

# CannaBiz;

## Business, Banking, Property Law

*Presented by:*

*John Friedemann  
Friedemann Goldberg LLP*

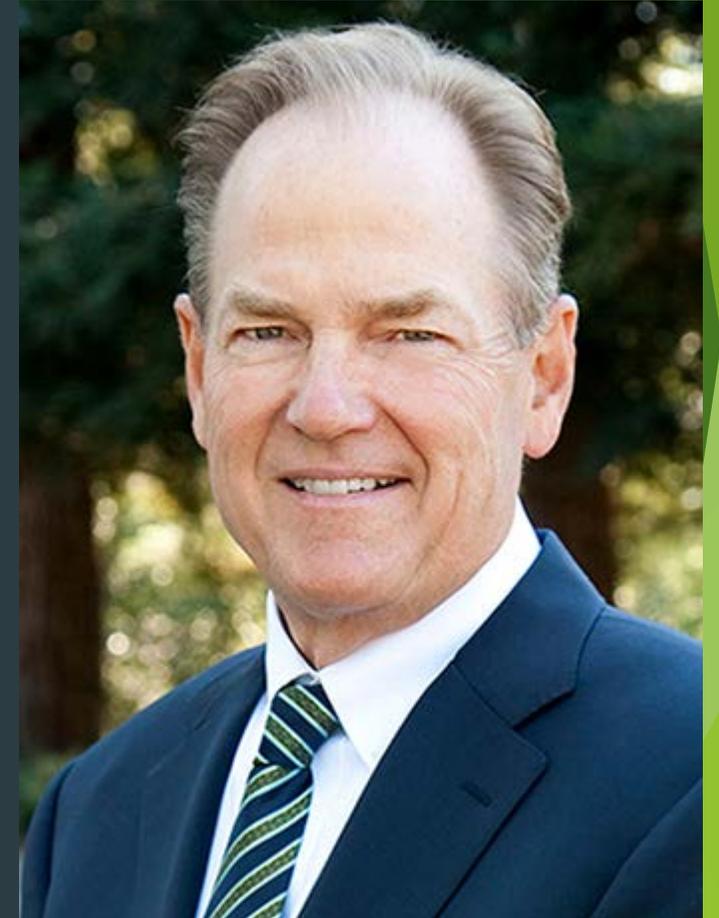
# Presenter – John Friedemann

John F. Friedemann is the managing partner of Friedemann Goldberg LLP. He practices in business, banking, and real estate law, both litigation and transactional. He has been practicing law since 1984.

A graduate of UCLA and the University of the Pacific, McGeorge School of Law, with distinction, Mr. Friedemann frequently speaks and lectures on a variety of law topics.

Mr. Friedemann has taught courses and delivered lectures at University of Southern California Law Center, Loyola Law School, Sonoma State University, and Empire College of the Law. He regularly speaks at conferences and at continuing education programs.

He has been recognized as a Super Lawyer 12 times by Super Lawyers Magazine, and was honored as an Outstanding Teacher by Sonoma State University for his classes on business law.



[jfriedemann@frigolaw.com](mailto:jfriedemann@frigolaw.com)  
(707) 543-4900  
[www.frigolaw.com](http://www.frigolaw.com)

## Overview

# Cannabis Issues in the law of Business, Banking, and Real Estate

# Schedule I of the Controlled Substances Act

- ▶ As a licensed attorney, I cannot advise anyone to violate the law.
- ▶ I will tell you what some people are doing in response to the law, but I will not be advising you to do the same.
- ▶ Prediction: Eventually, Congress will provide a legislative solution, but not anytime soon.

# Setting Up a Business -- Get Help!

- ▶ Outside professionals you need:
  - ▶ Cannabis consultant
  - ▶ Insurance broker
  - ▶ CPA/bookkeeper
  - ▶ Tax lawyer
  - ▶ Business lawyer

## Business Structure Options:

- ▶ California Medical Marijuana Collective/Cooperative
- ▶ Sole Proprietor
- ▶ General Partnership
- ▶ Limited Liability Company
- ▶ C Corporation
- ▶ Limited Partnership

# California Medical Marijuana Collective

- ▶ Proposed Law Changes:
  - ▶ California will allow you to convert your existing non-profit cannabis business into a for-profit entity.
    - ▶ Either a new for-profit entity is formed and then merged with the old non-profit.
    - ▶ Or the non-profit amends its articles of incorporation with the California Secretary of State.

# Sole Proprietor

- ▶ Least expensive option.
- ▶ Not a legal entity itself. A natural person who directly owns the business and is directly responsible for its debts.
- ▶ Owner has unlimited personal liability for losses.
- ▶ Owner has total management authority, but may act through agents or employees.
- ▶ No separate tax entity. Profits and losses passed through to owner.

# General Partnership

- ▶ An association of two or more to carry on as co-owners for profit.
- ▶ The partners are personally liable for losses and debts.
- ▶ Each general partner has equal rights to participate in management.
- ▶ Not taxed separately. Profits and losses passed through to partners.
- ▶ Little formality required. No written partnership agreement required.

# Limited Liability Company

- ▶ File Articles of Organization with the Secretary of State.
- ▶ One member required. Operating Agreement written or oral.
- ▶ LLC members are not personally liable for the entity's debts.
- ▶ Management vested in all its members unless agreed otherwise.
- ▶ Can be managed by one or more non-member managers.
- ▶ Not taxed separately. Profits and losses passed through to members.
- ▶ \$800 annual tax.
- ▶ Articles of Organization filed with Secretary of State.

# C Corporation

- ▶ File Articles of Incorporation with the Secretary of State - name, statement of purpose, name and address of agent for service, total number of shares.
- ▶ Directors and officers of the corporation are not responsible for debts.
- ▶ Management and control is vested in the board of directors, elected by the shareholders of the corporation.
- ▶ Business is conducted through officers and employees.
- ▶ Corporation taxed annually on earnings and shareholders taxed on dividends.
- ▶ Annual \$800 minimum franchise tax.
- ▶ Articles of Incorporation and Statement of Information filed with Secretary of State.
- ▶ Corporate formalities required – hold meetings, keep minutes, create bylaws.

# Limited Partnership

- ▶ File Certificate of Limited Partnership with the Secretary of State.
- ▶ One or more “general” partners manage the business; personally liable.
- ▶ One or more “limited” partners who contribute capital and share in the profits.
- ▶ General partner may be a corporation or LLC.
- ▶ Not taxed separately. Profits and losses of partnership passed through to partners. Each partner is responsible for paying taxes on their distributive share.
- ▶ Subject to minimum annual tax of \$800.

# Banking

- ▶ No federal law explicitly prohibits financial institutions from serving cannabis businesses.
- ▶ Know Your Customer laws require that banks know what their customers do.
- ▶ Bankers cannot be willfully blind. They must ask and investigate.
- ▶ Bankers fear federal money laundering laws that can consider cannabis deposits to be illegal transactions.
- ▶ Banks and credit unions have federal deposit insurance and must answer to at least one federal regulator.
- ▶ The NCUA agnostic approach; credit unions may proceed with caution.

# Money Laundering

- ▶ 18 USC 1956
- ▶ The government must prove:
  - ▶ A monetary transaction (deposit at a bank);
  - ▶ Depositor knew the money came from a crime; and
  - ▶ More than \$10,000.
- ▶ Penalty: \$500,000 and 20 years.

# CTRs under the Bank Secrecy Act

- ▶ Transactions of \$10,000 or more.
  - ▶ Transactions are aggregated.
  - ▶ If customer declines to continue making a deposit upon hearing about the CTR, the bank will file a SAR.
  - ▶ This change of plan is considered structuring, punishable by federal law against customer and, if not reported, the bank employee.
- ▶ 31 U.S. Code § 5324 - Structuring transactions to evade reporting requirement; 5 years in prison.

# Suspicious Activity Reports

- ▶ SARs required by Banks and credit unions to tell federal authorities if they suspect that their customers might be engaged in illegal activity.
- ▶ Required disclosure to the Financial Crimes Enforcement Network (FinCEN).
- ▶ 12 CFR 21.11;
- ▶ Known or suspected criminal offenses, over \$5,000.
- ▶ Suspected to involve money laundering or violation of Bank Secrecy Act.

# Banking Regulation

## The Cole Memo

- ▶ In 2013, a DOJ memo by Deputy Attorney General James Cole announced that federal authorities wouldn't raid state-permitted cannabis businesses if states enacted "robust controls" to keep pot from children and from being trafficked across state lines or into criminal markets.
- ▶ In 2012, President Obama's Treasury Department offered banks guidance on accepting marijuana deposits from state-licensed businesses.
- ▶ Rules still required financial institutions to file "suspicious activity reports" on all marijuana related accounts.

# Cash; What is legal?

- ▶ Spending cash.
- ▶ Making cash deposits, even in excess of \$10,000.
- ▶ Do not structure; understand CTRs.
- ▶ Some use cash to pay employees, suppliers, and business taxes. This is not money laundering.
- ▶ Some deposit cash, in small amounts, into an account held by a limited liability company that is a non-cannabis business. This is money laundering.
- ▶ Some have non-cannabis business affiliates that the cannabis business pays to justify cash transactions. This is also money laundering.

# Cash Gray Area for Banks

- ▶ Indirect marijuana related businesses
- ▶ FinCEN – guidance
- ▶ Line not clear – test appears to be diversity of income sources

# Proposed Cash and Banking Ideas

## ▶ Not recommendations, just observations

- ▶ Smart Safes
- ▶ Payments by App
- ▶ Bitcoin/cryptocurrency
- ▶ Public banking
- ▶ Private banking
- ▶ Credit unions
- ▶ Use cash whenever possible
- ▶ Some create a cover business to explain to vendors where cash is coming from
- ▶ Diversify business activities
- ▶ Layer entities

# Real Estate

- ▶ You cannot purchase property in California with cash.
  - ▶ If you have money in the banking system and you are going to buy property, don't buy in the name of your cannabis entity.
- ▶ Owner/Landlord Issues.
  - ▶ Banks will lend to your non-cannabis entity and you will not have to identify any activity for the entity other than owning property.
  - ▶ You can probably lease the property to a cannabis activity entity.

# Tenant Property Issues

- ▶ Possible problems with a form lease agreement
- ▶ Lease terms may broadly prohibit “Illegal” conduct
- ▶ Payment may not be accepted in cash
- ▶ Perception of tenant as high risk
- ▶ Best solution?
  - ▶ Own or control the real estate
  - ▶ Diversify your activities