



# **BILL C-45 AND REAL ESTATE**

How Canada's new cannabis laws may affect real estate, condominium developers and traveling across the border.

# MEET GEOFF RABIDEAU

Geoff Rabideau, the principal lawyer at Rabideau Law, graduated law school from Queen's University in Kingston, Ontario and has been a member in good standing with the Law Society of Upper Canada since 2008.

Geoff is an active member of his local community, has served on the board of directors for many local companies and businesses and is involved in several local charities throughout the year and holiday seasons.



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# THE CANNABIS ACT

Bill C-45

# BILL C-45 / FEDERAL

Bill C-45, the *Cannabis Act*, came into effect October 17, 2018.

Bill C-45 amends the *Controlled Drugs and Substances Act*, the Criminal Code and other Acts.

It is “...a legal and regulatory framework for controlling the production, distribution, sale and possession of cannabis in Canada.”

**Implementation is shared federally/provincially/municipally.**



# BILL C-45 / FEDERAL

The *Cannabis Act* will allow adults who are the age of majority, to legally:

- **purchase** limited amounts of fresh cannabis, dried cannabis, cannabis oil, cannabis seeds, or cannabis plants from retailers authorized by the provinces and territories;
- **possess** up to 30 grams of dried legal cannabis or equivalent in non-dried form in public;
- **consume** cannabis in locations authorized by local jurisdictions;
- **grow** up to four cannabis plants per household (not per person) for personal use, from licensed seeds or seedlings from licensed suppliers;
- **share** up to 30 grams of dried cannabis or equivalent with other adults;
- **make** legal cannabis-containing products at home, such as food and drinks, provided that dangerous organic solvents are not used in making them.

Other products, such as edibles, will be permitted for legal sale within one year following the coming into force of the *Cannabis Act*.



# BILL C-45 / PROVINCIAL

Applicable legislation includes:

- *Ontario Cannabis Act*  
(legislates the provincial specifics and will be renamed *Cannabis Control Act*);
- *Ontario Cannabis Retail Corporation Act*; and
- the *Cannabis Licence Act*.

Summary at <https://www.ontario.ca/page/cannabis-legalization>

Also related:

- The *Smoke-Free Ontario Act, 2017*.



# BILL C-45 / PROVINCIAL

Where you can smoke/vape cannabis in Ontario



Additional restrictions on smoking and vaping may exist in municipal bylaws, lease agreements, and the policies of employers and property owners.



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# BILL C-45 / PROVINCIAL

## Where you can smoke/vape cannabis in Ontario

- **Private residences** – this does **not** include residences that are also workplaces (e.g. long-term care and/or retirement homes)
- **Many outdoor public places** (e.g. sidewalks, parks)
- **Designated guest rooms** in hotels, motels and inns
- **Residential vehicles and boats** that meet certain criteria (e.g. have permanent sleeping accommodations and cooking facilities, and are parked or anchored)
- **Scientific research and testing facilities** (if the cannabis use is for scientific research and testing purposes)
- **Controlled areas** in:
  - long-term care homes
  - certain retirement homes
  - residential hospices
  - provincially-funded supportive housing
  - designated psychiatric facilities or veterans' facilities



# BILL C-45 / PROVINCIAL

Where you cannot smoke/vape cannabis in Ontario

## Indoors

You cannot smoke or vape cannabis in:

- **indoor common areas** in condos, apartment buildings and university/college residences;
- enclosed public places and enclosed work places;
- **non-designated** guest rooms in hotels, motels and inns.

## Schools and places where children gather

You cannot smoke or vape cannabis:

- at school, on school grounds, and all public areas within 20m of these grounds;
- on children's playgrounds and public areas within 20m of playgrounds;
- in child care centres, or where an early years program is provided;
- in places where home child care is provided — **even if children aren't present.**



# BILL C-45 / PROVINCIAL

Where you cannot smoke/vape cannabis in Ontario

## Hospitals, hospices, care homes and other facilities

You cannot smoke or vape cannabis:

- within 9m from the entrance or exit of hospitals (public/private), psychiatric facilities, long-term care homes, independent health facilities;
- on outdoor grounds of hospitals (public/private) and psychiatric facilities;
- in **non-controlled areas** in long-term care homes, certain retirement homes, provincially-funded supportive housing, designated psychiatric or veterans' facilities, and residential hospices.

## Publicly owned spaces

You cannot smoke or vape cannabis in publicly-owned sport fields (not including golf courses), nearby spectator areas and public areas within 20m of these areas.

## Vehicles and boats

You cannot consume cannabis (smoking, vaping, eating) in a vehicle or boat that is being driven or is at risk of being put into motion.



# BILL C-45 / PROVINCIAL

## Where you cannot smoke/vape cannabis in Ontario

### Other outdoor areas

You cannot smoke or vape cannabis:

- in restaurants and on bar patios and public areas within 9m of a patio;
- on outdoor grounds of specified Ontario government office buildings;
- in reserved seating areas at outdoor sports and entertainment locations;
- on grounds of community recreational facilities, and public areas within 20m of those grounds;
- in sheltered outdoor areas with a roof and more than two walls which the public or employees frequent, or are invited to (e.g. a bus shelter).



# BILL C-45 / MUNICIPAL

## Prohibition Exists

Some municipalities, such as Markham, Richmond Hill and Shelburne, have implemented stringent by-laws restricting cannabis consumption in public spaces, including parks, trails, parking lots, sidewalks, roads, retail, commercial and business establishments. It is an outright ban in public within city limits.





# HOW CAN BILL C-45 AFFECT REAL ESTATE?

An in-depth look at why legalizing cannabis may create obstacles for home owners and borrowers

# BILL C-45 AND REAL ESTATE

## General demand

- Demand for cannabis-related **commercial real estate** is growing rapidly.
- Demand for residential properties with **greenhouses** is growing.
- Demand for residential houses that have legal grow ops, 4 plants or fewer is currently unknown.



# BILL C-45 AND REAL ESTATE

## Stigmatized properties

- Demand for residential houses that were once illegal grow-ops has not changed. They are still viewed as a stigmatized property
- Stigmatized properties are harder to sell and typically sell for less per comparables
- \*The fact a house was a grow-op has to be disclosed and always has to be disclosed;
  - Mandatory disclosure rules reflect the fact that the conditions necessary to grow marijuana in a home environment can greatly damage the space. These conditions include a warm, humid environment, which encourages the growth of black mould and can cause wood to buckle and warp; ventilation requirements that could have required industrial-sized fans to be installed into walls; pesticide contamination; and improperly wired/altered electrical cables to bypass the existing hydro meters.
- Once stigmatized, it can be very difficult to wipe the slate clean; remediation standards – a process that would indicate what repairs a former grow site would need before it's deemed safe – don't yet exist.





# BILL C-45 AND REAL ESTATE

## The standpoint of the CREA and OREA

**Canadian Real Estate Association (CREA)** had requested a ban on home cultivation of cannabis until nationwide regulations are in place: It believes Ottawa should provide provinces with guidance on “safe home cultivation”.

**Ontario Real Estate Association (OREA)** has urged the Provincial Government to ensure home buyers have protection from associated risks with growing cannabis inside, including mold and fungus growth.

**Quebec** and **Manitoba** have chosen to prohibit home cultivation altogether, despite the four-plant limit allowed under the federal law.



# BILL C-45 AND REAL ESTATE

Zoocasa study / Will smoking cannabis inside a home decrease the property value?



# MORTGAGE SPECIFIC IMPLICATIONS

- Appraisers are very important
- Dealing with “A” lenders when purchasing a stigmatized home will be a NO-GO as they considers cannabis growth (regardless of whether it is 1 plant or 50) to be under their “grow op” policy. There is no immediate intention to change these rules.
- Lenders are leery to provide a mortgage on a stigmatized home partly because they will be more difficult to sell if the mortgagor has defaulted on the mortgage.
- Borrowers may need to turn to alternative lenders, which require considerable legwork to clear the home for financing.
- These alternative lenders will require full remediation, any trace of a grow-op (legal or not) will require air and mold testing, and case by case exceptions to obtain a mortgage and home insurance.
- Lender’s may call in mortgages where the borrower has made renovations to the property to accommodate the growing of cannabis, as the renovation work was a breach of the mortgage.



# HOME INSURANCE

- It is the home owner's responsibility to report whether or not they are growing cannabis, or intend to grow cannabis on the property.
- The requirement to report is continuous and must be met, otherwise any and all claims could be denied if cannabis was found to be grown on the property.
- Standard home insurance companies are still not insuring properties where growing of cannabis is present.
- These home insurance companies have advised they will eventually adapt to allow for cannabis growth to be covered under their policies at an additional premium.
- Managing General Agency (MGA) insurance companies can offer high-risk and non-standard solutions.
- MGAs such as Group One, Premiere Marine and Signature Risk would be appropriate for home growers, however, they charge a very high premium on the home plus a surcharge for the growing of cannabis. They also require that the policy premium be paid in full at the time of the commencement of the policy, or require a pre-authorized payment with a third-party payer, such as Visa.



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# MORTGAGE DEFAULT AND TITLE INSURANCE

- Currently Genworth, and title insurance companies, ie: Stewart Title and First Canadian Title, generally have no official position on properties that grow the legal limit of 4 plants, considering it to be tantamount to having 4 household plants.
- The Canadian Mortgage and Housing Corporation (CMHC), however, intends to treat these homes as they would a home that previously had mold/asbestos – they would require the lender obtain proof of remediation or a environmental site assessment depending on the situation.



# DENVER, COLORADO

## Looking Elsewhere for Guidance

- Since legalization of cannabis in Colorado in 2015, economy in Denver has skyrocketed.
- Demand for housing has increased exponentially.
- House prices and market rents have seen the same increases.
- I can attest to the fact that it is **business as usual**. Yes my buyers have more questions and concerns about what effect the growing of cannabis could have on the property, but with 6 plants the effect is so minimal. As the home owner is taking the appropriate steps, such as ventilation, then there is really no effect. The only effect we are noticing is the smell. Which is comparable, but is less of a detractor, to a house that smells from cigarette smoke.



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# DENVER, COLORADO

## Looking Elsewhere for Guidance

- Some of the concerns that we are now seeing is questions coming from our buyers asking about poisonous chemicals in the house, chemicals that may be used in the grow cycle. This is still an evolving area and just requires more education.
- Another concerns is for landlords
  - Does the landlord allow the tenants to grow?
  - Do they require a security deposit? A “grow deposit”.
  - I personally have some rental properties and I allow my tenants to grow but only in the garage, not in the house.



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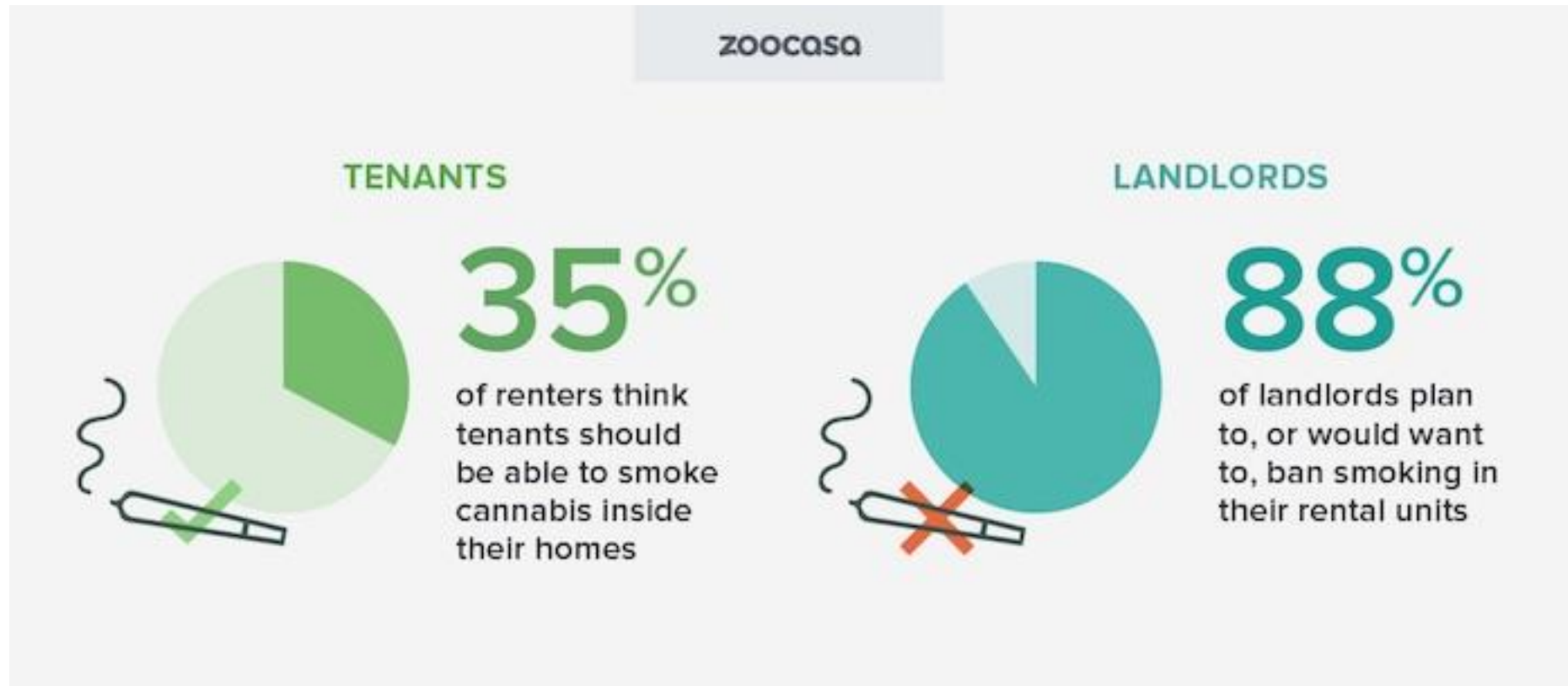


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# CANNABIS AND RENTAL PROPERTIES

Zoocasa study / Should renters be able to smoke cannabis inside their homes?





# CANNABIS AND RENTAL PROPERTIES

## Clauses to protect Landlords

Landlords can add clauses to their rental agreements that prohibit Tenants from smoking, vaping and growing cannabis in their properties.

Typical clause:

The Tenant acknowledges and agrees, as a fundamental term of this Lease, that no cannabis shall be grown, cultivated or distributed at any time, by the Tenant or permitted in the Leased Premises. The Tenant acknowledges that the prohibition on cannabis is based on concerns expressed by the Landlord on their behalf and on behalf of other Tenants, if applicable, about excessive electricity consumption, excessive humidity and possible mold growth as well as concerns about security at the Leased Premises; all of which are associated with the presence of cannabis growth in the Leased Premises. The Tenant accepts and agrees that the Landlord's concerns about health, safety and property damage described herein are appropriate and that if the Tenant or a person permitted in the Leased Premises breaches the prohibition, such breach shall be deemed to be a substantial interference with the reasonable enjoyment of the residential complex and a substantial interference with the lawful interest of the Landlord and the other tenants and as such, will be grounds for the termination of the Tenancy pursuant to the Residential Tenancies Act.



# CANNABIS AND RENTAL PROPERTIES

## Evicting a Tenant

Can a Landlord evict a tenant for smoking or growing cannabis?

If the Tenant is smoking or growing cannabis and the Landlord has a clause prohibiting the growing of and/or smoking of cannabis in the property, yes the Landlord will, provided the Landlord will have to show that the impugned tenant is bothering or interfering other Tenants or damaging the property, have the ability to bring an action to evict the Tenant.





# GROBO

Contained grow boxes may be the solution the real estate industry needs.

# GROBO

When taking into consideration the substantial effect cannabis growth in the residential home can have on the home's value, including mold and pests, it is important that we try to provide an option that allows for home owners to grow cannabis without sacrificing the value of the home.

Grobo is a potential solution for this problem, with a considerably low price point of \$1,999.00 CAD when considering the large costs associated with mold in a home.



# GROBO



Grobo boasts the following benefits:

- mess free;
- energy-conscious;
- autonomous—simply use app to input details of plant;
- odor-reduction through use of charcoal filters;
- reduced risk of pests.





## THE GENERAL CONSENSUS?

We won't know how any of the real estate related fields will adapt to the new laws until the law has had time to truly take effect. How one related field decides to handle the Cannabis Act will inherently impact the other fields.



# CONDOMINIUM CORPORATIONS BANNING CANNABIS

Who is banning marijuana,  
and should Condominium  
Corporations be able to  
control the activities of owners  
to this degree?

# SMOKING/VAPING CANNABIS IN CONDOS

As a reminder, you cannot smoke or vape cannabis in **indoor common areas** in condos.

The *Cannabis Act* allows use in private unit and growth of up to four plants per unit; however, it prohibits use of cannabis in indoor common areas, including parking garages, party/entertainment rooms, laundry facilities, lobbies and exercise areas.





# SMOKING/VAPING CANNABIS IN CONDOS

- A condominium board is allowed under section 58 of the Act to make, amend or repeal a rule that is reasonable and consistent with the Act, declaration, and by-laws to:
  - promote the safety, security or welfare of the owners/occupants and the property and the assets;
  - prevent unreasonable interference with the use and enjoyment of the units, common elements and assets;
  - rules may apply to the individual units as well as the condominium's common elements, including exclusive-use common elements such as balconies. Management of cannabis use is expected to be similar to similar issues such as tobacco or service animals.
- Issues are nuisance related to pungent cannabis smoke odours and potential effects of moisture and mold growth from cultivation, in addition to odours from budding plants and potentially increased utility bills.



# SMOKING/VAPING CANNABIS IN CONDOS

- Condo boards can legally ban cannabis use, but medical cannabis users may be exempt under Ontario's *Human Rights Code*.
- Many condos have moved to ban cannabis in the wake of legalization, but there are also reported cases of medicinal cannabis use in Ontario condos.
- An attempt by a Condominium Corporation to stop a resident from smoking medicinal cannabis could be challenged under the *Human Rights Act* as discrimination on the grounds of disability, pitting the use of medicinal cannabis against second-hand smoke risk and related concerns in condos. **Some lawyers feel these issues may be irreconcilable.**



# SMOKING/VAPING CANNABIS IN CONDOS

Condominium Corporations can however do the following:

- Provide a designated area in which cannabis is to be consumed. If this is provided, then it must be consumed in said space;
- Request proof that edibles are unable to be used as treatment;
- If the above is proved, require special ventilation be installed so as to prevent interference with the neighbouring units.



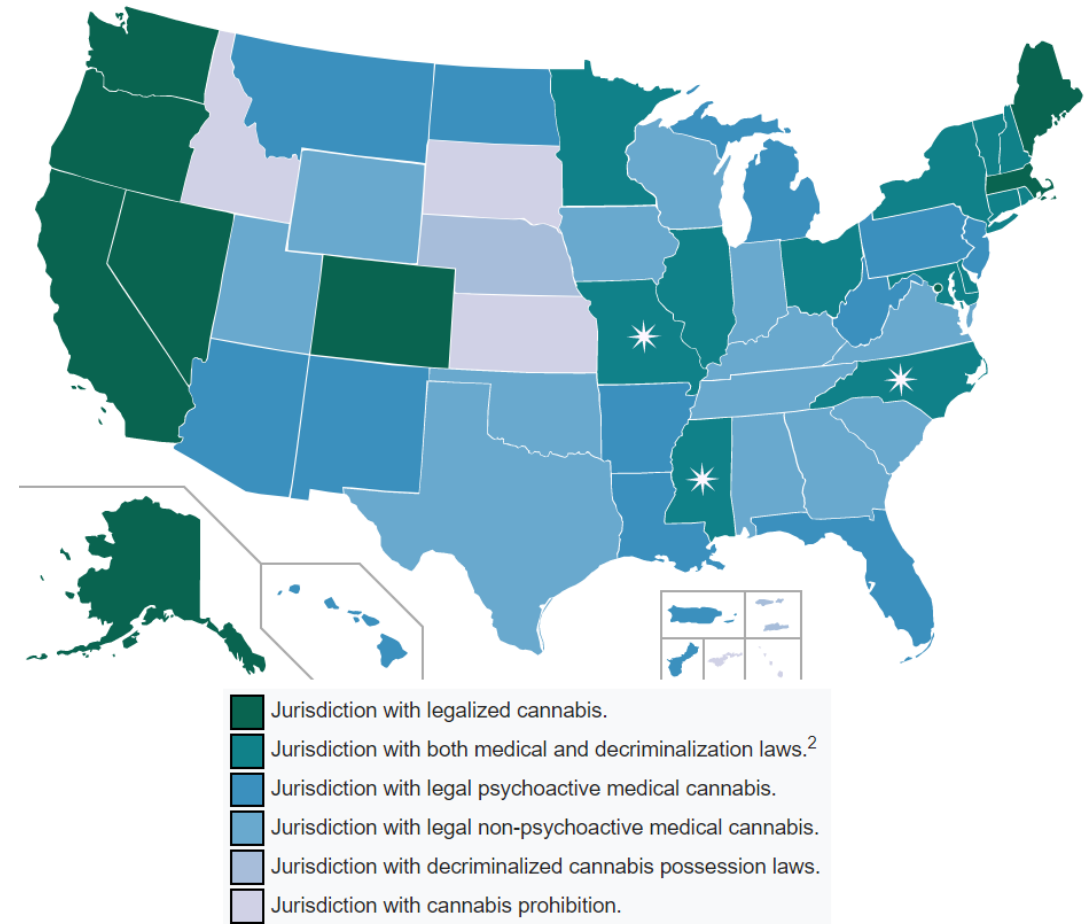


# TRAVELING TO THE UNITED STATES

How is the USA handling their neighbouring country legalizing a Schedule 1 drug, and what crossing the border looks like for Canadians moving forward?

# TRAVELING TO THE UNITED STATES

While some states have legalized cannabis, it remains federally illegal. In general, these issues appear to be in a state of flux.



# TRAVELING TO THE UNITED STATES

Border rules are not changing. Taking cannabis, or any product containing cannabis, across Canada's international borders, whether you are leaving or entering Canada, will remain illegal and can result in serious criminal penalties both at home and abroad. That prohibition exists even with U.S. states where cannabis is legal.

**In rare and exceptional circumstances**, Health Canada may authorize and issue an exemption for an individual to bring cannabis into Canada across international borders for medical or scientific purposes on a case by case basis.



# TRAVELING TO THE UNITED STATES

- On October 11 it was reported that the U.S. Customs and Border Protection (CBP) would not ban Canadian's who work in the legal cannabis industry, **provided their trip is “for reasons unrelated to the marijuana industry”**. The statement cautions that Canadians can still be banned at the border for trying to enter the U.S. for reasons related to the American marijuana industry.
- Investing in and/or admitted use of cannabis carries a greater risk of being banned;
  - there is precedent for admitted users of cannabis to be turned away at the border (e.g., historical case of Ross Rebagliati and numerous reported current cases, even involving admitted cannabis use from decades prior).



# QUESTIONS?

<b>STANDARD PURCHASE</b>	<b>\$1499</b>
<b>STANDARD SALE</b>	<b>\$899</b>
<b>STANDARD REFINANCE</b>	<b>\$799</b>
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