

# Interim Alcoholic Beverage Management Agreements.

(32B Chapter 8A, 32B-5-310, & R82-5-102)

## I. ALWAYS NOTIFY DABC OF ANY CHANGE OF OWNERSHIP IMMEDIATELY

Notify your compliance officer if there is **ANY CHANGE** in ownership of the corporation, partnership, LLC, sole proprietorship or similar entity who holds the license or there is a change in the entity that manages the retail licensee.



- Call your compliance officer to find out if you will need to do a change of ownership application and go before the DABC Commission for approval.
- Failure to do so may result in suspension or revocation or void the transfer and require the retail license to be forfeited.
- You must do this whether or not you need an interim alcoholic beverage management agreement.



## II. HOW DO I KNOW IF WE NEED AN INTERIM ALCOHOLIC BEVERAGE MANAGEMENT AGREEMENT?



If the new buyer of a business is

- Staying in the same location
- Desires to operate the day to day sales of alcohol
- The license transfer is not yet approved

Then the buyer and seller must enter into a written agreement to facilitate a smooth transition.

The new buyer may only manage alcohol sales and operations during the transition if they **understand that the DABC license and all revenue from the sales of alcohol does not belong to them. It still belongs to the seller who still owns the license.** However, the buyer can be reimbursed for any alcohol they purchase for the seller.

**NOTE:** The seller must maintain the required bond, insurance, and business license during the transition period, as these are statutory requirements to hold a license. However, the buyer may agree to reimburse the seller for any necessary costs incurred to maintain the bond, insurance, and business license.

### III. HOW DO I WRITE AN AGREEMENT?

There is a specific list of requirements for writing an agreement by you or your attorney. There is also a form that can be stipulated to and notarized. The form can be found on the DABC website: [GO HERE](#) You may also find the form in the transfer application packet.



#### LIST OF REQUIREMENTS:

1. Because the current DABC licensee (seller) still holds the DABC license, all proceeds from the sale of alcohol at the licensed business must flow to the DABC licensee (seller) and NOT to the new buyer. This is true during the transition period even if the buyer has acquired the lease or owns the premises.
2. During the transition period, revenue must still be reported and sales and income taxes must be paid under the DABC licensee's account numbers.
  - a. If the current DABC licensee (seller) will remain on the premises to operate the business during the transition period but no longer owns or has rights to the building and equipment, the seller may lease back the facility and equipment from the new owner.
  - b. If the current DABC licensee (seller) still owns or has rights to the building and equipment, then the seller may hire the new DABC applicant ( buyer) to manage and operate the business during the interim period for a reasonable fee (fair market value).
3. The duration of the management agreement between the DABC Licensee (seller) and the new buyer will begin when the sale is completed and is limited to the period during which the new owner is actively applying for a DABC license with the Commission. The new owner must agree to use their best efforts to obtain the license.
4. The bond, insurance, and business license must remain in the name of and be the responsibility of the current DABC licensee (seller) during the interim period. However, the new buyer may agree to reimburse the seller for any necessary costs to maintain the bond, insurance and business license during the interim period (i.e. on a pro-rata basis).
5. The current DABC licensee (seller) is ultimately responsible for any violations that occur during the interim period, and the violations will go on the seller's violation history record. However, the new DABC applicant (buyer) may agree to pay any fines and costs associated with any violation that occur during the interim period.
6. The current DABC licensee (seller) is ultimately responsible to timely renew the DABC license if the renewal cycle occurs during the period of the agreement. However, the buyer may agree to reimburse the former owner for any renewal fees.
7. Not until final approval of the license transfer may the proceeds from the sale of alcohol for the period of time following the transition period begin to flow to the new buyer.

#### IT CAN'T JUST GO ON & ON & ON &

The agreement is limited to the time a buyer is actively applying for a DABC license *AND* the new owner **MUST** actively apply to obtain the license.

8. The agreement ends on the day the Commission grants the DABC License. If the license was granted conditionally, the agreement ends when the licensee receives their local business license up to 30 days after being granted the conditional license. Another 30 days may be granted by DABC or another 5 months (total of no more than 7 months) may be granted if approved by the Commission under certain conditions. (See your compliance officer).

#### IV. OK! I NEED AN AGREEMENT. WHAT DO I DO NOW?

Before a retail licensee enters into an agreement, it must be submitted to DABC for approval. DABC compliance officers may guide the licensee to remedy any errors or omissions. But, remember, not until the agreement has been approved by DABC can the seller allow the buyer to use their license during the transition.

As is noted in the "list" the duration of the management agreement will begin when the sale is completed and is *limited to the period during which the new owner is actively applying for a DABC license with the Commission*. The new owner must agree to use their best efforts to obtain the license.

Before a retail licensee enters into an Interim Alcoholic Beverage Management Agreement it must be submitted to DABC for approval.

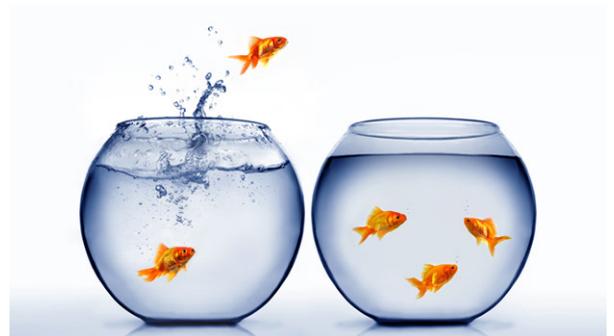
Once the license transfer is approved by the Commission, the agreement ends.

#### V. THERE IS ALWAYS AN EXCEPTION

The exception to needing an agreement is **IF** an *entity itself has an internal change* of ownership of:

- 51% or more of the shares of stock in a corporation
- A new general partner in a Partnership or
- 51% or more of the interests in an LLC

In this case, the business entity has 60 days to submit an application to DABC, which effectively gives this type of transfer a longer notification period. They are also NOT subject to the interim management agreement since the entity that holds the license is never actually replaced.



**NOTE:** NEW local licensing may still be required for this type of transfer. Check with your local jurisdiction.