

## Cannabis (Marijuana) Issues: Sale of Residential Real Property

**State and Federal Laws:** Adult, personal use of limited amounts of cannabis is legal under California law. Under federal law, it is NOT legal to possess, manufacture, distribute, sell or grow cannabis.

### What Does California Allow/Prohibit?

Permitted: Use and possession of 1 oz cannabis or less than 8 grams concentrate; Personal cultivation of up to 6 plants per household, indoors or outdoors; Limits may be exceeded for necessary amounts of medicinal marijuana.

Prohibited: Outdoor growing if visible to public; Smoking within 1,000 feet of a school, day care center or youth center when children are present; Smoking in public, where tobacco smoke is prohibited or while driving.

**May a real estate licensee sell property where cannabis is cultivated, used or sold?** Yes, under California law if the cannabis activity is legal. But not under federal law since all cannabis use is illegal. However, federal enforcement actions are not allowed against lawful State medicinal marijuana use and enforcement against personal use violations are extremely rare as federal resources are targeted towards business or large-scale operations.

**What should a real estate licensee do who knows, suspects or is aware that property being offered for sale is or was previously used for cannabis purposes?** Think of D.A.D.: Disclose, Attribute, and Disclaim.

**What should be disclosed?** Identify “red flags” that might be indicative that property is or will be used for cannabis purposes. Examples could include: Improper electrical additions; Unexplained water distribution systems in a house; Industrial ventilation in residence; Noticeable smell of marijuana; Observation of growing plants during a visual inspection; Known or publicized indications of illegal activity.

**How should any disclosure be made?** Make a statement concerning the “red flag,” without rendering an opinion on the legality or illegality. Example appropriate statements include:

“Neighbor says ...”; “There was an article in paper about ...”; “Electrician states ...”; “Home Inspector report reveals ...”; “I noticed in my inspection ... **[insert fact]**”

**AND ...** This may be indicative that property was used for cannabis purposes ...

**AND ...** I have not verified prior use/ factual claim or whether the use is lawful or illegal ...

**AND ...** Broker/agent recommends that buyer contact Seller or others for additional information and to satisfy themselves regarding the property.

**Where should a disclosure be made?** In the agent portion of the TDS or in the AVID.

**What obligations do buyers and sellers have?** Buyers have a duty to use reasonable care to protect themselves. Information about cannabis is available in C.A.R. Form SBSA, Section B, paragraph 10. Sellers have a duty to disclose material facts, such as in C.A.R. Forms TDS, Section II C, questions 4 and 5, and SPQ, question 18B.