarantee provides assurances against the exercise of such a governmental forfeiture, regulatory or police power, and further, Company expressly reserves the right to decline to close or insure such a property following the completion of any litigation or foreclosure action conducted on said property. You are advised to consult your legal counsel on whether it is required, advisable, or inadvisable to give notice to the Federal and/or State government in order to address potential forfeiture issues.

The laws regarding marijuana are in transition in this country. Bills to decriminalize marijuana on the Federal level are currently pending in Congress. At the very same time and in states which have legalized marijuana on the state level, there have been a significant number of marijuana drug busts and property forfeitures by the Federal drug enforcement authorities. Over the coming months and years, we hope for clarification of the law allowing WFG and its agents to provide the same high quality title and settlement services to all of WFG's potential customers.

NOTE: This Bulletin is for the sole purpose of establishing underwriting positions and policies reflecting WFG National Title Insurance Company's best business judgment. The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.