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Cannabis insurance and commercial real estate: Working with a knowledgeable broker is essential - by Anthony Caiazzo

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There is little difference between commercial insurance for the cannabis industry and that of everyday ordinary businesses. Cannabis companies have the same needs as any other business. The insurance carriers that operate in the higher risk markets of everyday companies are also serving the cannabis industry. Same carriers, same products, just a different risk. These same coverages include: property, general liability, product liability, crop insurance, directors & officers, cyber, crime, intellectual property, trademark coverage, and many others. Given the fact that ultimately cannabis is federally illegal, the insurers' operations fall into a legal gray area.

So how are these carriers able to legally sell cannabis insurance? In part, it is due to the same blind eye that has been turned from the industry entirely. However, since the McCarran-Ferguson Act of 1945, the authority over the insurance industry has been placed under the control of individual state laws rather than those of the federal government. Combine this with the fact that these legitimate national and international insurance companies are not high on the federal target list, and it has allowed carriers to operate in the cannabis industry without repercussion. That may change with this new administration who's already proposed reversing McCarran-Ferguson as it relates to healthcare. Insurance carriers were already extremely selective in this market. Even without any direct pressure, the perception of the new administration alone has made them increasingly cautious.

Before the end of 2015, Lloyds of London was the biggest player in the cannabis property & casualty market, offering relatively inexpensive coverage. The company has since pulled out of the industry, because at a certain point they no longer felt comfortable with the dichotomy between federal law and their business. Since then, the cannabis insurance market has been increasingly much more difficult to navigate. Carriers are open to the industry and are excited for its lucrative future due to the enormous amount of potential from the sheer volume and high premiums. However, hesitations with the federal government have forced many insurers to retract recently. At the very least, insurers are being extremely selective with their risk. These large national and international carriers are profiting from a federally illegal enterprise and risk consequences that could impact the rest of their business.

Aside from the legality aspect, product liability is the biggest issue for the carriers. No one is exactly sure how to quantify the risk that comes with the plant directly. Only a few carriers are serious about this line of coverage. Two of which are James River Insurance Company and a wholesaler named Next Wave Insurance Services, LLC. Once you get beyond product liability, the number of carriers expands. Even the larger more conservative insurers like AIG, Chubb, and Berkshire Hathaway will look at the other lines of coverage within this market.

As an insurance broker by trade, I have noticed an increasing trend between real estate and investments in cannabis grow properties. Growers are attracted to rural, less populated areas where the price per square foot of land is least expensive. Dispensaries on the other hand, tend to require locations in commercial, heavily populated areas with foot traffic to support the business. These properties come with a higher price tag and more zoning rules/restrictions that are tougher to adhere to, such as being in a certain proximity to a school or place of worship. Cannabis grows are not very complicated structures and often find homes in otherwise worthless vacant lots or industrials. Investors can purchase real estate for less money and get a better rate of return.

Insuring a landlord's property and liability is as tough of a coverage to place as anything else in cannabis. Be cautious when constructing new lots and purchasing vacant industrials. Insurers will at the very minimum require a thorough inspection of the building and its electrical system prior to insuring the property owner. The property must be structurally sound in every way and will undoubtedly be under greater scrutiny due to the higher risk that comes with cannabis. For grow operations the main risk is fire. The landlord may not be involved with the plant directly, but the insurer feels that it is still taking on much of the risk without maybe knowing anything about the actual operation or cultivator. In most cases, property owners purchase insurance with the intent of leasing it out to a grower and they have not yet secured one. It is paramount that an investor be aware of who their tenants are and their activities. If a grower tampers with the building's electrical systems or is maybe manufacturing oils and concentrates when they shouldn't be, it will put the landlord's coverage at risk. If a recreational grower sells some of its product on the black market without the property owner's knowledge and it were to be caught up in an investigation, the property could become caught up as well. Knowing your tenant is vital to minimizing the risk that a landlord takes on.

Cannabis is a difficult and risky business for all involved, it is legally gray at best from every angle. This difficulty has only been exacerbated by the current administration without even utilizing any direct action. These uncertainties for insurance make the application process extremely important. With the limited number of carriers and the high degree of selectivity, cannabis investors only have so many opportunities to secure coverage. This makes working with a knowledgeable insurance broker who can navigate the cannabis market and has deep rooted relationships with the carriers essential.

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