

# TRANSFERRING a DABC Retail License



Remember, licensees must immediately notify the DABC of changes in ownership. All sales and transfers of DABC licenses must first be applied for, fees paid, investigation conducted, and then approved by the DABC commission.

- The commission may suspend or revoke a license if notice has not been given. Therefore, applicants are encouraged to contact the department at 801-977-6800 prior to beginning a license transfer process.

Things to do BEFORE buying or selling a license and submitting a Transfer Application to DABC:

**STEP 1: DO** you need an interim alcohol beverage management agreement?

A retail licensee who wants to transfer their current license to a new owner, and the new owner desires to keep the business open and perform the day to day operations of the business during the transition period, must enter into an [Interim Alcoholic Beverage Management Agreement](#). This agreement provides a way to continue sales and service of alcohol until the transfer of the license has been granted by the Commission.

Before a retail licensee enters into a management agreement with a new buyer, the proposed agreement must be provided to the DABC for approval.

The DABC management agreement can be found in the transfer application and may also be found separately online on the DABC website [HERE](#). This checklist of requirements between the parties must be submitted if a



management agreement is required. The management agreement in the transfer application may be signed and used as is, or it may be written into a purchase agreement, or addendum document, but all the items in the checklist must be included in those documents. Once received, the Department will review the agreement within 15 business days from when it was received by DABC, and either approve or return if it is lacking any information or specificity as required from the checklist. It may then be resubmitted for approval.

- ❖ **NOTE:** If the new buyer is NOT going to be operating the day to day business operations, a management agreement is not required.



**STEP 2:** IF the purchase of the license includes cash, checks, or any other items of value (consideration) which have been agreed to be paid from the buyer to the license holder, the parties involved must comply with the following requirements:

**THE SELLER MUST:**

- Provide the buyer with a list of creditors who may have a claim against the licensee
- Provide a copy of the written notice given to those creditors, notifying them about the intended transfer of the license
- If there are no creditors, provide a signed letter stating there are no creditors.

These applicable documents must be included in the DABC transfer application.

**THE BUYER MUST:**

Establish an escrow account. This account must be established with a third party financial institution, title company or attorney who can legally provide an escrow service.

- Verification of eligibility with the financial institution should be confirmed prior to entering into an escrow contract.
- Deposit the full amount to be paid for the license into the escrow account
- The escrow holder must distribute the consideration within a reasonable time AFTER the completion of the transfer of the retail license in accordance with statute. (See Duties of an escrow holder)

**When Escrow is Required**

1. Seller must provide a list of their creditors.
2. Seller provides a notice of the intended transfer to each creditor.
3. Buyer and seller must establish an escrow account
4. Deposit the full amount of the purchase price for the license into escrow
5. Funds should only to be distributed AFTER the license transfer is approved by the Commission

**ESCROW IS NOT REQUIRED IF:**

- The seller is a business entity with a net worth of five million or more according to their most recent audited financial statement. This statement must be provided to DABC in the transfer application.
- This business entity must file a guaranty of full payment of all creditors, and a written guaranty is accepted by the creditors.

**Escrow is Also Not Required** If no consideration is being paid for the license

**PLEASE NOTE:** Further investigation by DABC will be conducted to prove there is actually is no consideration being transferred

### STEP 3: **SUBMIT** a complete application:

Transfer of a Retail License Application.

A DABC license may be sold, transferred and/or may move from one location to another, under the following restrictions:

- A new buyer *must still qualify* to hold a DABC license. No sale of a license may become effective without going through the licensing process.
- A new buyer may not be delinquent in payment of taxes arising out of the operation of a retail license.
- Any transfer of location must be within the same county with the exception of bars. Bar licenses may be transferred to anywhere in the state.

### STEP 4:

Department Investigation

Commission Decision

If the Transfer is Approved

#### IN ADDITION TO THE STANDARD INVESTIGATION:

- DABC reviews the purchase agreement and confirms that escrow/guaranty requirements are satisfied.
- Creditors are given the opportunity to file a claim
- Creditors must be paid in a statutory order of preference
- Verifies applicant is compliant with taxing agencies

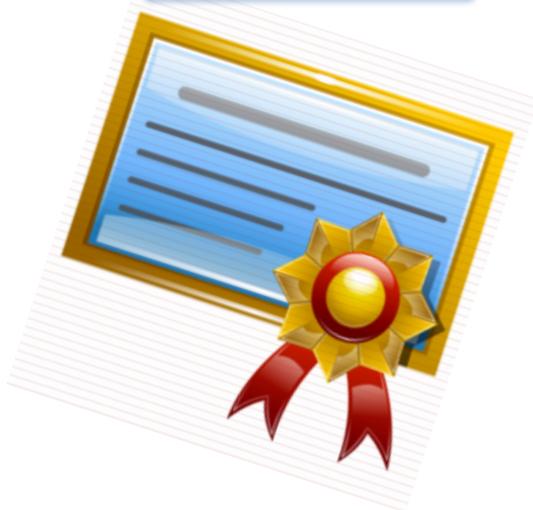
#### ESCROW PAYMENTS:

The escrow agent is notified that the transfer was approved and may make the final payments to any creditors and then release the remaining escrow funds to the seller.

With operational and payment requirements satisfied, the transfer of the license is complete.

**The new licensee must open within 30 days.**

Talk with your compliance officer if you need an additional 30 days.



## STEP 5:

Once the transfer is approved by the commission, operations of the retail license must begin within 30 days, even if granted under a conditional license.

However, the department may grant one 30 day extension.

The commission may grant one or more additional extensions not to exceed, in the aggregate, seven months from the day on which the commission approves the transfer if it can be demonstrated to the commission that the licensee:

- Cannot begin operations because the transferee is improving the licensed premises
- Has obtained a building permit for the improvements, and
- Can prove they are working expeditiously to complete the improvements to the premises.

### CONDITIONAL TRANSFERS

New transfer licensees must open within 30 days unless granted extensions not to exceed 7 months total in the aggregate

If the business does not begin operations within the time period required, the retail license will automatically be forfeited

**NOTE:** After the license is granted by the commission, operations of the retail license must begin at the location approved before there can be a another transfer of the license to a different location.

**STEP 6:** You are ready to open!



JUST THE FACTS - See the statutes and rules at:

- 32-B-5-102, 32B-5-310, 32B-8a-102, 201, 203, 302, 303, 401, 402, 404, 501, 502
- R82-5-102

# Duties of the Escrow Holder

Provide this Information to your Escrow Holder

## 32B-8a-402. Duties of escrow holder.

- (1) To act as an escrow holder under Section [32B-8a-401](#), a person shall comply with [Title 7, Chapter 22, Regulation of Independent Escrow Agents](#).
- (2) Not more than 10 days after the day on which the escrow holder receives a claim from a creditor, an escrow holder shall acknowledge receipt of the claim.
- (3)
  - (a) Not more than 10 days after the day on which an alcohol license is transferred and before the distribution of the consideration held by an escrow holder, the escrow holder shall advise each creditor who files a claim against the escrow whether there is sufficient consideration in the escrow to pay all creditors in full.
  - (b) If the consideration in an escrow is sufficient to pay all creditors in full, the escrow holder shall advise each creditor of the date on or before which payment will be made.
  - (c) If there are not sufficient assets to pay all creditors in full, the escrow holder shall advise each creditor who filed a claim of the following:
    - (i) the total assets placed in escrow with the escrow holder;
    - (ii) the nature of each asset;
    - (iii) the name of each creditor who filed a claim against the escrow and the amount of the claim;
    - (iv) the amount the escrow holder proposes to pay each creditor; and
    - (v) the date on or before which the escrow holder will pay each creditor.
- (4) An escrow holder may not release money in the escrow in exchange for:
  - (a) a promissory note; or
  - (b) any other consideration of less value to the creditors than the money exchanged.
- (5) If sufficient assets are not available in the escrow for the payment of the claims in full, the escrow holder shall pay the claims pro rata.
- (6) If the alcohol licensee who transfers the alcohol license disputes a claim, the escrow holder shall:
  - (a) notify the creditor making the claim;
  - (b) retain the amount to be paid to the creditor under this section for a period of 25 days; and
  - (c) to the extent that creditors do not successfully recover the amount described in Subsection [\(6\)\(b\)](#) in accordance with this part, pay the amount to the alcohol licensee.

**An escrow holder shall distribute the money in the escrow account for claims in the following order:**

1. The United States for a claim based on income or withholding taxes, and (a claim based on a tax other than specified in Subsection 32B-8a-201(3))
2. Wages, salaries, or fringe benefits earned or accrued by an employee of the seller before the transfer or opening of the escrow for the transfer of the alcohol license
3. Secured creditors to the extent of the proceeds that arise from the sale of the security
4. Mechanics liens
5. Escrow fees
6. Brokerage fees for services rendered
7. Reasonable attorney fees for services rendered
8. Landlords for proceeds on past due rent or lease requirements
9. For goods sold and delivered to the alcohol licensee for resale at the seller's licensed premises, and for services rendered, performed, or supplied in connection with the operation of the seller's licensed business
10. Court-ordered judgments, including a claim for court-ordered support of a minor child
11. All other claims

See 32B-8a-401