



COLORADO
Department of Revenue
Enforcement Division - Marijuana
455 Sherman Street, Suite 390
Denver, CO 80203

November 26, 2014

Douglas A. Gradisar, Esq.
Gradisar, Trechter, Ripperger & Roth
1836 Vinewood Lane, Suite 2000
Pueblo, CO 81005

Dear Mr. Gradisar:

This letter is in response to your request for a position statement pursuant to Rule M 104(A), 1-CCR 212-1, (2014) and Rule R 104(A), 1-CCR 212-2, (2014), received in our office on October 27, 2014. While this letter represents the good faith opinion of Division personnel who are familiar with state marijuana law, we acknowledge that even the most minor variations of facts or circumstances presented for review can materially change any analysis. Therefore, the Division does not make any specific or final determination on any of the issues raised.

1. "Is a lender who takes a security interest in furniture and/or fixtures used directly in the manufacture or cultivation of Retail Marijuana or Retail Marijuana Products, equipment or inventory an owner for purposes of licensing?"

Yes. R204(D) & M204(D)

2. "Is a lender who secures a promissory note by a deed of trust on real property used to grow, manufacture or sell marijuana an owner for licensing purposes?"

The question contains insufficient information to indicate if a direct or indirect financial interest in the marijuana business or establishment exists. Applicants seeking a determination of suitability for licensing must submit an ownership application to the state licensing authority for review. Whether the financial interest constitutes ownership will be dependent on the unique facts and circumstances of each case. R204(D) & M204(D)

3. If a lender is deemed to have an indirect financial interest as a result of a security agreement or deed of trust, must the licensee disclose that relationship to the Medical (sic) Enforcement Division and, if so, when?

*Assuming the question was intended to ask if disclosure must be made to the **Marijuana Enforcement Division (MED)**, CRS § 12-43.4-312 "require(s) a complete disclosure of all persons having a direct or indirect financial interest, in each license issues under this article." Disclosure must be made at time of application to the MED. R204(D) & M204(D)*

4. If a lender provides a loan and secures that loan with a promissory note which itself is secured by deed of trust on real property used to grow, manufacture or sell marijuana, and the lender never forecloses on the deed of trust because payments on the promissory note are timely made, has the lender become an “owner” for purposes of licensing regulations, and if so, when did the lender become an “owner?”

Please see response to Question #2 above.

5. Under the situation in Question #4 immediately above, in the event a lender is required to foreclose on the deed of trust, under the regulations and the law, hasn't the lender become an “owner” on multiple occasions?

The unique facts and circumstances of each case may or may not constitute ownership which is the basis for the requirement of that all direct and indirect financial interests be disclosed. R204(D) & M204(D)

Thank you for your inquiry. If you have additional information or any questions, please contact Jim Burack, MED's Chief of Investigations, at jim.burack@state.co.us.

Sincerely,

A handwritten signature in black ink that reads "W. Lewis Koski". The signature is written in a cursive style with a large, sweeping underline under the name.

Lewis Koski
Director