

Medical Cannabis License as Collateral for a Loan

Summary

This proposal establishes the framework for a lender to obtain a security interest in the proceeds from a Commission-approved sale of a grower, processor, or dispensary license.

The proposal addresses:

- Eligibility requirements for secured creditors;
- The process for a secured creditor to obtain a security interest in the right to the proceeds from a Commission-approved sale of a medical cannabis license;
- Eligibility requirements for a receiver;
- Security protocols applicable to receivers; and
- The disposition of a medical cannabis license.

Chapter 35 Fee Schedule

.01 Fees.

The following fees are established by the Commission:

A – K. (text unchanged)

L. Miscellaneous fees:

(1) - (2) (text unchanged)

(3) Change in the location of a grower, processor, or dispensary premises - \$7,000; [and]

(4) License reinstatement fee - \$2,000[.]; *and*

(5) *Receivership application fee - \$1,000.*

Chapter 38 Medical Cannabis License - Secured Creditors and Receivership

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated:

(1) “Licensee” means a licensed grower, processor, or dispensary.

(2) “Secured creditor” means a lending institution defined under the Financial Institutions Article, § 1-101, Annotated Code of Maryland that has been approved by the Commission to obtain a security interest in the proceeds from a Commission-approved sale of a grower, processor, or dispensary license.

.02 Eligibility Requirements for Secured Creditors.

A. To act as a secured creditor under this chapter, the lending institution must be approved by the Commission.

B. To request Commission approval, the lending institution shall provide the following documentation to the Commission:

(1) A compliance and reporting plan;

(2) A proposed plan for the appointment of a receiver that meets the requirements set forth in Regulation .05 of this chapter.

(3) Confirmation that the lending institution is:

(a) In good standing and eligible to conduct business in Maryland; and

(b) In compliance with any regulatory requirements applicable to the lending institution; and

(4) Any other information requested by the Commission.

C. If additional information is requested pursuant to §B(4) of this regulation, the lending institution must respond within 30 days, or the Commission may deny the request for eligibility as a secured creditor.

D. A secured creditor's eligibility is effective, provided:

(1) The Commission has not revoked the secured creditor's eligibility; and

2) The secured creditor:

(a) Maintains compliance with the eligibility requirements under this chapter; and

(b) Submits an annual report to the Commission attesting to its continued compliance with the eligibility requirements beginning one calendar year after the date the secured creditor is approved.

E. The Commission shall maintain and make available on its website a list of eligible secured creditors approved under this chapter.

.03 Security Interest in a Medical Cannabis License.

A. A licensed grower, processor, or dispensary may pledge an interest in the proceeds from a Commission-approved sale of medical cannabis license as a security interest for a loan.

B. An eligible secured creditor may obtain a security interest in the proceeds from a Commission-approved sale of a licensed grower, processor, or dispensary if:

(1) The following information has been provided to the Commission:

- (a) A copy of the security agreement, subject to the restrictions listed in §C of this regulation; and*
- (b) Any other information requested by the Commission; and*

(2) The Commission approves the secured creditor to obtain a security interest in the license.

C. Security Agreement Exclusions.

(1) A security agreement may not contain provisions that authorize the secured creditor to unilaterally:

(a) Require the loan to become due, except if the licensee materially breaches or defaults on its material obligations as set forth in the security agreement;

(b) Convert the debt under the loan to equity; or

(c) Deprive the licensed grower, processor, or dispensary of the right to operate the license.

(d) Restrict the ability of the licensed grower, processor, or dispensary from making payment on the secured loan through a third party unless the payment restriction would cause the secured creditor to violate a law by which it is governed.

(2) The Commission may restrict a security agreement for any other good cause as determined by the Commission.

D. Scope of a Security Interest in a Medical Cannabis License.

(1) Upon Commission approval under §B of this regulation, a secured creditor may create a security interest in a medical cannabis license associated with a loan to a licensed grower, processor, or dispensary.

(2) A security interest in a medical cannabis license entitles the secured creditor to:

(a) A property interest in the value of the medical cannabis license; and

(b) The right to the proceeds from the sale of the medical cannabis license that occurs in accordance with a disposition plan under Regulation .08 of this chapter. .

(3) A security interest in a medical cannabis license excludes the right to operate the license.

E. The Commission may deny a secured creditor from obtaining a security interest in a medical cannabis license if the Commission determines that the arrangement is intended as a mechanism to circumvent the sale or transfer of ownership requirements under Health-General Article, § 13-3311.1, Annotated Code of Maryland.

.04 Selection of an Eligible Receiver.

A. Subject to approval by the Commission under Regulation .05 of this chapter, a secured creditor may select an eligible receiver who is a third party to oversee the disposition of a medical cannabis license, including the assets of the licensee, if a licensed grower, processor, or dispensary whose medical cannabis license is subject to a Commission-approved security interest:

(1) Is the subject of an order requiring appointment of a receiver;

(2) Becomes insolvent; or

(3) Otherwise materially breaches or defaults on its material obligations secured by the associated license as set forth in the Commission-approved security agreement.

B. Not later than 10 business days before the Commission approves the receiver, the secured creditor who selects a prospective receiver for approval under Regulation .05 of this chapter shall submit the following information to the Commission:

(1) Proof of the creditor's secured interest in the license of the associated licensed grower, processor, or dispensary;

(2) Proof of an order requiring appointment of a receiver, insolvency, or evidence of the licensee's material breach or default on its material obligations, as set forth in the associated Commission-approved security agreement; and

(3) Any additional information requested by the Commission.

.05 Application for Receivership.

A. A prospective receiver must apply for and receive approval from the Commission in order to serve as a receiver under this chapter.

B. The applicant for receivership shall submit to the Commission a completed application, in a form developed by the Commission, accompanied by the following:

(1) Documentation establishing the applicant's qualifications and ability to oversee the orderly disposition of the secured license in a manner that facilitates continuity of the licensee's operations to the extent possible.

(2) A list of all owners and principal officers of the applicant and supporting documentation, including:

(a) Certificate of incorporation;

(b) Bylaws;

(c) Articles of organization;

(d) Operating agreements;

(e) Certificate of limited partnership;

(f) Resolution of a board of directors; or

(g) Other similar business formation documents;

(3) Documentation establishing that the individual or entity is eligible to do business in Maryland throughout the term of the receivership;

(4) Criminal history record information demonstrating that the applicant for receivership does not have any disqualifying criminal conviction applicable to medical cannabis licensees under this subtitle;

(5) Audited financial statements, including a record of tax payments in all jurisdictions in which an applicant has operated a business for the 3 years before the filing of the application;

(6) An affidavit confirming that the applicant does not have a financial or ownership interest in any grower, processor, or dispensary license in Maryland;

(7) A disposition of license plan, subject to Commission approval, which includes:

(a) A detailed description of the plan for the orderly disposition of the license and associated business assets in order to satisfy the security interest in the right to the proceeds from the sale of the license; and

(b) A proposed timeline for the orderly disposition of the license of the associated licensed grower, processor, or dispensary.

(8) Any additional information requested by the Commission.

C. The application shall be accompanied by the non-refundable receivership application fee specified in COMAR 10.62.35.01.

D. Commission Determination of Receivership.

(1) Upon receipt of a completed receiver application and associated fee, the Commission shall either approve, deny, or request additional information from the applicant.

(2) If the applicant fails to provide any additional requested information to the Commission within 30 days of the request, the application shall be considered denied.

(3) If the Commission approves an application, the Commission shall appoint the applicant to serve as the receiver to oversee the orderly disposition of the license, including the sale and transfer of the license and associated business asset, provided the Commission has not otherwise revoked the approval.

(4) The approved receiver:

(a) Shall maintain compliance with the eligibility requirements under this chapter, as evidenced by submitting an annual report to the Commission attesting to continued compliance beginning one calendar year after the date the receiver is approved;

(b) Must be a third party that is not affiliated with the secured creditor; and

(c) May not have a financial or ownership interest in any licensed grower, processor, or dispensary in Maryland during the period the receiver is actively carrying out its responsibilities under this chapter.

.06 Security Protocols for Receiver in a Non-Public Area of the Premises.

A When a receiver is admitted to a non-public area of the premises of a licensee, a registered grower, processor, or dispensary agent of the licensee shall:

(1) Log the receiver in and out;

(2) Retain with the log a photocopy of the receiver's government-issued identification;

(3) Continuously supervise the receiver while on the premises; and

(4) Ensure that the receiver does not touch any plant or medical cannabis.

B. The licensee shall maintain a log of any visits by the receiver to non-public areas for 2 years.

.07 Receiver's Responsibilities.

A. A receiver shall comply with the provisions in COMAR 10.62 and Health-General Article, 13-3301 et seq., Annotated Code of Maryland governing the licensed grower, processor, or dispensary that is subject to the receivership.

B. In the event of a material violation by the receiver, the Commission shall provide the secured creditor associated with the receivership with written notice of the violation and an opportunity to cure within 45 days after receipt of the written notice, unless the Commission determines that the violation is an imminent threat to public health and safety, in which case the Commission shall terminate the receivership immediately

C. The Commission shall terminate the receivership if after providing notice and the opportunity to cure, the material violation is not cured within the 45-day period.

D. Whenever the Commission terminates a receivership under this regulation, the secured creditor may select another prospective receiver for Commission approval under Regulation .05 of this chapter.

.08 Disposition of a Secured Medical Cannabis License.

A. A receiver appointed under this chapter shall initiate and oversee the orderly disposition of a license and associated business assets in accordance with the disposition of license plan specified in Regulation .05B(7) of this chapter.

B. Disposition of a license and associated business assets, including the method, manner, time, place, and other terms, must be in accordance with the following:

(1) Notification of the method, manner, time, place, and other terms of the disposition are advertised at least 60 days prior to the planned disposition in a newspaper of general circulation in the jurisdiction in which the licensee is located and authorized to do business, and posted to the Commission's website. The notification shall include, at a minimum, the following information in clear bold type:

(a) Name and contact information of the secured creditor;

(b) Name of license holder, and d/b/a or trade name, if applicable;

(c) License number;

(d) License classification;

(e) Date, time, and location of planned disposition;

(f) Deadline for obtaining pre-approval from the Commission to qualify as an eligible bidder at the planned disposition; and

(g) Terms and conditions imposed by the secured creditor on the disposition process and on the successful bidder.

C. To qualify as an eligible bidder seeking to obtain the medical cannabis license, an individual, or in the case of an entity, each individual who would acquire an ownership interest of 5% or more of the medical cannabis license that is the subject of the disposition, shall provide the following information to the Commission not later than 30 days before the deadline for obtaining Commission approval to qualify as a bidder at the planned disposition of the license:

(1) Name and contact information;

(2) Criminal history record information;

(3) Completed ownership and control attestation form provided by the Commission for each individual who intends to hold an ownership interest of 5% or more;

(4) Evidence of immediately available financial resources sufficient to pay the deposit at the planned disposition and to close the transaction within 10 days of the ratified and final disposition; and

(5) Any additional information requested by the Commission.

D. Process for Final Disposition.

(1) Upon completion of the planned disposition, the successful bidder shall prepare and submit to the Commission, within 3 days after the conclusion of the planned disposition, the necessary documentation to obtain final approval for the transfer and sale of the license, including a completed request to transfer ownership of a medical cannabis license provided by the Commission.

(2) Upon receipt of final approval of the transfer and sale of the license by the Commission, the disposition shall be considered ratified and final.

E. To facilitate the orderly disposition of a secured license and associated assets, the provisions set forth in Health-General Article, § 13-3311.1, Annotated Code of Maryland do not apply to the sale or transfer of the license pursuant to this chapter.

F. Notwithstanding § E of this regulation, the sale or transfer of a license in accordance with this chapter must be conducted in good faith, and the provisions of this chapter may not be used as a mechanism to circumvent the sale or transfer of ownership requirements under Health-General Article, § 13-3311.1, Annotated Code of Maryland.

G. Termination of Receivership.

(1) Upon ratified and final disposition of the medical cannabis license and associated assets:

(a) The receivership terminates; and

(b) The receiver shall be immediately released of any responsibility associated with the receivership, and from liability for any actions or omissions that occur after the termination of the receivership.

(2) Nothing in this regulation shall be construed as limiting the liability of the receiver for any actions or omissions that occurred during the period that the receivership was in effect.