

# **PURCHASING** a **Cannabis Related** **PROPERTY?**

**THREE KEY CONSIDERATIONS  
NOT TO OVERLOOK**

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Historically, when purchasing a property in Ontario, it was not uncommon for a vendor to represent and warrant in the agreement of purchase and sale that the property had never been used as a cannabis “grow-op”. It looks like such a representation and warranty is becoming a thing of the past.

As the cannabis industry matures, an increased number of newly licensed producers, retail store licensees and those manufacturing ancillary cannabis products (and edibles, once legalized) will be looking to purchase production facilities, retail storefronts, commercial properties and factories. Prior to the purchase of a property for cannabis business use, there are a number of key items one should consider.

In the normal course, when a purchaser enters into an agreement of purchase and sale to purchase a property, the agreement of purchase and sale will either be (i) conditional for a specific number of days; or (ii) a firm deal with no conditional period. In the first scenario, the agreement will be conditional upon the purchaser satisfying itself after conducting due diligence of the property and/or obtaining financing.

In the case of a conditional agreement, a purchaser ought to determine the following items during the conditional period. In the case of a firm agreement, the purchaser ought to determine the following items prior to executing an agreement of purchase and sale:



# 1

## TITLE

A previous owner (including possibly the vendor) of a property may have registered restrictive covenants or easements on title to a property. One example of such a restrictive covenant might be one which prohibits the production or manufacture of cannabis or cannabis products on the property. An example of an easement may be one which would prohibit a purchaser from expanding the building on the property or in the case of vacant land or knocking down the previous building to build a new building, may greatly restrict what one is able to build.

A purchaser's solicitor should always search title to the property to determine whether there are any such restrictive covenants registered, and tailor this search to consider cannabis-specific requirements. Like in every real estate transaction, the purchaser's solicitor should make sure that marketable title to the property is conveyed to the purchaser free and clear of any encumbrances. This will allow purchasers the freedom to conduct their cannabis-related business activities at or on the property without interference or additional restrictions beyond any laws and regulations.

# 2

## ZONING/USE

In considering the location and permitted use at a property, a purchaser needs to ensure that they will be able to use the property in the way that they intend prior to entering an agreement. A purchaser's solicitor must determine whether the zoning of the prospective property allows for the purchaser's intended use, or if there are any municipal by-laws that would prohibit the purchaser's intended use.

For example, if a purchaser is looking to purchase a property to use as a production facility, the property will need to be zoned accordingly. It would be very unfortunate if a purchaser found a perfect space for a production facility and it being zoned for a use that precludes that purchaser from using the space to produce cannabis.

Another example is in the retail context where considerations of municipal requirements is at the forefront of the licensing process. Each province has set its own buffer requirements for the location of stores. Ensuring that municipalities have not prohibited the presence of cannabis retail, and ensuring proper distances are maintained from schools, places of worship, etc. is of the utmost importance. The last thing a purchaser would want to do is spend more money and possibly multiple years fighting a municipality to get a property rezoned after spending potentially millions of dollars purchasing a property.

# 3

## FINANCING

A purchaser of course will need to come up with funds to pay for any property. In most real estate transactions, a purchaser receives financing to help pay for the purchase of the property. Typically, purchasers will look to the banks, and/or to private lenders for financing.

Traditionally, banks and top tier private lenders were hesitant to involve themselves with the cannabis industry. While times are certainly changing and both banks and private lenders have started to enter the world of cannabis debt financing, involvement in or use of a property for the purpose of involvement in the cannabis industry will often be a hurdle for purchasers, compared to a more “typical” industrial or commercial purpose.

As a result, as soon as a prospective purchaser decides to move forward, the best course of action is for that purchaser to start working on obtaining financing right away, so as to not hold up the purchase and obtain a favourable rate.

The above are just three (very important items!) a purchaser of a cannabis related property must keep in mind as they consider making a purchase. It is important that prospective purchasers contact a solicitor to assist through the purchasing process to ensure they are protected.





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