

**Legalized Marijuana & Real Estate:  
What You Need to Know**



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**Amendment 64:  
Then & Now**

Peter Wall



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**CO Retail Marijuana: How Did We Get Here?**

- November 2000: voters approve Amendment 20, legalizing the use and possession of medical marijuana.
- October 2009: Obama administration ends aggressive law enforcement against medical marijuana patients and dispensaries.
- November 2012: Colorado legalizes the use, possession and sale of retail marijuana with the passage of Amendment 64.

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### Amendment 64: What Did It Do?

- Permits persons 21 years or older to consume and/or possess up to 1oz of marijuana.
- Allows for the licensing of retail stores, growing, product manufacturing and testing facilities.
- Required the general assembly to enact an excise tax on the wholesale sales of marijuana.
- Required the general assembly to enact legislation governing the cultivation, processing and sale of retail marijuana.
- Gave local governments i.e. cities and counties the ability to opt in or out of retail marijuana.

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### Amendment 64: Who's Opting In & Out?

- A-64 gives local jurisdictions the ability to opt in, out or establish moratoriums on marijuana facilities.
- As of now, a majority of counties have chosen to opt out of retail marijuana.
- Allowing recreational sales: Denver, Boulder, Pueblo, Eagle, Pitkin, etc.
- Temporary ban on recreational sales: Adams, Jefferson, etc.
- Municipalities within a county have individual autonomy.

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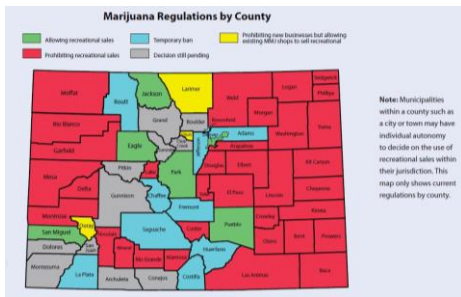
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### Amendment 64: Who's Opting In & Out?




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**Retail Marijuana: Where We Are Today**

- January 1, 2014: State DOR issues licenses for retail sales.
- By way of ordinance, Denver adopts specific regulations on use, possession and consumption:
  - Only pre-existing MMJ retail stores can open as RMJ stores until Jan. 1, 2016
  - Coterminous operation
  - Specific zoning for retail marijuana facilities
  - Limitation on RMJ/MMJ plants per residence
  - Needs & Desires hearings beginning Jan. 1, 2016

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**Policy Issues & Future Impacts**

- Federal government positioning
- Tax implications
- Retail marijuana banking
- Property rights
- Constitutionality of local regulation
- Community impacts
- Zoning limitations

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**Implications of Marijuana Laws on Colorado Real Estate**

Scott Peterson, Esq.




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Welcome to the neighborhood...




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Marijuana is still "illegal"!

- Conflict between Federal and State drug law? Federal law wins.
- Most commercial & residential leases have a catchall provision that prohibits "illegal" activities on property.
- Most property insurance policies have exclusions for damage to property caused by "illegal" activities.
- Most loan/financing documents contain covenants prohibiting "illegal" activities.
- Most banks adhere to internal and/or federally mandated lending criteria that prohibit lending for "illegal" purposes.
- Most Owner's Associations have covenants and restrictions that prohibit "illegal" activities.

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Implications for Real Estate Landlords

- Real Estate owners/investors have broad flexibility to control their own property and uses of that property with respect to marijuana.
- Through the lease, Landlords can specifically *prohibit* the use, cultivation or sale of marijuana ("illegal" activities catchall clause).
- Through the lease, Landlords can specifically *permit* the use, cultivation or sale of marijuana (applies mostly to *commercial vs. residential* real estate).

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### Implications for Real Estate Landlords

**BE CAREFUL!**

- Clause that allows for very flexible termination right in the event of change to current state law or federal *position* on marijuana.
- Consider the implications on:
  - Property Insurance
  - Existing mortgages/financing agreements
  - New loans or refinancing (high cost, secondary market loans)
  - Municipal/zoning/deed restrictions
  - Rent/expense collection – CASH!
  - Future marketability of property

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### Implications for Real Estate Tenants

- Residential tenants - follow the terms of your lease and be responsible & respectful of other tenants.
- Commercial tenants – need to insure that growing and/or selling marijuana is an explicitly permitted use within the lease document.
  - Large financial investment in both rent commitment and TI's
  - Consider "buyout" language in the event of change in state law or federal *position*
  - Grow facilities – explicitly define grow equipment, lights, etc. as "removable trade fixtures"
  - Agree in advance on form of payment for rent
  - Landlord access
  - Personal guarantees
  - Security Interest in FF&E

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### Implications for Real Estate Buyers

- Financing – If you need it, can you get it?
  - Traditional sources
  - "Hard" money lenders/Secondary markets
- Municipal regulations, zoning, proximity to schools
- Property insurance
- Change in federal *position* - can you "re-purpose" the property?
- Is your potential new home a former "grow" operation?
  - Property insurance claims, electrical wiring, mold, water damage, stigmatized property

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### Implications for Real Estate **Sellers**

- Showing restrictions – are there areas of the home or business that a potential buyer can't access?
- Source of funds - Is the property financeable by Buyer?
- If selling with lease income in place, is the tenant credit-worthy for valuation purposes?
- Disclosures – “material adverse condition”? Ask your broker!

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### Implications for Real Estate **Brokers**

- **Seller Broker**
  - Disclosures – “material adverse condition”?
    - Depends on circumstances
      - Do-it-yourself electrical wiring, plumbing, etc.
      - Mold concerns in humid grow environment
      - Property well-known grow facility or dispensary – “stigmatized”
      - As always, error on the side of disclosure
  - Marketing – Is a property appropriate for sale and/or cultivation of marijuana? “Perfect Grow Facility” – Consider zoning and other municipal requirements.
  - Set proper Client expectation on price, sales cycle, Buyer financing and inspection

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### Implications for Real Estate **Brokers**

- **Buyer Broker**
  - Inspection – make sure qualified inspector is aware of previous cultivation uses.
  - Avoid representations that a property is appropriate for marijuana sale, cultivation, etc. Insist that Buyer independently confirm a property's suitability for their intended use.
  - Qualify your buyers – do they have cash or legitimate access to funds?
  - Pay careful attention to Property Insurance Deadline and Association Document review

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**CBD Office Market...**



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CAR LEGAL HOTLINE  
For more information visit:  
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