

Structural Considerations Approaching State Licensing

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Real Quick review of how we got here

- 1996 - Proposition 215 – The Compassionate Use Act
- 2004 - Senate Bill 420
- 2015 - Medical Marijuana Regulation and Safety Act
- 2016 – Proposition 64 – the Use of Marijuana Act
- June 27, 2017 – The Medical and Adult-Use Cannabis Regulation and Safety Act (MACRSA)

Pre- (MACRSA) Entities. Many still operating in various forms

- Informal cooperative entities.
- Mutual Benefit Corporations
- Various not for profit entity forms.

Current Shift from not-for-profit to for-profit

Since 2004 California compliant business have attempted to comply with A.B. 420 by operating as not-for-profit entities.

The industry is re-posturing in anticipation of implementation of Medical and Adult-Use Regulation and Safety Act

Involving Qualified Tax Assistance Early

- Accountant's input may be more important than the attorney's
- 26 U.S. Code § 280E - Expenditures in connection with the illegal sale of drugs
 - Costs of Goods Sold
 - Parameters 280(e) applicability

Preferred Structures Under State Licensing

- Cooperatives – Formed pursuant to language in MACRSA or converted by amendment.
 - 3 or more parties
 - 4 or less acres of cultivation.
- Limited Liability Companies
- Close Corporations
- General Stock Corporations

Cooperatives – Formed pursuant to language in MACRSA. 3 or more parties. 4 or less acres of cultivation.

- **CHAPTER 22. Cannabis Cooperative Associations**
- ...
- **Article 3. Purposes**
- **26223.**
- (a) Three or more natural persons, who are engaged in the cultivation of any cannabis product, may form an association pursuant to this chapter for the purpose of engaging in any activity in connection with any of the following:
 - (1) The cultivation, marketing, or selling of the cannabis products of its members.
 - (2) The growing, harvesting, curing, drying, trimming, packing, grading, storing, or handling of any product of its members.
 - (3) The manufacturing, selling, or supplying to its members of machinery, equipment, or supplies.
 - (4) The financing of the activities that are specified by this section.
- (b) Members of a cannabis cooperative shall be disclosed to the licensing authority before the application is processed.
- (c) Members of a cannabis cooperative formed pursuant to this chapter shall be limited to cultivators who only hold a single Type 1 or Type 2 license.
- (d) Collectively, members of a cannabis cooperative shall not grow more than four acres of total canopy size of cultivation throughout the state during the period that the respective licensees are valid.
- (e) No member of a cooperative formed pursuant to this section shall be licensed to operate a cannabis business in another state or country.

Limited Liability Companies

- Limited Liability
- Cost and simplicity
- Fewer requirements

Corporations

- Close Corporations
- General Stock Corporations

Stand Alone company for Cannabis Operations

- Hold intellectual, real and personal assets
- Isolate liability
- Avoid commingling with non-cannabis products streams
- Avoid participating in prohibit activities as a cannabis licensee

Management Company Model

- Common with non-profit entities
- May remain advisable for many functions, as permitted.

Structures Not Preferred

- Sole Proprietors - Liability!!
- General Partnerships – Liability!!
- Mutual Benefit Corporations
 - Except, perhaps, in the conversion to a Cannabis Cooperative
 - In rare case converted to another form of corporation.

Reasons to Use Multiple Entities

- Limiting Liability
- Diversify investors

- Avoid an unlawful purpose
 - Transaction Structuring
 - Concealment
 - Fraud