A Primer on Florida Alcoholic Beverage Licenses

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If you are buying or financing properties with businesses selling alcoholic beverages, Florida's regulatory requirements may seem daunting. To successfully navigate the complexities of Florida alcoholic beverage licensing, a buyer or lender should work with an attorney experienced in this highly regulated area.

Applying for an AB License

The Division of Alcoholic Beverages and Tobacco (DABT) of the Florida Department of Business and Professional Regulation (DBPR) licenses and regulates the alcoholic beverage and tobacco industries in the state. It also collects and audits taxes and fees paid by such licensees. Accordingly, DABT accepts and processes all applications for alcoholic beverage licenses (AB license) and issues AB licenses as a privilege, not a right. A licensee's interest in an AB license is a general intangible over which the state has complete control.

AB licenses vary depending on the alcoholic beverage sale and consumption privileges that are being sought. For example, a 2COP AB license allows for the sale of both beer and wine for on- or off-premises consumption, while a 1APS AB license permits the sale of beer for off-premises consumption only.

Obtaining a new AB license or transferring an existing one takes approximately 90 days. You may obtain a temporary AB license in a significantly shorter timeframe upon the DABT's receipt, review and approval of your completed application, provided the application does not on its face disclose any reason for denial.

To obtain a new AB license, you must complete the DBPR Form ABT 6001 application (Application for New Alcoholic Beverage License). To transfer an existing AB license, you must fill out the DBPR Form ABT 6002 application (Application for Transfer of Ownership of an Alcoholic Beverage License).

If you are applying for a new AB license at a location where an existing AB license is already issued and active, the current licensee must surrender that license to the DABT before a new AB license is issued utilizing a DBPR

Form ABT 6007.

ABT 6002 and ABT 6001 applications are essentially the same in terms of the information required and disclosures needed. Both applications are fairly comprehensive and include the following sections:

1. Transaction information,
2. License category,
3. License information,
4. Personal information,
5. Description of premises,
6. Department of revenue clearance,
7. Zoning verification (this is not required for a transfer application),
8. Health department approval,
9. Contracts or agreements,
10. Felony convictions,
11. Special license requirements,
12. Disclosure of interested parties, and
13. Affidavit of applicant.

Perfecting a Lien on an AB License

If you're a creditor lending to a borrower with an interest in an AB license, you should confirm whether any other interests exist in the relevant AB license and then ensure your lien on such license is perfected. Before accepting an AB license as collateral, you can request a search of the relevant AB license for existing liens and equitable interests.

AB license searches are performed by the DABT following submittal of DBPR Form ABT 6023 (Request for Alcoholic Beverage License Lien Search). The DABT will provide copies of all recorded liens and security interests in the relevant license.

Once the lien search has been performed, a new lien can be filed against the AB license. The exclusive means of perfecting a lien on an AB license is by filing DBPR Form ABT 6022 (Application for Mortgagee's Interest in Spirituous Alcoholic Beverage License), which may be used to file a new lien, a lien assignment/assumption or a lien renewal/extension. A separate application must be completed for each license against which a lien is desired.

Filing ABT 6022 has been held by the Florida Supreme Court as sufficient to perfect a lien. No duplicate filing under the Florida Uniform Commercial Code (UCC) is necessary.

Under Florida law, DABT must receive the completed ABT 6022 and fee within 90 days of the date of the creation of the of the lien or security interest. Lenders should consider either (i) having borrowers execute separate liquor license security agreements, or (ii) having terms protecting their interests in a borrower's AB license incorporated into their other loan documents.

If you are buying or providing financing for a business having an alcoholic beverage license, you should consult with an attorney experienced in this area in order to achieve your desired goals and protect your investment.

Gary M. Kaleita is a shareholder at Lowndes and has been certified by The Florida Bar as a specialist in real estate law since 1993. A member of the firm's Banking & Finance Group and the Commercial Leasing Group, Gary can be reached at 407.418.6334 or gary.kaleita@lowndes-law.com. Questions may be directed to him or any member of the firm's Real Estate Department.