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WAC 314-55-035 Qualifying for a marijuana license. A

marijuana license must be issued in the name(s) of the true party(ies) of interest.

(1) **True parties of interest.** True parties of interest must qualify to be listed on the license, and meet residency requirements consistent with this chapter. For purposes of this chapter, "true party of interest" means:

| Entity | True Party(ies) of Interest |
|---|---|
| Sole proprietorship | Sole proprietor and spouse. |
| General partnership | All partners and spouses. |
| Limited partnership, limited liability partnership, or limited liability limited partnership | All general partners and spouses. All limited partners and spouses. |
| Limited liability company | All members and spouses. All managers and spouses. |
| Privately held corporation | All corporate officers (or persons with equivalent title) and spouses. All stockholders and spouses. |
| Publicly held corporation | All corporate officers (or persons with equivalent title) and spouses. All stockholders and spouses. |
| Multilevel ownership structures | All persons and entities that make up the ownership structure and spouses. . |
| Any entity or person(s) and spouse(s) expecting a percentage of the profits or exercising control over a licensed business. | Any entity or person who is in receipt of, or has the right to receive, a percentage of the profit from the licensed business during any full or partial calendar or fiscal year. |
| Any entity or person(s) and spouse(s) who exercise(s) control over the licensed business. | Any entity(s) or person(s) and spouse(s) who exercise(s) control over the licensed business.. |
| Nonprofit corporations | All officers, individuals, spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws. |

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(2) The following definitions apply to this chapter unless the context clearly indicates otherwise:

(a) "Control" means the direct or indirect power to order or direct the management or policies of a licensee, whether through an ownership interest or otherwise.

(b) "Financial institution" means any bank, mutual savings bank, consumer loan company, credit union, savings bank, savings and loan association, trust company, or similar lending institution under the jurisdiction and registered with the department of financial institutions.

(c) "Profit" means (i) gross profits, the entire gross receipts from all sales and services made in, upon or from a licensed business and (ii) net profit, gross sales minus the cost of goods sold.

(3) For purposes of this chapter, "true party of interest" does not include:

(a) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control as defined in WAC 314-55-035(2) (a).

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(b) A person who receives commission-based compensation, an incentive, or a bonus as an employee, if the employee is on a fixed wage or salary, and the commission-based compensation, incentive, or bonus is not more than twenty-five percent of the employee's ordinary annual compensation; or the bonus is based on an incentive, or bonus program that is not out of the ordinary for the services rendered. No more than five percent of the profits of the business may be given to any one employee under a commission-based compensation agreement. Where the percentage exceeds five percent, the employee is a true party of interest. Commission-based compensation agreements, incentive programs, and bonus programs between a licensee and its employees must be in writing.

(c) A person or entity contracting with the licensee(s) to sell the licensed premises, unless the contract holder exercises control by ordering or directing the management or policies of a licensee.

(d) A consultant receiving flat or hourly rate compensation under a written contractual agreement, is subject to the record

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keeping requirements of this chapter, unless the consultant receives a percentage of profit from the licensed business or exercises control as defined in WAC 314-55-035(2) (a).

(e) A financial institution.

(4) Control of the licensed business.

(a) The board may conduct an investigation of any person or entity who exercises any control over the applicant's business operations. This may include financial and criminal background investigations.

(b) Employees who manage daily business operations will not be considered true parties of interest, unless the circumstances or cumulative duties or powers indicate that the employee is exercising control of the business to the extent that it constitutes a true party of interest.

(c) Examples of control of a licensed business that would constitute a true party of interest include, but are not limited to any person or legal entity, other than an employee acting under the direction of the owner:

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(i) Incurring or is entitled to incur, debt or similar obligations on behalf of the business; or

(ii) Entering into, or entitled to enter into, a contract or similar obligation on behalf of the business; or

(iii) Exercising option agreements on behalf of the business.

(d) A person or legal entity who is entitled to receive profits, or exercises control without direction of the owner over the licensed business must be named on the license as a true party of interest.

(5) **Notification.**

(a) After licensure, all true parties of interest must continue to disclose the source of funds for all moneys invested in the licensed business, including all funds obtained from financiers.

(i) Moneys obtained through licensed marijuana business profits that are reinvested in the business do not require vetting by the board.

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(ii) Funds from revolving loans approved by the board within the previous three years need not be re-vetted by the board, unless the source of the funds has changed or the amount loaned increases.

(b) If the source of funds is an identified owner on the license, or a previously approved financier associated with the license, or a previously approved revolving loan, the board will allow these funds to be used upon receipt of the application. The board will then investigate the source of funds.

(i) If the source of funds is unverifiable after reasonable inquiry, or the board determines the funds were obtained or gained in a manner in violation of law, the board may issue a notice of correction, an administrative violation notice, or cancel a license consistent with the provisions of this chapter.

(c) Licensees must receive board approval before making any ownership changes consistent with WAC 314-55-120, with the exception of marital status changes as described in subsection (d) of this section.

(d) Licensees must notify the board of any changes to

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marital status within six months of the change by submitting a change in governing people application to the board.

(e) Noncompliance with the requirements of this section may result in enforcement action consistent with this chapter.

(6) Disclosure of agreements for intellectual property.

(a) A licensed marijuana business may enter into an agreement with any person, business, or other entity for:

(i) Any goods or services that are registered as a trademark under federal law under chapter 19.77 RCW or under any other state or international trademark law;

(ii) Any unregistered trademark, trade name, or trade dress; or

(iii) Any trade secret, technology, or proprietary information used to manufacture a cannabis product or used to provide a service related to any marijuana business.

(b) Any agreements entered into by a licensed marijuana business must be disclosed to the board, and may include:

(i) A royalty fee or flat rate calculated based on sales

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of each product that includes intellectual property or was manufactured or sold using the licensed intellectual property or service, provided that the royalty is no greater than an amount equivalent to ten percent of the licensed marijuana business's gross sales derived from the sale of each product;

(ii) A flat rate or lump sum calculated based on time or milestones;

(iii) Terms giving either party exclusivity or qualified exclusivity as it related to use of the intellectual property;

(iv) Quality control standards as necessary to protect the integrity of the intellectual property;

(v) Enforcement obligations to be undertaken by the licensed marijuana business;

(vi) Covenants to use the licensed intellectual property;
and

(vii) Assignment of licensor improvements of the intellectual property.

(c) A person, business, or entity that enters into an

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agreement with a licensed marijuana business, where both parties to the agreement are in compliance with the terms of this section, is exempt from the requirement to qualify for a marijuana business license for purposes of the agreements authorized by subsection (a) of this section.

(7) **Recordkeeping.** All agreements entered into by a licensed marijuana business as authorized by this section must maintain records as described in WAC 314-55-087.

(8) **Financiers.**

(a) Consistent with WAC 314-55-010(11), a financier is any person or entity, other than a financial institution, that provides money as a gift, or loans money to an applicant, business, or both, and expects to be paid back the amount of the loan, with or without interest.

(b) A financier may not receive an ownership interest, control of the business, a profit sharing interest, or a percentage of the profits in exchange for a loan or gift of funds, unless the financier or spouse, if directly involved in

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the loaning of funds, receive board approval and have qualified on the license as a true party of interest.



(c) Washington state residency requirements do not apply to financiers and spouses who are not also true parties of interest, but all financiers and spouses must reside within the United States.

(d) The board will conduct a financial and criminal background investigation on all financiers and spouses.
[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-035, filed 5/18/16, effective 6/18/16. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-035, filed 10/21/13, effective 11/21/13.]