

DOWN THE PIPE

No Easy Out for Cannabis-Based Businesses in Distress

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Anticipating the legalization of marijuana for recreational use in New Jersey, this article discusses the tension between state and federal law, and specifically addresses the impact of that divergence on marijuana business insolvency issues under the existing federal and state statutory schemes governing the sale and use of marijuana. These issues should be considered by business owners, lenders, landlords, suppliers and others with a financial stake in any marijuana-related business, as they highlight additional risks associated with such an investment.

On Jan. 18, 2010, former New Jersey Governor Jon Corzine signed into law the Compassionate Care Act, authorizing the establishment of alternative treatment centers (ATCs) and the sale of marijuana for medicinal purposes through the creation of the New Jersey Medical Marijuana Program.¹ Based on a bipartisan agreement reached between then-Governor Chris Christie and the Assembly sponsor of the act in early Dec. 2010, the Department of Health (DOH) determined to limit the number of ATCs in the initial request for applications to six.² By Feb. 14, 2011, 21 separate entities had submitted 35 applications for ATC permits.³ However, after evaluation of the applications, the DOH awarded only six permits to nonprofit entities: two permits in the north region, two in the central region, and two in the south region.⁴

In 2018, Governor Phil Murphy took the movement one step further and announced his intent to legalize marijuana for recreational use in New Jersey by the end of 2018.⁵ Two bills are currently pending that would accomplish this goal.⁶ If met, New Jersey would be among nine other states that have legalized marijuana for recreational use for adults over the age of 21.⁷

However, marijuana remains illegal in the eyes of the federal government. The Federal Controlled Substances Act (CSA), at 21 U.S.C. §§801, *et seq.*, makes it illegal “to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense” marijuana.⁸ Penalties include lengthy minimum

prison sentences, hefty fines and forfeiture of “any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation” and “any of the person’s property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.”⁹ The CSA provides equally strict penalties for “[a]ny person who attempts or conspires to commit any offense defined in this title.”¹⁰ Furthermore, the administration of President Donald Trump has dialed back from the more liberal policies under the previous administration.¹¹ In a Jan. 4 memorandum addressed to all United States attorneys, U.S. Attorney General Jeff B. Sessions rescinded all previously issued Department of Justice (DOJ) guidance for marijuana-related businesses.¹²

Accordingly, businesses hoping to capitalize on the new commodity face many challenges. For example, a significant challenge centers around the fact that it has proven difficult for cannabis businesses to find banks willing to maintain their accounts.¹³ In addition to CSA concerns, banks are faced with the

risk of being charged with money laundering and other financial crimes.¹⁴ Those that do offer banking services to cannabis businesses tend to charge costly fees.¹⁵ Without access to a bank account, online banking, or credit cards, businesses face significant administrative burdens, security issues and accounting challenges requiring more labor and expense.

Businesses looking to become involved in the marijuana industry may also find it difficult to obtain financing. Generally, conventional lenders do not loan to marijuana businesses due to the illegality of marijuana at the federal level, which subjects these businesses to the risk of forfeiture of collateral and other criminal penalties. Additionally, non-conventional lenders are known to place extremely onerous terms on these loans due to the perceived risk.¹⁶

In addition to the other financial challenges facing cannabis businesses, certain marijuana-related businesses may not be able to take advantage of tax deductions to which they would otherwise be entitled, while at the same time being subject to taxation by the Internal

Revenue Service.¹⁷

Not only is it challenging to establish and maintain a cannabis business in New Jersey, but cannabis businesses are not given the same options as other operations if and when they find themselves in financial distress. As discussed in detail herein, for most businesses involved in the cannabis industry, a liquidation or reorganization cannot be accomplished pursuant to the federal bankruptcy system because it remains a crime under federal law to possess or use marijuana. Cannabis businesses are prevented from taking advantage of Chapter 11 of Title 11 of the United States Code (Bankruptcy Code), which generally allows businesses to reorganize by staying creditor action, shedding unprofitable contracts and leases, reducing unsecured debt, and selling assets free and clear of liens and encumbrances. Marijuana-related businesses will also be foreclosed from utilizing Chapter 7 of the Bankruptcy Code, which provides for an orderly liquidation of a business’s assets.

While New Jersey cannabis businesses may be able to take advantage of the



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state's insolvency statute and effect an assignment for the benefit of creditors, this arrangement presents significant obstacles.

Federal Bankruptcy Jurisprudence

As recognized by the Office of the United States Trustee, marijuana businesses present a "unique and unprecedented" scenario because they are federally illegal enterprises that "openly propose to continue their illegal activity during and after the bankruptcy."¹⁸ While in other bankruptcies involving illegal business activity the "criminal activity has already permanented and the principal concerns of the bankruptcy court is to resolve competing claims by victims for compensation, a marijuana bankruptcy case may involve a company that not only is continuing in its business, but is even seeking the affirmative assistance of the bankruptcy court in order to reorganize its balance sheet and thereby facilitate its violations of the law going forward."

The law that has developed out of the bankruptcy courts to date poses several concerns for cannabusinesses facing insolvency. For instance, a Chapter 11 case may be subject to dismissal even if only a portion of the debtor's income is derived from a marijuana business.¹⁹ In *Rent-Rite*, the court found that because marijuana is illegal under federal law and because the debtor's "illegal" activities put its lender's collateral at risk of being forfeited to the federal government pursuant to 21 U.S.C. § 881(a)(7), the debtor had come with unclean hands and acted in bad faith.²⁰ For these reasons, the court found the debtor was engaged in "gross mismanagement" of the estate under 11 U.S.C. § 1112.²¹

Nearly two years later, Judge Howard R. Tallman revisited his decision in *Rent-Rite* and applied the same principles to dismiss a Chapter 7 case where the debtor was "engaged in the business of producing and distributing marijuana

on the wholesale level," which, the court recognized, was legal under Colorado law.²² Here, the court reasoned, "the Debtors' chapter 7 trustee...cannot take control of the Debtors' Property without himself violating §856(a)(2) of the CSA. Nor can he liquidate the inventory of marijuana plants [the debtor] possessed on the petition date because that would involve him in the distribution of a Schedule I controlled substance in violation of § 841(a) of the CSA."²³ In other words, "administration of this case under chapter 7 is impossible without inextricably involving the Court and the Trustee in the Debtors' ongoing criminal violation of the CSA."²⁴

The court also refused to allow the debtors to convert their case to one under Chapter 13 "because their reorganization would be funded from profits of an ongoing criminal activity under federal law and would necessarily involve the Chapter 13 Trustee in administering and distributing funds derived from the Debtors' violation of the CSA."²⁵

Two years after *Arenas*, employees of the Office of the United States Trustee (UST) published an article that references the UST's longstanding "policy of seeking dismissal of marijuana bankruptcy cases that cannot lawfully be administered" and the underlying guideposts: 1) "the bankruptcy system may not be used as an instrument in the ongoing commission of a crime and reorganization plans that permit or require continued illegal activity may not be confirmed;" and 2) "bankruptcy trustees and other estate fiduciaries should not be required to administer assets if doing so would cause them to violate federal criminal law."²⁶

Even where a debtor proposes to 'sanitize' plan payments, Chapter 13 cases are subject to dismissal.²⁷ In *Johnson*, the debtor received \$1,203 a month in Social Security income and \$1,000 a month from cultivating and selling mar-

ijuana.²⁸ In partially granting²⁹ the U.S. trustee's motion to dismiss, the court reasoned that money is fungible, and if the court and the standing trustee were to accept any money from the debtor, they would be supporting the debtor's "criminal enterprise."³⁰ Moreover, the court reasoned that, for the same reason a trustee cannot "hold[] contraband or [use] proceeds or instrumentalities of federal criminal activity," debtors who remain in possession of estate property cannot do so.³¹

The Ninth Circuit has constrained the application of the unclean hands doctrine to allow a marijuana dispensary creditor to pursue a non-dischargeability action against their bankrupt former attorney who stole \$25,000 from the company.³² In another case, the Ninth Circuit allowed a Chapter 13 debtor to remain in bankruptcy where a portion of her rental income was derived from the operation of a marijuana dispensary and rental payments from the dispensary continued post-petition.³³ Most recently, in *Garvin v. Cook Invs. NW, SPNWX, LLC (In re Cook Invs. NW, SPNWX, LLC)*,³⁴ the court declined to expand the *Rent-Rite* principles to prevent a debtor from remaining in Chapter 11 where the plan payments were derived from non-marijuana-based businesses and the debtor rejected its lease with the marijuana-growing tenant.³⁵

Unlike what has been seen in the existing case law, there are many types of businesses that may derive income from marijuana that do not directly relate to its cultivation, distribution and sale. For instance, there may be companies that make accessories for smoking marijuana; packaging for the various cannabis products; and equipment for growing and cultivating marijuana; and companies processing the end use product, etc. There may also be service-based businesses such as delivery services, attorneys, consultants, space designers, and realtors. Additionally, there are

many alternative cannabis businesses that exist, such as cannabis-friendly establishments, smoke and paint studios, cannabis-themed bike tours, cannabis cuisine pairing and catering.³⁶ As more states legalize marijuana and more businesses are established, it will be interesting to see how the bankruptcy courts deal with these businesses and their varying degrees of connection to federally illegal activities.

State Law Alternatives

While businesses whose activities violate federal law cannot utilize the protections of the Bankruptcy Code, some states, including New Jersey, offer alternatives to bankruptcy. For example, businesses in New Jersey may affect an assignment for the benefit of creditors (ABC).³⁷ An ABC is a court-supervised insolvency proceeding governed exclusively by state law. The operative statute in New Jersey is N.J.S.A. §2A:19-1, *et seq.* An ABC is commenced when a deed of assignment is conveyed by the debtor entity, known as the assignor, to an assignee of the debtor's choosing, who serves in a similar fiduciary role as a Chapter 7 bankruptcy trustee. The deed of assignment is then filed in the Superior Court, Chancery Division, Probate Part.

Just as in Chapter 7 and liquidating Chapter 11 bankruptcy proceedings, the goal of an ABC is liquidating an insolvent estate and making a distribution to creditors. Such liquidations can take the form of a sale of the assignor's assets, including any tangible physical assets and any intangible assets such as goodwill, to a third party through a public auction, or through a private sale to a pre-arranged buyer (also known as a stalking horse). While these mechanisms are very common in any liquidation proceeding, the liquidation of a cannabis business presents several unique challenges in an ABC.

First, from a regulatory standpoint, a purchaser of a cannabis business would be

required to possess the requisite licenses to buy and handle the product and carry on the business. While New Jersey has not yet promulgated its rules and regulations with respect to this business model, review of the licensing requirements in other jurisdictions forecasts an expensive and time-consuming process. New York, for instance, requires, among other things, a non-refundable application fee of \$10,000 and a registration fee in the amount of \$200,000.³⁸ Illinois allows for only 21 cultivation center licenses and payment of a \$25,000 non-refundable application fee, proof of \$500,000 in liquid assets, as well as other requirements.³⁹ Other states have similarly restrictive licensing requirements.⁴⁰ As such, assuming few licenses are actually issued in a given time period, the pool of potential purchasers of a cannabis business in the context of a distressed asset sale may be limited and restricted to only a handful of buyers, making the liquidation and sale of the assets even more difficult.

Even in cases not involving federally illegal products, like cigarettes and alcohol, an assignee must be cognizant of the applicable rules and regulations concerning the sale, custody and distribution of such products. For example, in a liquidation of a business that also sells tobacco products, the proposed buyer would need to have the proper licenses to purchase such products. These same concerns are also implicated in a business involving alcohol, such as a convenience store or a bar and grill, since the applicable Alcohol Beverage Consumption Act would necessarily be triggered, which requires such establishments to maintain a liquor license.⁴¹ Needless to say, the sale of a cannabis business would likely be replete with at least as many, if not more, regulatory hurdles in the context of the sale of marijuana, especially given the potentially new legal landscape and legislation.

Of course, many events must take

place before the business can even be sold. For example, one of the first tasks an assignee undertakes is to visit the premises with his or her professionals, such as accountants and appraisers, to secure the books and records of the entity and start the process of appraising the assets for sale. While these tasks would remain the same in any business, the cannabis business presents a unique set of challenges to an assignee since the assets on the premises may include a significant amount of cash and valuable merchandise (which happen to be federal contraband).

The assignee must also secure the premises and the assets. However, in addition to the assets found in a traditional business, such as machinery, equipment, general inventory and real estate, which are relatively easy to secure, cannabis businesses will likely contain highly fungible and movable items, including valuable and potentially dangerous inventory, making these items prime targets for theft and misappropriation. As such, an assignee appointed in such a case would have to be particularly sensitive to the physical safeguarding of the assets from theft or conversion by third parties. Accordingly, an assignee in such a case may be required to take additional steps to safeguard the assets by padlocking the doors, retaining a security service, or other more drastic measures that would not otherwise be taken in a more traditional business liquidation.

Furthermore, it is standard operating procedure of an assignee to open a fiduciary bank account(s) for transfer of the assignor's funds and from which to transact business on behalf of the assignment estate. However, as previously discussed, banks have generally been unwilling to do business with marijuana businesses, presenting yet another challenge to the assignee.

Beyond these issues, other more subtle but critical issues may arise. For exam-

ple, if the cannabis business is a cultivation facility, environmental concerns will need to be addressed. Since certain pesticides⁴² would likely be used in the cultivation of marijuana and certain solvents may be used during the extraction process, an assignee will need to be careful that he or she is not deemed a 'responsible person' under the applicable environmental laws if those pesticides, solvents or other agents cause environmental damage to the property and the property needs to be remediated.⁴³ If insurance needs to be obtained the environmental aspect may present an additional obstacle. Some courts have held in favor of insurance companies denying coverage because the underlying marijuana business violated federal law and, thus, was deemed in contravention of the subject insurance policy.⁴⁴

Despite the challenges for the assignee in cannabis liquidation, a secured lender may wish to (or be forced to) participate in an ABC proceeding over a federal bankruptcy proceeding involving a marijuana business. Since most real estate foreclosures involve only state law and are prosecuted and litigated before the state court, a state court sitting in a jurisdiction with laws legalizing cannabis would more likely enforce a lender's security interest.⁴⁵ In contrast, this outcome may be less likely in a bankruptcy setting since marijuana is currently illegal under federal law.⁴⁶

Conclusion

In sum, given the current legal landscape, most marijuana businesses will be denied access to relief under the federal Bankruptcy Code. However, state court alternatives may be available to assist an ailing marijuana business in New Jersey. While these options are not without risk to those involved, they provide some mechanism by which to affect an orderly liquidation of a marijuana business. ▮

Endnotes

1. See N.J.S.A. §§24:6I-1, *et seq.*
2. Department of Health, Executive Order 6 Report, March 23, 2018, at 11-12, *available at* https://www.state.nj.us/health/medicalmarijuana/documents/EO6Report_Final.pdf.
3. *Id.* at 12.
4. *Id.*
5. See Payton Guion, Will legal weed come to N.J.? What to know about the latest proposal, NJ.COM, March 18, 2018, *available at* http://www.nj.com/marijuana/2018/03/6_big_changes_in_new_nj_marijuana_plan.html.
6. See *id.*
7. Melia Robinson, Here's where you can legally smoke marijuana in 2018, *Business Insider*, April 20, 2018, *available at* <http://www.businessinsider.com/where-can-you-can-legally-smoke-weed-2018-1>.
8. 21 U.S.C.S. § 841 (2018).
9. 21 U.S.C.S. §§ 841; 853 (2018).
10. 21 U.S.C.S. § 846 (2018).
11. See U.S. Dept. of Justice, Office of the Attorney General Memorandum, *Guidance Regarding Marijuana Enforcement*, Aug. 29, 2013, (setting forth certain "enforcement priorities" including preventing the distribution of marijuana to minors, preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels, preventing violence and the use of firearms in the cultivation and distribution of marijuana, etc., and directs Department attorneys to "focus their enforcement resources and efforts... on persons or organizations whose conduct interferes with any one or more of these priorities").
12. See Massachusetts Division of Banks, Banking for marijuana-related businesses in Massachusetts, March 27, 2018, *available at* <https://www.mass.gov/news/banking-for-marijuana-related-businesses-in-massachusetts>.
13. See, e.g., Robb Mandelbaum, Where Pot Entrepreneurs Go When the Banks Just Say No, *N.Y. Times Magazine*, Jan. 4, 2018, *available at* <https://www.nytimes.com/2018/01/04/magazine/where-pot-entrepreneurs-go-when-the-banks-just-say-no.html> (noting that banks tend to take their cues from the federal government, and handling the proceeds of a marijuana transaction poses the risk of violating anti-money laundering laws).
14. See, e.g., 18 U.S.C. §§1956-1957 (2018); see also Julie Andersen Hill, Banks, Marijuana and Federalism, *available at* <https://www.dropbox.com/s/dc5w9q2ntlc9myu/Hill-on-marijuana-banking.pdf?dl=0> (Hill is an associate professor of law at the University of Alabama School of Law and, according to *Forbes*, this article was presented at a conference on marijuana and federalism in 2014); U.S. Dept. of Justice, Office of the Attorney General Memorandum, *Marijuana Enforcement*, Jan. 4, 2018.
15. See Massachusetts Division of Banks, Banking for marijuana-related businesses in Massachusetts, March 27, 2018, *available at* <https://www.mass.gov/news/banking-for-marijuana-related-businesses-in-massachusetts>.
16. See, e.g., James Rufus Koren, Lend-

es-in-massachusetts ("This includes the Treasury Department's guidance from former Deputy Attorney General Cole dated August 29, 2013, known as the 'Cole Memo 1.' Also rescinded was the subsequent Department memorandum dated Feb. 14, 2014, known as 'Cole Memo 2,' which served as companion guidance to the Financial Crimes Enforcement Network's (FinCEN) BSA Guidance on Marijuana-Related Businesses issued on the same date.").

- ing money to pot businesses is a high risk move: 'This is not for the faint of heart', *L.A. Times*, Dec. 19, 2016, available at <http://www.latimes.com/business/la-fi-marijuana-lending-20161219-story.html>; Julie Weed, Legal Weed Entrepreneurs Finding New Funding Options, *Forbes*, Sept. 9, 2017, available at <https://www.forbes.com/sites/julie-weed/2017/09/09/funding-options-for-cannabusiness-expanding/#108449c7cf39>.
17. See 26 U.S.C. §280e (2018); 26 U.S.C. §61 (2018) (defining gross income); Internal Revenue Service, Office of Chief Counsel Internal Revenue Memorandum No. 201504011, Jan. 23, 2015 (*citing James v. United States*, 366 U.S. 213, 218 (1961) ("Though a medical marijuana business is illegal under federal law, it remains obligated to pay federal income tax on its taxable income because §61(a) does not differentiate between income derived from legal sources and income derived from illegal sources), available at <https://www.irs.gov/pub/irs-wd/201504011.pdf>; see also *Gambina v. Commissioner*, 91 T.C. 826, 828-29 (1988) (criminal forfeiture does not relieve a taxpayer of taxation). For a detailed discussion on taxation rules for marijuana businesses, see Tony Nitti, IRS Further Limits Deductions For State-Legal Marijuana Facilities, *Forbes.com* (Jan. 24, 2015), available at <https://www.forbes.com/sites/anthonymitti/2015/01/24/irs-further-limits-deductions-for-state-legal-marijuana-facilities/#5c97eefa7aba>.
 18. Clifford J. White III and John Sheahan, Executive Office for U.S. Trustees, Why Marijuana Assets May Not Be Administered in Bankruptcy (Dec. 2017), available at https://www.justice.gov/ust/file/abi_201712.pdf/download.
 19. See *In re Rent-Rite Super Kegs W. Ltd.*, 484 B.R. 799, 803-04; 806-07 (Bankr. D. Co. 2012) (Tallman, J.) (Debtor owned a building and approximately 25% of its revenues were derived from leasing space to marijuana growers legally operating under Colorado state law); see also *In re Arm Ventures, LLC*, 564 B.R. 77 (Bankr. S.D. Fla. 2017) ("a bankruptcy plan that proposes to be funded through income generated by the sale of marijuana products cannot be confirmed unless the business generating the income is legal under both state law and federal law").
 20. *Id.* at 803-06.
 21. *Id.* at 806-09.
 22. *In re Arenas*, 514 B.R. 887, 888 (Bankr. D. Colo. 2014) (*aff'd* 535 B.R. 845 (10th Cir B.A.P. 2015)).
 23. *Id.* at 888-92.
 24. *Id.* at 891.
 25. *Id.* at 892 (recognizing that under 11 U.S.C. §1325(a)(3), a Chapter 13 plan cannot be confirmed unless it has been proposed in good faith and not by any means forbidden by law).
 26. Clifford J. White III and John Sheahan, Executive Office for U.S. Trustees, Why Marijuana Assets May Not Be Administered in Bankruptcy (Dec. 2017), available at https://www.justice.gov/ust/file/abi_201712.pdf/download.
 27. See *In re Johnson*, 532 B.R. 53, 56 (Bankr. W.D. Mich. 2015).
 28. *Id.* at 55.
 29. The court gave the debtor the opportunity to choose between continuing his marijuana business and availing himself of the protections of the bankruptcy code. *Id.* at 58.
 30. *Id.* at 56-57.
 31. *Id.* at 57.
 32. See *Northbay Wellness Group, Inc. v. Beyries*, 789 F.3d 956, 958 (9th Cir. 2015).
 33. See *Olson v. Van Meter (In re Olson)*, No. NV-17-1168-LTiF, 2018 Bankr. LEXIS 480, at *13-15 (B.A.P. 9th Cir. Feb. 5, 2018). This holding, however, was based on the lower court's failure to articulate the findings leading to its determination that the debtor violated the CSA and thus the case should be dismissed.
 34. 2018 U.S. Dist. LEXIS 49640 (W.D. Wa. March 26, 2018).
 35. *Id.* at *8-9.
 36. Kim Lachance Shandrow, 9 Business Ideas for People Looking to Cash in on the Marijuana Boom, *Entrepreneur.com*, Oct. 6, 2016, available at <https://www.entrepreneur.com/slideshow/282008>.
 37. Other types of state-court insolvency mechanisms include receiverships. Receiverships are typically commenced by banks and other secured lenders. There are a variety of types of receiverships, including statutory receiverships and custodial receiverships. Statutory receivers are governed under N.J.S.A. §§14A:14-2 and 14A:14-4. A custodial receiver, which is similar to a statutory receiver, is discussed at great length in *Ravin, Sarasohn, Cook, Baumgarten, Fisdch & Rosen, P.C. v. Lowenstein Sandler, P.C.*, 365 N.J. Super. 241 (App. Div. 2003). Rent receivers are sometimes used in foreclosure actions to prevent waste. See *Wilmington Sav. Fund Soc'y v. FSB v. Zimmerman*, 450 N.J. Super. 415 (Ch. Div. 2017). For a discussion on the different types of receivers, see, generally, *Kaufman v. 53 Duncan Investors, L.P.*, 368 N.J. Super., 501 (App. Div. 2004) and Hon. William A. Dreier and Paul A. Rowe, *Guidebook to Chancery Practice in New Jersey* (7th Ed. 2008) at 106-107. Special fiscal agents are another state court mechanism typically

- used to preserve an entity's assets while the entity is engaged in litigation. *See e.g., Roach v. Margulies*, 42 N.J. Super. 243 (App. Div. 1956) and *Kassover v. Kassover*, 312 N.J. Super. 96 (App. Div. 1998). For further discussion on the use of special fiscal agents, *see also* Dreier and Rowe, *supra.*, at 107, and Scrivo, Gallo and Gimigliano, Special Fiscal Agents – Armed Peacekeepers, *New Jersey Lawyer*, April 2014, at 37-38.
38. *See* New York State Medical Marijuana Program Application requirements at the New York State Department of Health website at https://www.health.ny.gov/regulations/medical_marijuana/application/applications.htm. *See also* Velasquez, Josefa, What's Next for Marijuana Legalization in NY? Lawyers Tell Us, *New York Law Journal*, Feb. 5, 2018, available at, <https://www.law.com/newyorklawjournal/sites/newyorklawjournal/2018/02/05/whats-next-for-marijuana-legalization-in-ny-lawyers-tell-us/>.
 39. *See* Illinois' Proposed Rules for Compassionate Use of Medical Cannabis Pilot Program Act Filed, which lists the requirements to qualify for the Medical Cannabis Pilot Program at http://www.idph.state.il.us/public/press14/4.18.14_Proposed_Rules_for_Compassionate_Use_of_Medical_Cannabis.htm.
 40. *See* Hilary Bricken, Marijuana Pay-to-Play Licensing Trend, *Above the Law*, Sept. 19, 2016, at <https://abovethelaw.com/2016/09/marijuanas-pay-to-play-licensing-trend/>.
 41. *See* New Jersey's Alcohol Beverage Control Act, N.J.S.A. 33:1-1, *et seq.*
 42. *See, generally*, California Department of Pesticide Regulation regarding Cannabis and Pesticides, at <http://www.cdpr.ca.gov/docs/cannabis/index.htm>.
 43. *See e.g., Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)*, 42 U.S.C.S. §9601, *et seq.* That notwithstanding, 42 U.S.C. §9607(n) provides a "safe harbor" for a "fiduciary," which is defined as, among others, a trustee, executor, administrator, custodian, guardian of estates or guardian *ad litem*, receiver, conservator, committee of estates of incapacitated persons, or a personal representative. 42 U.S.C. §9607(n)(5)(A)(i)(I)-(XI).
 44. *See e.g., Tracy v. USAA Cas. Ins. Co.*, 2012 U.S. Dist. LEXIS 35913 (D. Haw. March 16, 2012) (granting the insurance company's motion for summary judgment to deny coverage because "the cultivation of marijuana, even for the State-authorized medical use, violates federal law and the enforcement of an insurance policy under the particular circumstances of this case is contrary to public policy"); *see also Hemphill v. Liberty Mutual Ins. Co.*, 2013 U.S. Dist. LEXIS 200109 (D.N.M. 2013). *But see Green Earth Wellness Ctr., LLC v. Atain Specialty Ins. Co.*, 163 F. Supp. 3d 821 (D. Colo. 2016) (denying summary judgment for insurance company on an insurer's claim for \$40,000 due to damage to harvested marijuana buds and flowers damaged in the Waldo Canyon fire and rejecting argument that policy was void on public policy grounds due to the illegality of cultivating marijuana because insurer entered into policy of its own will and was, therefore, obligated to comply with its terms or pay damages for having breached it); *see also Green Moss Med., Inc. v. Gally*, 242 Ariz. 293 (App. 2017) (holding that the lease agreement at issue was not void for illegality, even though the lessee's plan was to operate the leased facility as a medical marijuana dispensary, which would have violated federal law).
 45. *See e.g. Parks v. "Mr. Ford,"* 556 F.2d. 132, 158 (3rd Cir. 1976) ("Both the creation and the method of foreclosure are creatures of state law."); *see also, e.g., Ramsey v. Citibank, N.A.*, 2011 U.S. Dist. LEXIS 110963, *18-19 (Dist. Colo. 2011) ("In the absence of any controlling federal law, 'property' and 'interests in property' are creatures of state law." (citations omitted)). "Foreclosure proceedings are generally handled by state courts, not federal courts, and the propriety of determining whether a foreclosure is appropriate is a matter of state law, not federal law" (citations omitted)); *see also, e.g., In re Miller*, 442 B.R. 621, 629 (Bankr. W.D. Mich, 2011) ("Contracts made in, and to be performed in, Michigan are governed by Michigan law. Also, transfers of interests in real property are determined by state law where the real property is located. Likewise, the Michigan foreclosure sale, a creature of statute, is governed by Michigan, not Wisconsin, law. "The method for the foreclosure of a mortgage on land and the interests in the land resulting from the foreclosure are determined by the local law of the situs." *Id.* at § 223. "The transfer of real property is regulated by the lex loci rei sitae, i.e., the law of the state in which the property is located."").
 46. *See, e.g., In re Johnson*, 532 B.R. 53 (Bankr. W.D. Mich. 2015), *supra.*