



Medical Cannabis License as Collateral for a Loan

Summary

This proposal establishes the framework for a medical cannabis license to be pledged as collateral for a loan. The proposal addresses:

- Eligibility requirements for secured creditors;
- The process for a secured creditor to obtain a security interest in a medical cannabis license;
- The process for issuing a Certificate of Authority and appointment of a receiver;
- Eligibility requirements for a receiver; 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, and 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 license of a grower, processor, or dispensary.



.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 must provide the following:

(1) A compliance and reporting plan;

(2) Confirmation that the lending institution is:

(a) In good standing and not subject to a supervisory agreement; and

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

(3) Any other information requested by the Commission.

C. If additional information is requested pursuant to §B(3) of this regulation, and the lending institution must respond within 10 days, or the Commission may deny the request for eligibility as a secured creditor.

D. A secured creditor's eligibility is effective for 2 years, provided:

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

2) The secured creditor maintains:

(a) 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 its medical cannabis license as a security interest for a loan.

B. An eligible secured creditor may obtain a security interest in the license 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. (1) A security agreement may not contain provisions that:

(a) Authorize the secured creditor to unilaterally:

(i) Require the loan to become due at any time; or

(ii) Convert the debt under the loan to equity;

(b) Restrict the ability of the licensed grower, processor, or dispensary from making payment on the secured loan through a third party; or

(c) Unilaterally deprive the licensed grower, processor, or dispensary of the secured license.

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

D. (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 but not the right to operate a medical cannabis business; and

(b) The right to the proceeds from the sale of the medical cannabis license that occurs during the term of the loan, if applicable.

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.



F. A secured creditor may request the Commission to issue a Certificate of Authority pursuant to Regulation .04 of this chapter

.04 Issuance of Certificate of Authority.

A. The Commission may issue a Certificate of Authority to a receiver approved by the Commission pursuant to Regulation .08 of this chapter.

B. A Certificate of Authority confers legal authority over the operation and disposition of a grower, processor, or dispensary license, including assets of the licensee, under the circumstances described in §C of this regulation.

C. The Certificate of Authority may be issued if the 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 bankrupt; or*
- (3) Otherwise breaches or defaults on its obligations secured by the associated license.*

D. A secured creditor may request a Certificate of Authority by submitting 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 receiver, insolvency or bankruptcy, or the licensee's breach or default on its obligations associated with the loan for the secured medical cannabis license;*
- (3) A proposed timeline for the continued operation and orderly disposition of the license of the associated licensed grower, processor, or dispensary, including the sale and transfer of the secured license and associated business assets; and*
- (4) Any additional information requested by the Commission.*

E. The Commission may issue a Certificate of Authority to a receiver or other qualified party upon written request by a Commission-approved secured creditor.

F. The Certificate of Authority authorizes the holder to continue operation, without obtaining a separate license or paying any additional fees, of a licensed grower, processor, or dispensary, to allow for the orderly



disposition of the associated license, including any assets of the licensee.

H. The holder of a Certificate of Authority is subject to the same restrictions and obligations as a grower, processor, or dispensary licensee, except as specifically exempted under this chapter.

.05 Term and Renewal of a Certificate of Authority.

A. A Certificate of Authority issued pursuant to Regulation .04 of this chapter is valid for 120 days.

B. (1) Upon receipt of a written request by the holder of the Certificate of Authority not less than 10 days before the expiration of the Certificate of Authority, the Commission may renew the Certificate of Authority for an additional 120 days, provided the holder of the Certificate of Authority is in compliance with this subtitle and any other applicable Maryland law.

(2) The holder of the Certificate of Authority shall make any subsequent renewal requests not less than 10 days before the expiration of the Certificate of Authority.

(3) Upon good cause shown that more time is necessary to allow for the continued operation and orderly disposition of the associated license and licensee's assets, the Commission may renew the Certificate of Authority for additional 60 day periods until the completion of the disposition has been ratified and approved by the Commission.

C. A Certificate of Authority does not replace a grower, processor, or dispensary license, which remains in effect.

D. If the license expires while the Certificate of Authority is active:

(1) The receiver may continue to carry out its responsibilities after the date the license expires; and

(2) The license may be renewed upon final disposition of the secured license, including the sale and transfer of the license and associated business assets.

.06 Expiration and Termination of Certificate of Authority.

The Commission may revoke or refuse to extend a Certificate of Authority in the event that the holder fails to comply with any Maryland laws applicable to the associated licensed grower, processor, or dispensary.

.07 Certificate of Authority Holder's Responsibilities.

A. The holder of a Certificate of Authority 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 and named in the Certificate of Authority.



B. In the event of a violation by the holder of a Certificate of Authority, the Commission shall provide the holder and secured creditor named on the Certificate of Authority with written notice of the violation and an opportunity to cure within 45 days after receipt of the written notice. .

.08 Application for Receivership.

A. An applicant must apply for and receive approval from the Commission in order to be eligible 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 continue operations of a licensed grower, processor, or dispensary, and otherwise comply with and meet the obligations and legal requirements of a grower, processor, or dispensary license;

(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 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 other grower, processor, or dispensary license in Maryland;



(7) 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.

D. (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 Commission approves an application, the applicant shall qualify as a pre-approved receiver, eligible to serve as a holder of a Certificate of Authority issued under this chapter for 2 years, provided the Commission has not otherwise revoked the approval.

(3) The approved applicant 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; and

(4) If the Commission requests additional information from an applicant, and the applicant fails to provide additional information to the Commission within 10 days of such request, the application shall be considered denied.

E. A receiver or other qualified party who is not pre-approved by the Commission may be appointed as a receiver and holder of a Certificate of Authority, provided that a completed application along with any other information required under §B of this regulation and the receivership application fee specified in COMAR 10.62.35 are submitted to and approved by the Commission.

F. The Commission shall maintain and make available on its website a list of pre-approved receivers eligible to serve as a receiver and holder of a Certificate of Authority under this chapter.

G. A receiver is not eligible to have a financial interest or ownership in any licensed grower, processor, or dispensary in Maryland during the period the receiver maintains eligibility or is actively holding a Certificate of Authority issued under this chapter.

H. A receiver holding a Certificate of Authority may not serve as a receiver for more than one grower, one processor, and four dispensary licenses at the same time.

.09 Disposition of a Secured Medical Cannabis License.

A. If a Certificate of Authority has been issued under this chapter and the grower, processor, or dispensary cannot be restored to solvency, the holder of the Certificate of Authority shall initiate the orderly disposition



of the secured license and associated business assets in accordance with a Commission approved plan to satisfy its security interest in the value of the secured license.

B. Disposition of a secured 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 secured licensee is authorized to 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. Upon completion of the planned disposition, the successful bidder shall prepare and submit to the Commission, within 3 days after the conclusion of the disposition, the necessary documentation to obtain final approval for the transfer or sale of the license.

D. To facilitate the orderly disposition of a secured license and associated assets, the provisions set forth in Health-General Article § 13-3311.1 do not apply to the sale or transfer of the license, or licenses, named in a Certificate of Authority issued pursuant to this chapter.

E. Notwithstanding § D 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 eschew the requirements of Health-General Article § 13-3311.1.

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

(a) The Certificate of Authority terminates; and



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

(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 Certificate of Authority was in effect.

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