

Cannabis Business Blog

Strategic Planning for Washington's Licensed Marijuana Business Owners

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This is the first installment of a two-part article which talks with you about issues to consider when structuring the ownership once operation of your I-502 related business has begun.

A very important issue with regard to any business, but now particularly with an I-502 business, is the isolation of the potential liability associated with the operation of an I-502 business or I-502 related business from the other assets of the business owner. This strategic planning issue is of particular concern to participants in the I-502 industry so long as the application of federal law to the business remains uncertain.

Where we are: The passage of I-502 made the sale of recreational marijuana legal under Washington State law and resulted in the creation of major new business opportunities within the state.

The problem with this new business is that the direct or indirect growing, possession, sale and distribution of marijuana remains a violation of the federal Controlled Substance Act. So what is legal under Washington law remains illegal under federal law.

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Warning Regarding Federal Law: The possession, distribution, and manufacturing of marijuana is illegal under federal law, regardless of state law which may, in some jurisdictions, decriminalize such activity under certain circumstances. Penalties for violating federal drug laws are very serious. For example, a conviction on a charge of conspiracy to sell drugs carries a mandatory minimum prison term of five years for a first offense and, depending on the quantity of marijuana involved, the fine for such a conviction could be as high as \$10 million. In addition, the federal government may seize, and seek the civil forfeiture of, the real or personal property used to facilitate the sale of marijuana as well as the money or other proceeds from the sale. Although the U.S. Department of Justice (DOJ) recently rescinded its guidance regarding prioritization of criminal prosecutions of individuals and entities operating in compliance with effective state regulatory systems, DOJ left in place long standing guidance to federal prosecutors regarding how to exercise this discretion. Individuals and companies are cautioned to consult with experienced attorneys regarding their exposure to potential criminal prosecution before establishing business operations in reliance upon the passage of state laws which may decriminalize such activity. Federal authority to prosecute violations of federal law as crimes or through seizures and forfeiture actions is not diminished by state law. Indeed, due to the federal government's jurisdiction over interstate commerce, when businesses provide services to marijuana producers, processors or distributors located in multiple states, they potentially face a higher level of

scrutiny from federal authorities than do their customers with local operations.