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2024 Real Property Law Retreat

For Here or To Go? Restaurant Leases and Liquor License in a Post-Pandemic Era

Saturday, March 9, 2024
3:30pm - 4:30pm

Speakers: Katie Phetteplace, Jordan Cohen, and Carrie A. Peters

Conference Reference Materials

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Connecting Qualified Buyers & Sellers

WHAT A GOOD DEAL LOOKS LIKE

There are many options and strategies available when buying or selling an on-sale full-service restaurant liquor license in California.

How It Works

Liquor licenses in California are limited and issued according to population per capita by county. Every year, the Department of Alcoholic Beverage Control looks at the increase in population and occasionally releases new licenses in a county-wide lottery, but not for every county in California. These licenses have many rules and restrictions.

Once a restaurant, bar or hotel no longer needs their license, they must surrender it back to the ABC and within one year they must either let ABC know they are going to use it somewhere else, or they must sell it on the secondary market.



Key Principles When Working with a License Broker

- **Trust.** All relationships are built on trust with both people and the process. We work hard to earn the trust of every single client.
- **Transparency.** Make sure you are asking the right questions. A legitimate broker should be able to tell you what the market price is for the license you are looking for and show you comps for recent sales. A legitimate broker will be able to tell you who they Buyer is, what their construction timeline is – every single detail of the transaction.



Qualified Buyers

A Qualified Buyer

Not all buyers are the same and it's important to make sure that the buyer for your license is *qualified*. Here's what to look for:

- Signed lease for the new project location.
- Building permits pulled and approved and/or construction has begun and at least 50% complete.
- New business will be ready to open in 3-6 months.
- Conditional Use Permit (CUP) or Administrative Use Permit (AUP) or Change of Use Permit is secured (or in process) from local jurisdiction or verification in writing it is not needed.
- Business entity is in good standing with the California Secretary of State
- Strong capitalization table (CAP Table) that has been vetted by a CPA, real estate broker or legal counsel. Is the project fully funded or is the Buyer still looking for seed money?
- Project team assembled and ready to go (Executive Chef, front of the house, bar manager etc)



Qualified Sellers

Fair Market Value

Prices fluctuate on weekly/monthly basis, and we specialize in establishing fair market valuations across California on a real-time basis.

A Qualified Seller

Not all sellers are the same and it's important to make sure that the timing and terms are determined before entering a deal. Here's what we look for:

- License is current and up to date with the Department of ABC (renewals and fees paid, no ABC holds, suspensions or special provisions)
- Business entity is current with the California Secretary of the State
- Determine if Seller is obligated, under a lease agreement, to give the current landlord the Right of First Refusal to purchase the liquor license
- No tax holds on the license for any of the listed partners (EDD, FTB, IRS, CDTFA). If there are tax holds, Seller needs to verify to Buyer that they have been in touch with the taxing agency to make sure the license is not at risk of being seized and auctioned off



- Seller understands the escrow process and is willing to be patient It might take time to find the right buyer and to get the best price ABC
- ABC process is typically 3-6 months and the seller's money will not be received until after the license issues
- Trusts the broker they are working with to best represent their interests and get the best fair market value for their license



Choosing the *Right* License Broker

Not All Brokers Are Alike

Because there is a limited supply of licenses at any one time, it's important to choose your broker wisely.

We strongly recommend that you *work with just one broker* as opposed to shopping around looking for several different brokers.

When multiple brokers begin to look for licenses in the same county at the same time, this can artificially inflate the price of that license, pitting buyers against sellers and brokers against brokers.

Trust The Process

Most often, our clients are extremely busy and don't have the time or necessary resources at their fingertips. It's a complicated process with lots at stake. Often there are several agencies involved to ensure a smooth and seamless transaction.

Get in touch with the ABC License Company Team!

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SAMPLE PROVISIONS FOR RESTAURANT LEASES AND LIQUOR LICENSES

Commercial Leases w/ ABC License – Recommended Clauses for Buyer/Tenant

The Lease should be contingent upon necessary permits for operation, including the Alcohol License:

“Permits. This Lease shall be contingent upon Lessee timely receiving all necessary and desirable permits for the operation of its business as well as the successful transfer of the Type-48 ABC License (“Liquor License”). Lessor will cooperate with Lessor and will execute any necessary applications for such permits at no expense to Lessor. Lessee will have the right to terminate the Lease if it is unable to obtain all permits, variances and governmental approvals, with commercially reasonable conditions acceptable to Lessee in Lessee’s sole discretion, needed for the lawful construction and operation of its business. In the event the Liquor License does not transfer within six (6) months following the effective date, either party may terminate this Lease through written notice to the other party.”

Early Possession Agreement w/ Temporary Permit

In the case of a temporary permit being utilized, the following clause will be required in any Early Possession Agreement between the Seller/Outgoing Tenant, Buyer/ Incoming Tenant, and the Landlord:

“ABC License. Incoming Tenant, following execution of the Lease, shall submit the application for the transfer of a type-41 Alcohol Beverage Control license (“ABC License”) pursuant to the Purchase Agreement. Incoming Tenant shall operate upon the Premises under a temporary permit issued by the Department of Alcoholic Beverage Control pending the issuance of the ABC License to Incoming Tenant (the “ABC Issuance”). Incoming Tenant agrees to provide Landlord and Outgoing Tenant with proof of ABC Issuance within two (2) business days following Incoming Tenant’s receipt of notice of the ABC Issuance.”

Commercial Leases w/ ABC License – Recommended Clauses/Options for Landlord IF LANDLORD AGREES TO ANY CONTINGENCY

3.4 Contingencies: This Lease shall be contingent upon each of the following conditions being satisfied or waived by Tenant, in its sole discretion (each subsection under this section, a “Contingency;” collectively, the “Contingencies”). If Tenant has not satisfied the Contingencies within one hundred eighty (180) days after execution of the Lease but prior to the Contingencies being satisfied or waived, then either party may terminate the Lease going forward without liability to either party. In the event the Lease is terminated, the Security Deposit and any prepaid Rent shall be promptly returned to Tenant. Landlord will not be required to deliver the Premises to Tenant until Tenant has either waived its Contingency under Paragraph 3.4.1 or the Contingency under Paragraph 3.4.1 has been met. If Landlord elects to permit Tenant to commence the Work (as defined below) and Tenant subsequently terminates this Lease after beginning said changes, modifications, additions or construction to the Premises, Tenant shall complete the specific portion(s) of changes, modifications, additions or construction that was undertaken, at Tenant’s sole cost and expense. This specific restoration obligation for Tenant shall extinguish upon completion of Tenant’s Work.

3.4.1 Building and Use Permits: The Lease is contingent upon Tenant receiving all necessary licenses, permits, and approvals from all applicable governmental authorities for the completion of the Work (as defined in Schedule 3)(the “Permits”) and the approval of the operation of the Premises for the Permitted Use by the local zoning and building license ordinance, all at Tenant’s sole cost and expense (the “Licenses”), excepting only the Liquor License (as defined below), which shall be governed by Paragraph 3.4.2 below. Landlord will cooperate with Tenant in Tenant’s efforts to obtain the Permits and the Licenses.

The Permit Documents shall be subject to the review and approval of Landlord and the City of _____ (the “City”) and all other applicable governmental agencies. In the event that Landlord, the City, or any other governmental agencies require any amendments to any of the submitted Permit Documents, Tenant will cooperate to incorporate the comments and will promptly cause any amended Permit Documents to be prepared and delivered, but in no event later than ten (10) days from the date of Tenant’s receipt of the comments. Time is of the essence in regards to this Paragraph 3.4.

Tenant will notify Landlord within five (5) days of obtaining the Permits and/or Licenses. If at any time within one hundred eighty (180) days, Tenant determines that it will not obtain the Permits on such terms and conditions as are acceptable to Tenant, in its sole discretion, Tenant may terminate this Lease upon written notice to Landlord and Landlord will promptly return the Security Deposit and any prepaid Rent to Tenant.

3.4.2 Liquor License: The Lease is contingent upon Tenant receiving a Type ____ Liquor License from the California Bureau of Alcoholic Beverage Control (“ABC”) for the Premises (the “Liquor License”). Tenant shall provide all information, applications, and fees needed to apply for the Liquor License to the ABC not later than ten (10) days from the Effective Date. In the event that the ABC asks for additional or supplemental information to the Liquor License application, Tenant will use its best efforts to promptly respond and provide the requested information. Time is of the essence in regards to this Paragraph 3.4.2.

Notwithstanding anything to the contrary in this Lease, if at any time, Tenant determines that it will be unable to obtain the Liquor License on such terms and conditions as are acceptable to Tenant, in its sole discretion, Tenant may terminate this Lease upon written notice to Landlord and Landlord will promptly return the Security Deposit and any prepaid Rent to Tenant.

3.4.3 Landlord Cooperation: Landlord agrees to reasonably cooperate with Tenant in satisfying the Contingencies, including providing information, documentation, and signing the necessary applications, but in no event shall Landlord be required to pay any costs or increase any liabilities. In the event Landlord fails to sign or otherwise complete such a document within ten (10) business days of receipt of the same, as Tenant’s sole remedy, the Contingency Period will be extended by ten (10) business days and each day after the Contingency Period will be extended by one (1) business day for each day of delay.

Landlord suggested provisions for liquor license

(a) Tenant acknowledges and agrees that the Liquor License is critical to the use of the Premises for an upscale, first-class restaurant, including a full-service bar. Tenant acknowledges and agrees that any sale or transfer of the Liquor License separate from the assignment or continued operations of a

restaurant at the Premises would negatively and adversely impact the Project, generally, and the continuous use of the Premises for the Permitted Use, specifically. In reliance on the foregoing acknowledgements and as additional consideration for Landlord's execution of this Lease, Tenant agrees that Tenant shall not sell, transfer, convey, or grant to any other person any interest in the Liquor License, other than an assignee or subtenant under this Lease intending to continuously operate the business for the Permitted Use. Tenant agrees that if there is a transfer of the Tenant's business to an assignee, the Liquor License will be included with such sale to such assignee. Tenant acknowledges and agrees that the availability of money damages would be inadequate to compensate Landlord for the loss and/or damage resulting in the event of a breach by Tenant of this covenants, and that in addition to any other remedy, at law or in equity, available to Landlord, the remedy of specific performance and injunctive relief are specifically bargained for by Landlord and agreed to by Tenant as a remedy in the event of a default by Tenant under the terms of hereof.

(b) If this Lease is terminated following an Event of Default, all proceeds or other consideration received by Tenant in connection with any transfer of the Liquor License shall be paid to Landlord.

SAMPLE PROVISIONS FOR PURCHASING A BUSINESS WITH A LIQUOR LICENSE

Business Asset Purchase Agreements – Recommended Clauses for Buyer

Final deposits into escrow as well as close of escrow will generally be tied to the completed transfer of the Alcohol License (90-120 days). We like to see language similar to the following:

“On or prior to transfer of the Alcohol License from Seller to Buyer with commercially reasonable conditions to Buyer, Buyer shall deposit with Escrow Holder the additional amount of Two Hundred Thousand Dollars (\$200,000.00).”

Transfer of the Alcohol License requires both the Seller and Buyer to execute and notarize forms for the application submitted to the Department of Alcoholic Beverage Control, which may also include an agreement to have a temporary permit to operate during the license transfer process, which requires the following:

“Cooperation. Seller agrees to cooperate with Buyer in the preparation and filing of all forms, applications, notifications, reports and information, if any, required or reasonably deemed advisable pursuant to any Law in connection with the transactions contemplated by this Agreement, including, without limitation, any application, notification, report, or other filing in connection with the transfer of the Alcohol License and a temporary permit to sell alcohol. In addition, Seller, if in possession of the premises, at the request of Buyer, promptly shall post and maintain a Public Notice of Application with regard to the transfer of the Alcohol License at the Property for thirty (30) days after such request or such longer period as may be required by applicable Law.”

When a Temporary Permit is required, the following clause is necessary:

“Temporary Liquor License. In the event a temporary permit to sell alcohol (“Temp License”) is desired, the lease assignment, or new lease, shall be required to address a commencement date contingent on the issuance of Temp License. Upon successful

issuance of the Temp License, Buyer shall operate the business in a reasonable, prudent, and good faith manner as not to significantly diminish the goodwill or quality of the Business. Prior to Buyer operating the Business with a Temp License, Buyer, Seller and Landlord shall enter into an agreement for early occupancy while the Close of Escrow is pending (“Early Occupancy Agreement”). In addition to the foregoing, the assignment of the Lease or a new lease must have been agreed upon between Buyer and Landlord and shall be contingent upon the transfer of the Liquor License.”

Asset Purchase Agreements are generally contingent upon a lease or lease assignment being executed with the Landlord, who is not a party to the APA:

“Buyer must have received written consent from the landlord(s) of the Property in form reasonably satisfactory to Buyer to the assignment of the lease of space for such location to Buyer, such assignment to be effective as of issuance of a Temp License (if desired) or the Alcohol License to Buyer, whichever is sooner, or alternatively, Buyer must have entered into a new lease(s) with the owner of the Property in such form and substance as acceptable to Buyer in its sole discretion. The Buyer may insist that the lease be contingent upon the successful transfer of the Alcohol License.”