

## RE114C24: MA CE Navigating the Green Rush: Commercial Real Estate and Legalized Cannabis

Course objective: Overview of the specific regulatory requirements and business culture of the cannabis-related commercial real estate market, identify client investment opportunities and challenges, and have awareness or knowledge of commercial client risks in the evolving cannabis real estate market.

1. Introduction to Cannabis Legalization in Massachusetts
  - a. Overview of cannabis legalization laws in Massachusetts
    - i. CBD (*cannabidiol*; in 2018, the U.S. legalized CBD that contains less than 0.3% THC from hemp or cannabis plants)
    - ii. Marijuana (dried leaves, flowers, stems, and seeds from the *Cannabis sativa* or *Cannabis indica* plant. The marijuana plant contains THC at much higher concentration than CBD)
  - b. New regulations, amendments, pending legislation
2. Cannabis Control Commission (CCC) <https://masscannabiscontrol.com/>
  - a. CCC's role in regulating the MA cannabis industry and CCC public meetings
  - b. New license types creates demand for additional commercial space
  - c. Interaction with other state and federal government agencies: DPH, MCSR, MDAR, DOR, AGO, DEA, OSHA
3. Understanding Cannabis Business Operations
  - a. Real estate requirements and limitations for each license type
    - i. Secure and controlled facilities
    - ii. CCC changes in security requirements
  - b. Regulatory requirements and licensing process
  - c. Operational considerations for cannabis businesses
4. Energy and Environmental Best Practices
  - a. Energy and safety challenges addressed in cannabis real estate
  - b. Environmental issues - drift, pesticides, septic (air, water, soil)
  - c. Health and Manufacturing risks - mold, toxic fumes, odors, air quality
5. Conflict between state and federal laws regarding cannabis (a Schedule I controlled substance) on the cannabis industry
  - a. Cannabis legalization bills considered by Congress (MORE, SRA, CAO Act, and PREPARE Act.)

- b. Overview of the impact of the legalization of cannabis in the Massachusetts commercial real estate market and working with regulatory complexities across broad ranges of commercial businesses and effectively managing risks in this evolving industry,
  - c. Federal transportation and federal fund limitation on legalized cannabis business
  - d. Federal Banking Restrictions: challenges for financing due to federal laws affecting banking
- 6. Cannabis Property valuation and financing considerations
  - a. Financing treatment of cannabis business revenue and loan availability
    - i. Cannabis income allowed for financing (VA loan)
    - ii. SAFE Banking Act of 2023 (banking services to cannabis-related businesses)
    - iii. Specialized lending for cannabis businesses
    - iv. CLIMB Act (go public)
- 7. Overview of commercial real estate sector needs and valuation in the cannabis market:
  - i. Retail, Agricultural. Healthcare, Transportation, Cultivation, Product Manufacturing, Social Consumption, Laboratory Science, and Medical Treatment Centers
  - b. Property values and revenue generation in municipalities with legalized cannabis businesses
- 8. Market trends and demand for cannabis-related properties
  - a. Intended use of property
  - b. Available square footage, efficient floor plan
  - c. Adequate lighting & ventilation system
  - d. Situs
  - e. Security measures (cameras, alarms)
  - f. Water supply lines & electrical capacity
  - g. Efficiency and Sustainability
    - i. Title V, Generators and fumes, Waste management, water usage, Pest management. Ventilation, allergens and respiratory hazards: cannabis dust, mold, volatile organic compounds, pollen, bacterial endotoxins, pesticides, soil components, and cleaning disinfectants
  - h. Cannabis Industry - Merger and Acquisition (M&A) and property transfer
- 9. Compliance with local regulations governing cannabis businesses

- a. Zoning laws, building codes, and fire safety regulations
10. Host Communities - Host community agreement and fees
- a. License Compliance
  - b. Municipalities that were unfairly hurt during the war on drugs
  - c. Social Justice and Economically Reparative Practices
    - i. Social Equity Program, Certified Economic Empowerment, Disadvantaged Business Enterprises
    - ii. CCC Guidance on Diversity and Positively Impact Disproportionately Harmed People
    - iii. Federal reform laws in Congress (HOPE)
11. Compliance requirements for property owners and landlords
- a. Landlord: health and safety standards, including waste disposal
  - b. Tenants: Cannabis Licensee responsibilities for activities occurring within licensed premises and compliance with lease requirements
  - c. Implicit Bias and Diversity Training in the cannabis industry
12. Risk Management, Due Diligence and Disclosures
- a. Risk Management
    - i. Identifying and assessing risks associated with cannabis tenancy
    - ii. Mitigating legal and financial risks
    - iii. Red flags: grow houses, ownership/suitability, need for waivers of the regulations to stay in compliance
  - b. Due diligence process
    - i. Insurance considerations for cannabis-related properties
    - ii. Title Insurance
    - iii. Property Insurance - limited availability for renter's insurance
  - c. Disclosure of Material Facts
13. Case Studies and Best Practices
- a. Analysis of successful cannabis-related real estate transactions
  - b. Lessons learned from challenges and failures in the market
  - c. Best practices for property owners, landlords, and investors
  - d. Innovative approaches in the industry
14. Future Outlook and Emerging Trends
- a. Projected growth of cannabis industry in Massachusetts
  - b. Emerging trends in cannabis-related commercial real estate

Resources for further information:

- Glossary - attached
- National Association of Realtors
- Massachusetts Cannabis Control Commission <https://masscannabiscontrol.com/>
- Massachusetts Cannabis Business Association <https://www.masscba.com/>
- MA laws about marijuana regulated by the Cannabis Control Commission  
<https://masscannabiscontrol.com/public-documents/regulations/>  
<https://www.mass.gov/info-details/massachusetts-law-about-recreational-marijuana>
- MA law about hemp (under Massachusetts Department of Agricultural Resources)  
<https://www.mass.gov/industrial-hemp-program>
- Cannabis Business Times
- MJ Biz Daily

Related CE Courses:

- RE111C21: Diversity, equity and inclusion – why it matters to RE commercial practitioners
- RE04RC12: M.G.L. c. 93A, Consumer Protection & Business Regulation
- RE22RC20: Title V
- RE63RC10: Environmental Issues
- RE25RC08: Financing
- RE60RC10: Commercial Real Estate Transactions
- RE16RC13: Zoning & Building Codes

## MA CE Navigating the Green Rush: Commercial Real Estate and Legalized Cannabis

### Glossary

**Adult-Use Cannabis:** Cannabis intended for recreational use by adults aged 21 and over, regulated by state law.

**Cannabinoid:** A chemical compound found in cannabis plants. The most well-known cannabinoids are THC (**tetrahydrocannabinol**) and CBD (**cannabidiol**), each with different effects and uses.

**Cannabis Control Commission (CCC):** The regulatory body overseeing the licensing and operation of cannabis businesses in Massachusetts.

**Cannabis Property Valuation:** The process of assessing the value of properties used for cannabis operations, considering factors like location, infrastructure, and regulatory compliance.

**CBD (Cannabidiol):** A non-psychoactive cannabinoid found in cannabis and hemp, often used for its potential therapeutic benefits, such as reducing anxiety and inflammation.

**Conditional Adult-Use Cannabis License:** A type of provisional license that allows businesses to begin operations while they complete the requirements for a full adult-use license.

**Cultivation License:** A permit allowing the holder to grow cannabis plants for commercial purposes. In Massachusetts, there are different tiers based on the size of the grow operation.

**Delivery License:** A permit allowing businesses to deliver cannabis products directly to consumers. This license has specific regulations regarding security, tracking, and delivery protocols.

**Delta-8 THC (Delta-8-Tetrahydrocannabinol):** A naturally occurring cannabinoid in cannabis plants, providing a milder psychoactive effect compared to Delta-9 THC. Its legal status varies, often considered less regulated than Delta-9 THC.

**Delta-9 THC (Delta-9-Tetrahydrocannabinol):** The primary psychoactive component of cannabis, responsible for the "high" experienced by users. It is heavily regulated and classified as a Schedule I controlled substance under federal law.

**Dispensary:** A retail location where cannabis products are sold to consumers. Dispensaries require specific licenses and must adhere to state regulations.

**Equity Applicant:** An individual or entity eligible for priority licensing and support from the CCC, aimed at promoting diversity and inclusion in the cannabis industry.

**Energy and Environmental Compliance:** Regulations addressing energy consumption and waste management.

**Federal Banking Restrictions:** Challenges for financing due to federal laws affecting banking.

**Host Community Agreement (HCA):** A contract between a cannabis business and the municipality where it operates, outlining contributions to the community and other local requirements.

**Infused Product:** Cannabis products that have been combined with other ingredients, such as edibles, tinctures, and topicals. These products require specific manufacturing processes and regulatory approvals.

**Interstate Commerce Considerations:** Potential changes in federal law affecting the market.

**License Compliance:** Adherence to CCC regulations and local laws governing cannabis business operations.

**Massachusetts Department of Agricultural Resources (MDAR) Sampling and Testing Method:** Protocol for sampling and testing cannabis products to ensure compliance with state regulations, covering sample collection, cannabinoid analysis, and safety assessments.

**Medical Marijuana Treatment Center (MTC):** Also known as a Registered Marijuana Dispensary (RMD), this is a facility that acquires, cultivates, possesses, processes, transfers, transports, sells, distributes, dispenses, or administers marijuana products for medical purposes.

**Medical Use Marijuana:** Cannabis prescribed by a healthcare provider to treat or alleviate symptoms of medical conditions, regulated by state laws and requiring a medical marijuana card for legal access.

**Microbusiness:** A smaller scale cannabis business licensed to engage in a limited number of activities, such as cultivation and production. These businesses benefit from reduced fees and simplified compliance requirements.

**Municipal Opt-Outs and Moratoriums:** Some municipalities restrict cannabis businesses.

**Provisional License:** A temporary license granted to a cannabis business applicant that has met certain requirements and is allowed to begin operations while the final review and approval process is completed.

**SAFE Banking Act of 2023:** Legislation that allows banking services to cannabis-related businesses, addressing financial challenges in the industry.

**Secure and Controlled Facilities:** Properties with enhanced security measures to meet CCC requirements, including cameras, alarms, and restricted access areas.

**Seed-to-Sale Tracking:** A system mandated by the CCC to track cannabis products from cultivation through processing to final sale to ensure regulatory compliance and prevent diversion.

**Social Consumption Establishment:** A business where adults can purchase and consume cannabis on-site, similar to bars or cafes. These establishments are currently under pilot programs in certain areas of Massachusetts.

**Social Equity Program:** A CCC initiative aimed at promoting diversity and supporting individuals and communities disproportionately harmed by previous cannabis laws.

**THC (Tetrahydrocannabinol):** The primary psychoactive component of cannabis, responsible for the "high" experienced by users.

**Title V Permit:** Required under the Clean Air Act, it regulates air emissions for cannabis operations, outlining emission limits, monitoring, and reporting to ensure compliance with environmental standards and mitigate adverse impacts on air quality.

**Zoning Ordinances:** Local laws and regulations that determine where cannabis businesses can operate, including restrictions on proximity to schools, residential areas, and other sensitive locations.