

## Transferring Retail Liquor Licenses in California

by LYNNE A. CARMICHAEL



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A retail alcoholic beverage license in California is subject to strict regulation by the California Department of Alcoholic Beverage Control (ABC). Transfer of the license is subject to ABC approval, in accordance with [Cal Const art XX, §22](#) and the [Alcoholic Beverage Control Act \(Bus & P C §§23000–25762\)](#). This article describes the administrative process involved in transferring retail alcoholic beverage licenses issued by the ABC and updates information that previously appeared at [6 CEB Cal Bus L Prac 1 \(Winter 1991\)](#). After surveying the applicable statutory and regulatory framework, it provides a hypothetical that illustrates the various issues that may arise in the transfer process. The appendix contains checklists, a table of forms, sample drafting language for sales agreements involving retail alcoholic beverage licenses, and copies of ABC Forms 208A and 208B.

There are more than 60 different types of ABC licenses authorized in California, each with its own set of privileges and obligations specific to the category of license involved. See [Bus & P C §23320](#). This article focuses primarily on retail licenses and does not deal with ABC licenses issued to producers, importers, or wholesalers of distilled spirits, wine, and beer. However, the personal and entity qualification procedures described are the same for all classes or types of ABC licenses.

### IN THIS ISSUE

Transferring Retail Liquor Licenses in California .....	65
by Lynne A. Carmichael	

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## CONSTITUTIONAL ISSUES AND REGULATORY FRAMEWORK

### The Federal Constitution

The Twenty-First Amendment to the U.S. Constitution, which ended this country's experiment with Prohibition, provides that "[t]he transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." This wording is significant for what it does not do, *i.e.*, grant the states exclusive jurisdiction over the regulation of commerce in alcoholic beverages. Rather, it creates a system in which the federal and state governments are jointly involved in regulating the production, importation, wholesale distribution, and retail sale of alcoholic beverages to the public. Many of the distinctions between the interests of the states and the federal government are described in *California Retail Liquor Dealers Ass'n v Midcal Aluminum, Inc.* (1980) 445 US 97, 63 L Ed 233, 100 S Ct 937, in which the Supreme Court struck down California's statutory requirement of price-posting for wine because it conflicted with the Sherman Act prohibition of resale price maintenance. 15 USC §1. The Supreme Court declared unconstitutional state statutes that prohibited alcohol content information on beer labels and price advertisements for alcoholic beverages. *Rubin v Court Brewing Co.* (1995) 514 US 476, 131 L Ed 2d 532, 115 S Ct 1585; *Liquor Mart v Rhode Island* (1996) 517 US 484, 134 L Ed 2d 711, 116 S Ct 1495. In both cases, First Amendment considerations prevailed.

### Federal Regulation – Business Practices and Special Taxes

The Federal Alcohol Administration Act (27 USC §§201–211) authorizes the Department of the Treasury to oversee the production, importation, and wholesale distribution of distilled spirits, wine, or malt beverages. The Bureau of Alcohol, Tobacco and Firearms administers this program. See 27 CFR parts 1–11 for the federal regulations governing business practices and other relations between industry members and state-licensed retailers.

The federal government does not require the licensing of retailers, and the Department of the Treasury voluntarily limits its direct involvement with retailers to the assessment and collection of "special occupational taxes," presently set at \$250 per year per retail location. 26 USC §§5121–5125. Significant financial penalties are assessed for failure to make federal tax filings on prescribed forms within 30 days of the

transfer of a licensed retail business. 27 CFR §194.170. The procedures for compliance with the special occupational tax requirements are set forth in 27 CFR part 194.

### The California Constitution and the ABC

Article XX, §22 of the California Constitution creates a system of regulation under which the ABC is vested with "exclusive power" to license persons and premises involved in the "manufacture, importation and sale of alcoholic beverages" in California. Because the ABC is a constitutional rather than a legislative agency, it has limited judicial powers and its decisions on factual matters must be given the same deference as the factual findings of a trial court (*i.e.*, factual decisions are conclusive and final and not subject to review). *Bus & P C* §23090.3; see *Brice v Department of Alcoholic Beverage Control* (1957) 153 CA2d 315, 314 P2d 807.

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**“The ABC has extensive discretionary power; ‘capricious and arbitrary’ decisions might be reversed, but appellate review is very limited.”**

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The ABC's exercise of discretion is subject to oversight from a three-member Alcoholic Beverage Control Appeals Board, who "shall not receive evidence in addition to that considered by the department" and whose authority over appeals from ABC decisions is "limited to the questions whether the department has proceeded without or in excess of its jurisdiction, whether the department has proceeded in the manner required by law, whether the decision is supported by the findings, and whether the findings are supported by substantial evidence in the light of the whole record." *Cal Const art XX, §22*. The appeals board can only affirm or reverse the ABC's decisions. Reversal is permitted only on the bases stated in *Cal Const art XX, §22*. On reversal, the appeals board may only remand the case to the ABC for reconsideration. *Bus & P C* §23085.

A final decision of the appeals board can be appealed to the court of appeal for the appellate district in which the ABC proceeding arose, or to the supreme court. Court review of ABC decisions is limited to the constitutionally mandated list of issues quoted above, plus the question of whether there is relevant evidence that, in the exercise of reasonable diligence, could have been produced or was improperly excluded at the hearing.

The ABC has extensive discretionary power; “capricious and arbitrary” decisions might be reversed, but appellate review is very limited. The ABC district office overseeing the project has primary discretion in granting concessions related to the licensing or investigatory process. This nonreviewable discretion extends even to the granting or denial of a temporary operating permit, denial of which may delay consummation of a transaction for months.

### GENERAL PRINCIPLES OF ABC LICENSE TRANSFERS

The privileges of a license are expressly limited to those conferred by the specific type of license involved for the premises and time period covered by the license. [Bus & P C §23355](#). Accordingly, counsel for a prospective ABC license transferee should review the client’s intended business plan to ensure that the type of ABC license applied for will actually allow the client to conduct the contemplated retail business as intended.

#### Types of Retail Licenses

Retail licenses are commonly classified by the kind of alcoholic beverage sold and the nature of the premises involved. Included in the beverage category are (see [Bus & P C §23320](#)) general licenses (covering all alcoholic beverages, *i.e.*, distilled spirits, wine, and beer); beer licenses; and beer and wine licenses.

The two most common California retail premises that require ABC licenses are:

(1) “Off-sale” establishments (*e.g.*, grocery stores, liquor stores, convenience stores), in which alcoholic beverages are sold to consumers in sealed packages for consumption off the premises ([Bus & P C §§23393–23394](#)); and

(2) “On-sale” establishments (*e.g.*, restaurants, hotels, cafeterias, nightclubs, bars, and cafes), in which alcoholic beverages are sold primarily for consumption on the premises ([Bus & P C §23396](#); see also [Bus & P C §23401](#) regarding the off-sale privileges of on-sale licenses).

Other retailers who require ABC licenses include caterers who sell alcoholic beverages to their customers; holders of special charitable or fundraising event licenses; public conveyances serving alcoholic beverages (such as boats, trains with dining and club cars, and airplanes) ([Bus & P C §23320](#)); and nonprofit clubs established for fraternal, civic, patriotic, benevolent, or other purposes and granted the specific privilege of possessing an ABC license ([Bus & P C §§23425–23455](#)).

Typically, a license is described by its premises category, followed by its beverage category, *e.g.*, on-sale beer and wine license. See generally [Bus & P C §23320](#). The retail licenses discussed in this article are:

- Type 21 off-sale general licenses ([Bus & P C §§23393, 23394](#));
- Type 41 on-sale beer and wine eating place licenses ([Bus & P C §§23038, 23396, 23399, 23787](#)); and
- Type 47 on-sale general eating place licenses ([Bus & P C §§23038, 23396, 23399, 23787](#)).

Type designations are explained on ABC Schedule A: On-Sale Calendar Year License Fees, and ABC Schedule B: Off-Sale Fiscal Year License Fees.

#### Finding a License

The number of retail on-sale general and off-sale general licenses that can be issued in a county is restricted by population. Issuance of new on-sale or off-sale general licenses is subject to the population limitations: one on-sale general license for every 2000 people within a county ([Bus & P C §§23816](#)) and one off-sale general license for every 2500 people living within a city or county ([Bus & P C §§23817](#)). The number of off-sale beer and wine licenses is limited to one for every 2500 people in the city or county in which the proposed new premises are situated. When the existing number of off-sale beer and wine licenses is added to the number of off-sale general licenses, the combined total cannot exceed one for every 1250 people. [Bus & P C §23817.5](#).

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### “Issuance of new on-sale or off-sale general licenses is subject to the population limitations.”

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In counties in which the population is increasing, the ABC schedules annual priority drawings in September. A person may obtain a “priority” general license, pending satisfaction of the application requirements and the qualifications for issuance. See [Bus & P C §§23816–23817, 24070, 23821, 23961–23962](#). For a period of two years after issuance, a priority license cannot be transferred except for the reduced-fee “family” transfers stated in [Bus & P C §24071](#) or in the event of a hardship situation. The consideration for an otherwise permitted transfer cannot exceed \$12,000. [Bus & P C §24079\(c\)](#).

The ABC approaches the hardship issue on a case-by-case basis. The ABC generally defines hard-

ship restrictively, and departmental procedures require a showing that a licensee is unable, after a good faith effort, to continue in business because of ill health or extreme personal financial hardship. The transferor must specify the rationale for the request to transfer the priority license, explaining in writing the inability to continue as licensee.

Many locations in the state have already exceeded the population limitation. Applicants for off-sale beer and wine licenses can apply for issuance of a license, however, if: (1) the proposed premises are in a census tract and crime reporting district with reported crimes and concentration of licenses below the levels specified in [Bus & P C §23958.4](#), and (2) the governing body of the area determines that public convenience and necessity would be served. [Bus & P C §23817.7](#).

**COMMENT:** A new business that includes as part of its business plan the sale and delivery of wine to persons who purchase through mail, fax, telephone, or e-commerce, will need, at a minimum, a Type 20 off-sale beer and wine license. Because of restrictions on issuance of new Type 20 licenses and other requirements for public access to the premises (rule 27), such businesses should also consider obtaining a Type 17 beer and wine wholesaler license at the same location. While this means that wholesale sales must be made to other wholesalers and/or to other retailers and that only wine (not beer) can be sold under the retail license, persons with both types of licenses may be approved for the issuance of a new Type 20 license in a location where no retail store will be open to the public, thereby avoiding the rule 27 requirements for public access. [Bus & P C §23817.8](#).

Type 41 on-sale beer and wine eating place licenses are not limited in number and are issued by the ABC for a fee of \$300. When continued operations are not a factor (*e.g.*, when a lengthy renovation period is contemplated or if the premises have been closed for more than 30 days and no temporary permit will be issued), applicants may want to apply for a new Type 41 license rather than transfer the one at the premises. No recording or escrow is required, and if the previous license has not been canceled or revoked, applicants will not have to comply with the premises qualification requirements. If the former Type 41 license has been canceled or revoked, the ABC will treat the premises as “unlicensed” and will require compliance with notice and other premises qualification requirements.

Alcoholic beverage license brokers may be used to locate unrestricted, open-market alcoholic beverage licenses that are available for transfer. However, these unrestricted licenses may be extremely expensive, especially in counties where the population has not

been growing. Particular care must also be taken to inquire about the status of the transferor as well as the license sought to be acquired. If the transferring licensee has not complied with the [ABC Act](#) or paid all taxes due, or is under the supervision of the bankruptcy court, the license may not be readily transferable. By the time such facts come to light, the parties may be unable to meet their timetable.

### Sales of Assets

Before beginning the license transfer process, counsel should review the underlying sales agreement to avoid the parties’ irreversibly structuring the business transaction in ways that conflict with the [ABC Act](#). Whether or not the agreement so specifies, the transfer of a retail alcoholic beverage license is subject to ABC approval. Inclusion in the agreement of specific language to this effect is strongly suggested; at a minimum it will require the parties to address the consequences of failure to obtain approval. Sample contract language is contained in the appendix.

If a third party lender is involved, or if the transferor is carrying back a note for part of the purchase price, the Act imposes limitations on the types of assets that can be used to secure the debt. For example, under [Bus & P C §24076](#):

- A licensee may not enter into any agreement to pledge the transfer of the license as security for a loan or for the fulfillment of an agreement;
- A license may not be transferred to satisfy a loan or to fulfill an agreement entered into more than 90 days preceding the transfer application filing date;
- “Unwind” provisions that require a re-transfer of a license to the transferor if the terms of the agreement are not observed are void;
- Any clause that gives the lessor an option to purchase the license at the expiration of the lease are void after 90 days; and
- No agreement to transfer can be used to establish a preference for any creditor of the transferor other than the preferences specified in the escrow provisions of [Bus & P C §24074](#).

In addition, no nonpossessory security interest, other than a purchase money security interest, may be given in the beer, wine, or liquor inventory of a retail merchant. Any purchase money security interest covers only the initial inventory sold or taken as security and does not extend to any after-acquired liquor inventory. [Com C §9102\(4\)](#). Note that this provision is not included in Division 9 as amended by [Stats 1999, ch 991](#), effective July 1, 2001.

## Tied-House Considerations

A person who has an interest (whether as owner, officer, director, or agent) in a licensed business in the manufacturing or wholesale tier of the alcoholic beverage industry may be prohibited from also having an interest in a licensed business in the retail tier, including an interest in any on-sale or off-sale license. [Bus & P C §25500](#). Acting as a supplier of equipment for less than the current market price (see [Bus & P C §§255019\(c\), 25503.1\(b\)](#)) or as a lessor of premises without specific ABC approval (see [Bus & P C §25503.10](#)) is also prohibited. This prohibition is strictly maintained by the ABC. There are many statutory exceptions to the prohibitions (see, *e.g.*, [Bus & P C §§23357, 23362, 23378.2, 25503.1–25503.37](#)), especially for wineries, sports stadiums, and entertainment theme parks, but exceptions are narrowly construed.

These “tied-house” restrictions date back to Prohibition and are principally designed to encourage temperance by discouraging a supplier from owning or having an interest in (and thereby controlling or influencing) retail outlets. Because the ABC’s principal mission is to encourage temperance, the tied-house restrictions are treated very seriously. Any failure to disclose potentially conflicting interests may trigger license disqualification proceedings.

## THE LICENSE TRANSFER PROCESS

When an ABC license is transferred from one location to another, the transaction is referred to as a “premises-to-premises” transfer; when an ABC license is transferred from one person or entity to another person or entity, the transaction is referred to as a “person-to-person” transfer. See [4 Cal Code Regs §60\(a\)](#). Both types of transfer may occur simultaneously (*i.e.*, a “double transfer”), depending on the situation. Authority for ABC license transfers is found in [Bus & P C §§24070–24082](#).

### Basic Transferor and Transferee Requirements

#### ABC 211-A License Transfer Request

The principal ABC form signed by the transferor is Form 211-A (License Transfer Request). This form, signed only by the transferor, is used both for the transfer of the license and for the application for a temporary permit that allows the transferee to operate if the parties have agreed that the transferee may temporarily operate the business pending completion of the ABC’s investigation and report. (This form is not needed if the licensed entity remains the same but the

license is being transferred because of a change in majority ownership, manager, or general partner pursuant to [Bus & P C §24071.1](#) or [§24071.2](#); see discussion below.) The following persons may be required to sign for the transferor ([Bus & P C §23958](#)):

- All individuals listed as licensees on the license;
- All general partners of any general partnership licensee;
- Two officers of any corporate licensee;
- The general partner of any limited partnership licensee;
- All members of a member-managed limited liability company licensee;
- The designated manager or officer of any limited liability company managed by a manager or having elected officers.

All signatures must be notarized or witnessed by an ABC employee.

**COMMENT:** Information about the exact names of the parties who have been qualified with the ABC to sign for the transferor can be obtained from the ABC district office that has the premises file or from the ABC Web site, [www.abc.ca.gov](http://www.abc.ca.gov) (license query). Counsel should verify entity names and persons qualified to sign before preparing the documents for signature; the slightest variation can cause delays in the ABC filing.

### Escrows

The transferor and transferee, by written agreement, must open an escrow in every transfer that “involves a purchase price or consideration” before an application for transfer is filed with the ABC. [Bus & P C §24074](#). This statute sets forth the procedure for, and priority of, payments to the transferor’s creditors.

The escrow provisions do not apply to transactions incident to a divorce, bankruptcy, receivership, or death, or to other reduced-fee transactions, because these transactions typically do not involve a purchase price or consideration, or the transferor and its creditors are already under the supervision of a court. See [Bus & P C §24075](#).

Other exceptions to the escrow requirement include (1) transfer of an off-sale beer and wine license when payment of the creditors’ claims is guaranteed by a corporation with a net worth of \$5 million or more ([Bus & P C §24074.4](#)); and (2) corporate, partnership, or limited liability company transfers of licenses that do not involve transfers to a new licensed entity under [Bus & P C §24071.1](#) or [24071.2](#). See [Bus & P C §24074](#).

The person or entity acting as the escrow agent must be qualified to act as such under the [Escrow Law](#)



(Fin C §§17000–17702). Bus & P C §24074.1. The escrow agent cannot be a party to the transaction and must conduct itself as a fiduciary on behalf of the transferor's creditors. An attorney may act as the escrow agent. See Fin C §17006(b).

An escrow agent's duties include acknowledging the creditors' claims within 10 days of receipt (Bus & P C §24074.1), distributing the proceeds to the creditors in the order required (Bus & P C §§24074, 24074.1), requiring the transferee to deposit the agreed-on consideration into escrow within 30 days after filing the application for transfer (Bus & P C §24074.3), and retaining the consideration deposited until receipt of notice from the ABC that the license has been transferred. See Form 226 (Statement re Consideration Deposited in Escrow), which must be completed by the applicant and delivered to the escrow agent.

As part of the approval process, the ABC formally provides notification of an impending transfer to the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. The escrow holder is required to satisfy various state tax liabilities of the transferor (see Bus & P C §24049) before the license can transfer. Bus & P C §24074. The ABC will refuse to transfer a license when a taxing authority puts a hold on a license transfer because the transferor is delinquent in the payment of alcoholic beverage taxes, sales and use taxes, state personal income taxes, or other state taxes, including unemployment taxes. Bus & P C §24049. See *In re Farmers Markets, Inc.* (California v Farmers Markets, Inc.) (9th Cir 1986) 792 F2d 1400.

**COMMENT:** A variety of commercial firms offer liquor license escrow services. However, the quality of available service varies, and counsel should take great care in reviewing proposed standard form escrow instructions against statutory requirements and the underlying purchase and sale agreement. Poorly drafted, conflicting, or overreaching standard-form escrow instructions often create serious obstacles to closing of transactions.

### **ABC 227 Notice of Intended Transfer of Retail Alcoholic Beverage License Under Bus & P C §§24073 and 24074**

For person-to-person transfers, the licensee and proposed transferee must record a notice of intended transfer, Form 227, in the office of the county recorder for the county in which the licensed premises are located. Bus & P C §24073. The notice must contain:

- The name and address of transferee;
- The kind of license being transferred;
- The address of the premises involved;
- The agreement that the purchase price will be paid only after the transaction is approved by the ABC;
- The amount and description of consideration; and
- The name and address of the escrow holder.

Both parties must sign this form, but the signatures need not be notarized. A certified copy of recorded Form 227 must accompany the transfer application.

### **ABC 227-A Notice of Intended Transfer Under Bus & P C §24071.1 or §24071.2**

Business and Professions Code §§24071.1 and 24071.2 address the situation in which a corporation, limited partnership, or limited liability company undergoes a significant change in ownership or management. When ownership of 50 percent or more of stock, limited partnership interests, or membership interests has been acquired by or transferred to a person or persons who did not own a 50-percent interest when the license was issued to the entity, the entity must file an application to transfer its license to itself as newly constituted. Bus & P C §§24071.1 and 24071.2. The change may occur in a single transaction or as the cumulative effect of a series of smaller transactions. Counsel should alert appropriate licensee clients of this requirement.

If the general partner of a limited partnership is changed, the limited partnership must comply with the notice and transfer requirements. If the entity is not required to report changes in ownership or management under Bus & P C §23405 (corporations), §23405.1 (limited partnerships) or §23405.2 (limited liability companies), it is also exempted from the requirements imposed by Bus & P C §§24071.1 and 24071.2. Bus & P C §24071.1(a).

Transfers in which the entity remains the same after transfer may be filed any time within 30 days after the change in ownership or management, and the ABC prefers that the parties wait until the new owners or managers are in place so that any officer or director changes can be reported at the same time. There is some risk that if the ABC were to find the new owners unqualified, it would deny the transfer and require the transaction to be unwound or the new owners to be divested of their interests as a condition of continued licensure. Therefore, counsel should question new owners about other alcoholic beverage interests or previous arrest records to lessen the chance that the ABC might demand divestiture.

Before filing the transfer application, the entity must record, in the affected county recorder's office, a

notice stating the name and address of the entity and the persons acquiring ownership of 50 percent or more of the interests, the amount of consideration paid, the kind of licenses intended to be transferred, and the premises address. Only a post-change representative of the affected entity needs to sign this notice. The notice is contained in Form 227-A, a certified copy of which must be filed with the transfer application. No escrow is required because no consideration is paid to the licensee for transfer of the license or licensed business. Also, no temporary permit is required to continue business; the licensed entity and the license number remain the same. See [Bus & P C §24074](#).

### ABC 217 Application Questionnaire

The transferee must provide the ABC with documentation establishing its qualifications to hold the license and the qualification of the premises by completing Form 217. Depending on the type of entity, further forms may be required, as described below. Licenses issued to a single individual, married persons, or general partners are issued in the names of the individuals or partners. Their names must be stated in Part 1 of the application. Any material change in this information will require withdrawal and re-filing of the application in the proper names.

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**“The issuance of a temporary operating permit can help parties achieve a more expedited timetable than otherwise available under the usual approval period of 60-90 days for a permanent license.”**

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Form 217 provides for selecting the types of licenses and transfers involved. The form may include multiple licenses and multiple transactions if such transactions are related to the same premises.

The applicant must provide information about the location of any escrow and financial information with regard to the purchase of and investment in the business, including funds used for establishing the new business or the consideration paid to the transferor of an existing business. The statement of consideration paid on Form 217 must match the consideration stated on Form 227, and must match information given by the owners of the business if funds other than general corporate funds will be used to acquire the business.

All persons in whose names the license will be issued must sign. For corporations, two corporate officers must sign: the president, a vice president, or the chairman of the board; and the secretary, an assistant

secretary, the chief financial officer, or an assistant treasurer. For limited partnerships, the general partner must sign. For member-managed limited liability companies, one of the members may be delegated by the others to sign the application documents, but all members must sign the Form 211-SIG or personally appear at the ABC when the application is filed to sign the Form 211 generated by the ABC. [Bus & P C §23958](#). All signatures must be executed and sworn to before a notary public or an ABC employee.

### ABC 211-SIG Application Signature Sheet

While some ABC offices prefer that all persons signing for an applicant for a liquor license appear at the district office to sign the application and be fingerprinted, there are situations in which attendance is not practical. In those situations, the applicant may use Form 211-SIG to obtain the required signatures. All signatures on this form must be notarized.

### Temporary Operating Permits

The ABC, in its discretion, may issue a temporary operating permit to a person-to-person transferee of an ABC-licensed retail business that is remaining in the same premises, effective at any time after 5 days following the application filing date. [Bus & P C §24045.5](#). The 5-day waiting period is designed to allow the private business that publishes standard daily lists of transfer applications to distribute the lists to its subscribers, which include wholesalers who might be creditors of the transferor. If the applicant is able to demonstrate compliance with the bulk transfer notice provisions, the 5-day period may be waived.

The issuance of a temporary operating permit can help parties achieve a more expedited timetable than otherwise available under the usual approval period of 60-90 days for a permanent license. The requirements for issuance of a temporary operating permit include the following ([Bus & P C §24045.5](#)):

- (1) The premises shall have been operated under a retail license within 30 days of the transfer application;
- (2) The original license shall have been surrendered to the ABC for the purpose of issuing a temporary permit (see Form 211-A);
- (3) The transfer application shall have been filed and no reason for denial of the application shall appear to exist; and
- (4) A temporary permit fee of \$100 shall have been submitted.

The temporary operating permit is good for up to 120 days and may be extended for an additional 120-day period (on payment of another \$100 fee) at

the discretion of the ABC. [Bus & P C §24045.5](#). Unless the applicant (transferee) presently operates another location under an issued ABC license, it may purchase inventory only on a “cash” basis (business checks for beer and wine; certified checks or prepayment for distilled spirits). The applicant may not receive credit from suppliers (otherwise permitted under [Bus & P C §25509](#)). The temporary permit may be revoked at any time, and the ABC’s failure to issue or renew a temporary operating permit is completely discretionary. The ABC’s decision is not appealable and does not entitle the applicant to any hearing rights. Attorneys should warn the parties about these restrictions on operations under temporary permits, as well as the risks and liabilities involved, so they can plan accordingly.

### Qualifying Entities for a License

The ABC generally requires qualification documentation for the entity named on the license, and particular individuals and related entities with specified relationships to the proposed licensee. There are special forms and requirements for qualification of corporations, limited partnerships, limited liability companies, and trusts.

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**“The [qualification] process is designed to prevent an individual with a significant ownership or management interest in the licensee from hiding behind the shield of an entity.”**

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Typically, the ABC requires qualification of various officers, directors, management personnel, and owners who own 10 percent or more of the entity. It also requires organizational documentation and information about ownership of intervening entities in the “chain of ownership” that show the ultimate individual owners (who generally must be qualified) or publicly traded companies (that need only supply Form 243, Form 140, and the most recent annual report). Thus, qualification may mean the delivery of a huge amount of paperwork to the ABC. The process is designed to prevent an individual with a significant ownership or management interest in the licensee from hiding behind the shield of an entity. Even a manager of a licensed business must submit documentation and be qualified as if he or she is the owner, whether or not the manager has any ownership interest in the license or the business.

### General Partnerships

No additional form is required to qualify a general partnership as a licensee, although a copy of the general partnership agreement (if one exists) should be submitted with Form 217. See Form 520 (instructions and general information for applicants). The ABC issues a general partnership license to the partners themselves and not to the general partnership. [Bus & P C §23958](#). General partnerships with numerous partners may want to form a limited liability company or a corporation to hold the license to avoid the aggravation of having all the general partners’ names listed on the license and all partners being required to sign the license application forms. If a limited liability company or corporation is formed to hold the license, that entity must actually write the checks, pay the sales tax, take the risk of loss, and receive the net profits from the business.

### Corporations

A corporate licensee provides corporate information on the reverse of the Form 217, and no separate form is required. If there are any corporations in the chain of ownership that must be qualified, each must complete a Form 243 (Corporate Questionnaire). Each corporate licensee and any other corporation required to be qualified must list all officers and directors; all outstanding stock certificates and their owners (unless the company is publicly held and listed on a public exchange (see [Bus & P C §23405](#))); the location of the stock register, minute book, and principal bank account (including authorized signatures); and information about qualification to do business in California if the corporation is not a California corporation.

All corporate entities must also submit copies of the articles of incorporation and evidence that the stock has been issued. Usually, copies of the stock certificates are sufficient, but the ABC may also accept a copy of the form of stock certificate with a list of the stockholders certified by the corporate secretary. See Form 520. In addition, corporate entities must supply copies of the minutes of the meetings at which the officers and directors were elected.

Form 217 provides information about any lease of the premises, the allocation of the purchase price to the assets purchased, bank accounts, and accountants. Certain publicly traded corporations and corporations required to file periodic reports with the SEC will not be required to provide corporate qualification materials. Instead, copies of Forms 243 and 140 and the most recent annual report, evidencing eligibility for the exemption, are all that is required. [Bus & P C §23405](#).

A corporate applicant must complete Form 140, certifying that neither the corporation nor any affiliated businesses holds a direct or indirect interest in the business, property, or license of any alcoholic beverage producer, rectifier, importer, or wholesaler.

### Limited Partnerships

When a limited partnership must be qualified, the general partner(s) and all limited partners holding 10 percent or more of the capital or profits of the limited partnership interests must be identified and qualified with the ABC. [Bus & P C §§23405.1, 23953](#). If there is a change in the general partner, the entity must file an application to transfer the limited partnership license to the limited partnership as newly constituted. [Bus & P C §24071.1](#).

A limited partnership applicant must complete and submit Form 256 (Limited Partnership Questionnaire), along with a file-stamped copy of the LP-1, a copy of the signed limited partnership agreement with all amendments, and a copy of the qualification to do business in California if not a California limited partnership. See Form 520.

All general partners and all limited partners (if fewer than ten) or all limited partners who own 10 percent or more of the capital and profits (if there are more than ten limited partners) must be listed on Form 256.

The general partner must submit a Form 140 on behalf of the limited partnership, certifying that neither the limited partnership nor any affiliated business holds a direct or indirect ownership in the business, property, or license of any alcoholic beverage producer, rectifier, importer, or wholesaler.

### Limited Liability Companies

If the LLC is managed by its members, every member must be qualified. If the company is managed by a manager or managers, only the manager(s) and members with 10 percent or more of the voting interests of the company need to be qualified. [Bus & P C §§23405.2, 23953](#).

An LLC applicant (and any LLC in the chain of ownership with 10-percent ownership or more) must also complete and submit a Form 256-LLC (Limited Liability Company Questionnaire), along with a file-stamped copy of the LLC-1, a copy of the signed operating agreement with all amendments, and a copy of the qualification to do business in California if required. See Form 520. All managers, officers, and members must be listed, together with the members' voting percentages (the form calls for "% of ownership," but [Bus & P C §23405.2](#) uses "voting interests" as the measure).

The LLC must submit a Form 140 to certify that neither the company nor any affiliated business holds any direct or indirect ownership in the business, property, or license of any alcoholic beverage producer, rectifier, importer, or wholesaler.

**COMMENT:** All members must sign the application unless they have appointed an officer or officers in their operating agreement. In some cases, if there will be a large number of members, counsel will want to consider a manager-managed LLC or an LLC where only a few of the members have voting interests (the managing members) and the balance have nonvoting interests in the capital and profits. Alternatively, it may be wise to appoint an officer in the operating agreement of a member-managed LLC that has a large number of members so that the officer may sign for the company.

### Trusts

When qualifying a trust as a licensee, all trustees must be individually qualified on Form 217. All beneficiaries must be identified on Form 217, but they need not provide qualification materials. See *In re Local 38 Convalescent Trust Fund* (June 29, 1973) [ABC App Bd No. AB-3486](#). There is no separate form for trust applications. A copy of the trust agreement must be submitted with the application.

The trustee must submit a Form 140 on behalf of the trust, certifying that neither the trust nor any affiliated business holds any direct or indirect ownership in the business, property, or license of any alcoholic beverage producer, rectifier, importer, or wholesaler.

### Qualifying Persons

An individual, whether a licensee, partner, member, shareholder, officer, or director, must complete Form 208A (Individual Personal Affidavit) and Form 208B (Individual Financial Affidavit). Forms 208A and 208B are reproduced in the appendix.

#### ABC 208A Individual Personal Affidavit

The information supplied in Form 208A allows the ABC to conduct a background check of the person and his or her employment, including previous alcoholic beverage license history and arrest record, to determine whether the individual has violated any law involving moral turpitude. See [Cal Const art XX, §22](#). The form also requires information about current interests in alcoholic beverage businesses to uncover potential violations of the tied-house restrictions.

Each individual owner, general partner, limited partner with a 10-percent interest or more, managing

member, member with 10-percent or more of the voting interests of a limited liability company, trustee, and corporate officer, director, and 10-percent-or-more shareholder must qualify. See [4 Cal Code Regs §58](#). Spouses of persons with ownership interests requiring qualifications must also qualify. If the applicant is a corporate subsidiary, then the principal officers, a majority of the directors, and 10-percent-or-more shareholders of the applicant's parent(s) must also file Form 208A, unless the parent is exempted from filing as described above.

Individuals who file Form 208A must also submit a photocopy of their driver's license. When the application is filed, the person who takes the application will specify who must provide fingerprints. Those persons must report to a LiveScan fingerprinting facility (located throughout the state) before the license is issued. Typically, officers, directors, 10-percent-or-more owners, and the spouses of owners must be fingerprinted. The ABC, in its sole discretion, may waive the requirement for some individuals (*e.g.*, out-of-state residents).

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**“A conviction for fraud or a crime involving, for example, dishonesty, unreasonable violence, depravity, or illegal conduct for profit will be treated as disqualifying by the ABC unless evidence of rehabilitation is provided.”**

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There are two general categories of disqualifying factors that may affect individuals: (1) problems with a prior arrest and conviction, and (2) tied-house issues. Commission of a crime involving moral turpitude can result in denial of a license. See [Bus & P C §23958](#); [Cal Const art XX, §22](#). In some cases, the ABC will accept information about the circumstances surrounding the commission of the offenses and may make a determination that the record does not reasonably support the conclusion that the applicant lacks the necessary character traits of a qualified licensee. A conviction for fraud or a crime involving, for example, dishonesty, unreasonable violence, depravity, or illegal conduct for profit will be treated as disqualifying by the ABC unless evidence of rehabilitation is provided.

#### **ABC 208B Personal Financial Affidavit**

Specified persons must also complete Form 208B (Personal Financial Affidavit) on the reverse side of Form 208A. If a person required to submit a Form 208A is not making a personal financial contribution,

that person needs only to so indicate in Item 3 on the form and sign at the bottom.

A person making a personal financial contribution to the purchase price for the costs of establishing a new business must describe the amount of his or her personal contribution and the sources of any cash in detail so that the ABC can trace the source of all funds used for the acquisition of a licensed business. If, for example, the source is savings, the individual must specify the location of the savings account and provide bank or brokerage statements. If the source is the sale of property, the individual must provide the property address, the name and address of the buyer, and the net proceeds of sale. If the source is a gift or loan, the individual must provide full information about the giver or the lender and the terms of the loan. If an individual rather than an institutional entity is the source of funds, the ABC may ask further questions about that individual's source of funds. The ABC has 90 days to verify the information provided in the financial records.

If the applicant's source of financing is general entity funds or a loan made to the entity and if the applicant is not newly formed, then individual owners of that entity will not be required to disclose the source of their previous investments in the entity.

Another ground for denial of a license is that the applicant is not a true party-in-interest in the business to be licensed. If the facts disclosed in the personal financial affidavits indicate that another, unqualified person is truly in control of the business (*e.g.*, as a result of loans to or other interests held in the applicant by such person) the license can be denied.

#### **Qualifying Premises**

Qualification of the premises is required whenever (1) a license is issued for a new location; (2) an existing license is transferred to a new location; or (3) application is made to operate at a previously licensed location that has not been operated under the same type of license within the 90 days before the filing of the application. See [Bus & P C §§23957, 23958, 23985–23987](#). After a license is issued, the ABC must approve in advance any changes to the location of the entrance doors, expansion to a patio or into other space not previously licensed, or changes to the interior physical arrangements that would materially or substantially alter the premises or their usage. [4 Cal Code Regs §64.2\(b\)\(1\)](#). A new qualification is not required for qualified and operating premises if the only change is a change in licensee.

### ABC 255 Zoning Affidavit

Local zoning codes must be checked, usually through a call to the planning department, to ascertain whether the licensee must obtain a conditional use permit. For new premises, the applicant must complete Form 255, stating the zoning for the premises, the parcel number, and the name of the local planning department person who supplied the information. The licensee must start the permit process for a conditional use permit for the operation of a retail alcoholic beverage store before making an application for the license, but the permit does not have to be issued before the application materials are filed.

**COMMENT:** If a conditional use permit has previously been issued for the premises, the new owner may need to apply for a permit transfer. The planning commission, or equivalent local body, holds a public hearing on the application before issuing the permit and may impose restrictions on the conditional use permit, *e.g.*, restrictions on the hours of operation and the type or size of alcoholic beverages sold, and requirements for security on the premises and for clean up. Any conditions placed on the permit will be carried over as conditions on the ABC license.

Counsel should advise clients to plan well in advance for a conditional use permit. Issuance can take several months and many jurisdictions impose substantial application or processing fees.

### ABC 257 Diagram of Licensed Premises

The applicant must provide Form 257 with the application materials. 4 Cal Code Regs §64.2(a). This form must show entrances, exits, interior walls, exterior boundaries, and dimensions of the licensed premises. The licensee must also provide certain information about hours of operation, food service, entertainment, and the surrounding neighborhood.

#### Fees

Unless subject to special treatment, a transaction is treated as a person-to-person or double transfer subject to the transfer fee schedule in Bus & P C §24072. The fee for transfer of a retail license is one half of the fee charged when the license was initially issued, not to exceed \$1250 for a person-to-person transfer or \$100 for a premises-to-premises transfer. Both fees are charged for a double transfer. Additional fees are charged for fingerprint services and a Business Practices Unit enforcement assessment (for off-sale general and certain nonretail licenses only). See Bus & P C §23053.5.

### Transfers Under Bus & P C §§24071.1 and 24071.2

All changes in the general partner of a limited partnership licensee, or a more-than-50-percent change in ownership of a corporation, limited partnership, or limited liability company (whether the change results from a single transaction or is the cumulative effect of a series of smaller transactions) must be reported within 30 days, and the licensee must file an application to transfer the license to the entity as newly constituted. Bus & P C §§24071.1, 24071.2. The transfer fee is 50 percent of the original fee for the first license (with a minimum of \$100 and a maximum of \$800) and \$100 for each additional license.

### Reduced Fee Person-to-Person Transfers

A reduced fee of \$50 applies for specified person-to-person transfers, including transfers (1) between spouses (before entry of a final decree of divorce); (2) to bankruptcy trustees and receivers; (3) between partners (when no new partner is licensed); (4) to a decedent's estate or surviving spouse; (5) to a trust when the transferor is the trustee; (6) to or from a corporation owned by the transferor; (7) between parent and subsidiary corporations; and (8) between sister corporations owned by the same natural person (but not if owned by a corporate entity; see *Foodmaker, Inc. v Alcoholic Beverage Control Appeals Bd.* (1974) 10 C3d 605, 111 CR 553). Bus & P C §24071. The ABC must approve such transactions before transfer of actual control is effected. A temporary retail permit must be obtained under Bus & P C §24045.5 when filing the initial application for transfer if control is to be transferred before ABC approval, but it may not be available in all circumstances.

### Special Situations

There are special rules for intercounty premises-to-premises transfers (Bus & P C §§24070, 24077), exchange of a public premises license for a bona fide eating place license and vice versa (Bus & P C §§24072.1, 24072.2), exchange of an on-sale general license for a special on-sale general license (Bus & P C §§24072.5, 24078), and for continued operation of premises destroyed by fire and other acts of God (Bus & P C §§24081, 24082).

### Post-Application Requirements

#### Posting the Premises

Immediately after filing an application for sale of alcoholic beverages at designated premises, and if

possible, within 5 days, the applicant must conspicuously post Form 207 (Notice of Intention to Engage in the Sale of Alcoholic Beverages) on the premises for at least 30 consecutive days. [Bus & P C §23985](#). See [4 Cal Code Regs §109](#). If the premises are already licensed and will not undergo a change in the type of license, however, Form 207-B (Public Notice of Application for Ownership Change) should be used. Form 293, which certifies that the required posting has begun, must be received by the ABC within 5 days after posting.

### Mailing Notice to Residents

If the transaction involves a premises-to-premises transfer (including a transfer required because of a substantial change in the premises) or a change in license privileges or original issuance, the applicant must mail a copy of Form 207-E (Notice of Intention To Engage in the Sale of Alcoholic Beverages) to each resident of real property wholly or partially within 500 feet of the premises within 15 days after posting has begun. See [Bus & P C §23985.5](#). This notice gives the address of the retail premises, the names of the applicants, and the procedures for filing a protest against issuance of the license. Within 15 days after posting, the applicant must file Form 207-F, showing the address to which each notice was mailed. The 30-day protest period begins on the date the premises were posted or the date of mailing of the notice, whichever is later. See Form 207-E.

Whenever an application for issuance or transfer of a license is filed, the ABC notifies the sheriff, chief of police, and district attorney of the locality in which the premises are situated; and the board of supervisors of the county (if the premises are in an unincorporated area) or the city council (if in an incorporated city). [Bus & P C §23987](#). If the proposed premises are in a high-crime area, that fact is highlighted on the form before it is forwarded to the agencies.

### Publishing Notice of Application

Within 10 days after filing the application, an applicant for an on-sale license must publish notice of the application in a newspaper of general circulation in the city or area in which the premises are located. [Bus & P C §23986\(a\)](#); [4 Cal Code Regs §111](#); [Govt C §6061](#); Form 207-A. If the premises are in a high-crime area, the notice must be published three times in accordance with [Govt C §6063](#). After publication, the affidavit of publication furnished by the newspaper must be filed with the ABC before the transfer is completed. Publication (and recording, discussed below) are designed to protect the transferor's creditors and to provide notice to the residents in the area.

### ABC 226 Statement re Consideration Deposited in Escrow

Within 30 days of filing the application to transfer, the transferee must place in escrow the consideration for the transfer of the licensed business and must sign Form 226, stating under penalty of perjury that the purchase price has been deposited with the escrow holder. The escrow holder must also sign this form, stating that all consideration is in the escrow or that the escrow holder has the unconditional written assurance of a responsible lender that funds will be deposited when the license is issued. The escrow holder forwards this to the ABC district office where the premises are located. When the license is transferred, the ABC returns the counter-signed form to the escrow agent as a signal that the consideration in the escrow can be released to the transferor or as required by [Bus & P C §24074](#).

## LOCATION ISSUES

### Undue Concentration

No retail license for a new location or premises-to-premises transfer of a retail license will be approved if issuance of the license would result in or add to an "undue concentration" of licenses. [Bus & P C §23958](#). However, the ABC may issue the license if public convenience or necessity would be served by issuance.

Applicants for an on-sale eating place license or a hotel, motel, or lodging establishment license may make a showing of public convenience and necessity to the ABC. For all other types of retail licenses, the applicant must obtain a determination from the local governing body that public convenience would be served by issuance of the license. If the local governing body fails to make such a determination within 90 days of notice of the application, the ABC may issue the license if the applicant shows that public convenience and necessity would be served.

**COMMENT:** The license applicant must apply directly to the local governing body for a determination of public convenience and necessity in accordance with local requirements. Because the process of obtaining this determination may take several months, the application should be made promptly.

### Location Restrictions

Generally, no original issuance of a retail license or premises-to-premises transfer of a retail license will be approved if a residence is within 100 feet of the proposed premises or a parking area maintained for the benefit of patrons of the premises. [4 Cal Code](#)

**Regs §61.4.** If the applicant can establish that the business will not interfere with the residents' quiet enjoyment of their property, however, the license may be issued subject to negotiated conditions that reduce the impact of the licensed business on its neighbors.

The ABC may refuse to issue a license for premises within the immediate vicinity of a hospital or church, or within 600 feet (for an on-sale license) or 200 feet (for an off-sale license) of a school, playground, church, or other specified community facility. **Bus & P C §23789.** An applicant for a license at new premises must provide the ABC with a list of nearby facilities on Form 251.

### Conditional License

If grounds exist for the denial of a license, the applicant may request that the ABC place reasonable conditions on the licensee's operation of the business, such as limited hours of operation for alcoholic beverage sales. See **Bus & P C §§23800–23805.** If a license is denied because of the premises' proximity to a residence, school, church, or other designated facility, the applicant can petition for a conditional license and negotiate with the ABC and any neighbors to obtain a license subject to conditions based on the circumstances and the neighborhood.

### DEALING WITH PROTESTS

The most troublesome issues in license transfer projects involve protests filed against the transfer within the 30-day protest period. Protests not filed within the statutory period are subject to dismissal unless the filer can prove that the applicant failed to comply with either the posting or mailing requirements.

Protests may be filed by nearby churches or schools; for concerns about traffic or noise, parking, attractiveness of the proposed premises to minors, crime, or too many existing licenses; or if the noticed owners are not the true parties in interest.

If a protest is filed by a public official, local governing body, local law enforcement agency, or person living within 100 feet of the proposed premises, the ABC generally will not approve the license unless the protest is withdrawn, usually in exchange for negotiated conditions on the license. The ABC may impose conditions on the license to address the concerns raised by a protestor who does not live within 100 feet of the proposed premises. If the ABC approves the issuance of the license, with or without conditions, the protestor may request a hearing before an administrative law judge. See **Govt C §§11500–11529.** At the hearing, the burden is on the protestor to show that

the ABC abused its discretion in approving the issuance of the license.

The ABC may reject a protest if it determines that the protest is filed for reasons that are "false, vexatious, or without reasonable or probable cause." **Bus & P C §24013.** If the protest is dismissed, the protestor has 10 days following license issuance to file a "protest-accusation" seeking revocation of the license based on the grounds alleged in the protest. The protestor is then granted a hearing before an administrative law judge. See **Govt C §§11500–11529.**

**COMMENT:** The applicant should identify and address any opposition before filing the license application. Oftentimes, the applicant may be able to propose license conditions or other accommodations that will satisfy the concerns of the potential protestors in exchange for their non-opposition to the license.

### FOLLOWING THROUGH TO THE CLOSE

Between filing the complete application package and issuance of the final approval, counsel's main task will be to communicate regularly with ABC investigators assigned to the case at each involved ABC district office to ensure that the investigation is proceeding smoothly on a reasonable timetable and that no information needed by the investigator to complete the project has been overlooked.

After the 30-day posting period, and generally within 60 days, the investigator will complete an investigation report for approval by his or her superior in the district office. If the application has been protested or if there are residents within 100 feet of the premises, but the ABC is recommending issuance, the report will be sent first to either the Northern Division office (all counties north of Santa Barbara) or Southern Division office (all other counties) of the ABC for approval, and then forwarded by the Division to Sacramento headquarters for final approval and license issuance. Other reports go directly from the district office to Sacramento headquarters. Any filed protests will be transmitted to the Hearing and Legal staff of the ABC in Sacramento for processing, and the local investigation will generally be deferred until the protest is resolved either by denial or issuance, with or without conditions. Because an interim permit is available if the ABC is recommending issuance, however, counsel should continue to question the investigator in order to establish the issuance recommendation.



## POST-CLOSING CONSIDERATIONS

After the transaction closing and the issuance of the retail liquor license, counsel should provide general advice about compliance with ongoing ABC qualification requirements. For example, specified entity changes must be reported to the ABC within 30 days, and new officers, directors, managers, and 10-percent-or-more shareholders, partners, and members must undergo qualification and investigation procedures. [Bus & P C §§23405, 23405.1, 23405.2; 4 Cal Code Regs §68.5](#). If the ABC finds the new officer, director, manager, or owner unqualified, he or she must be removed as a condition of continued licensure.

It is also wise for counsel to retain a complete, executed set of all documents filed with the ABC. If subsequent events require retransfer of a license, the prior licensing file will be an invaluable starting point for the new project.

It has been the author's experience that 90 percent of counsel's work in ABC retail license transfers takes place in the planning and documentation preparation stages of the transaction. Most problems that are capable of resolution are disclosed and developed at these stages.

## HANDLING THE "MOM-AND-POP" LIQUOR LICENSE TRANSFER

Transfer of an operating business by sole proprietors at a single-premises retail location can be less complicated than the situations outlined above. The minimum personal documentation required (assuming that the transferees and the transferors are married, with both spouses being named as licensees) consists of:

- License Transfer Request (Form 211-A),
- Application Questionnaire (Form 217),
- Individual Personal Affidavits (Form 208A),
- Individual Financial Affidavits (Form 208B),
- Photocopies of Drivers' Licenses,
- Fingerprint cards, and
- Evidence of the source of funds for the purchase price.

The premises documentation consists of:

- Zoning Affidavit (Form 255) and conditional use permit, if required by local zoning,
- Diagram of Licensed Premises (Form 257), and
- Affidavit of Posting (Form 293).

To accomplish the filing of the application for transfer most efficiently, the parties should take the following steps:

(1) Go to the local ABC office and request a package of necessary documents for the transfer (the ABC is predicting that documents will be available on its Web page; if so, it is not necessary to go to the ABC office for them);

(2) Open an escrow (see [Bus & P C §24074](#));

(3) Record a Notice of Intended Transfer (Form 227) in the county in which the premises are located (see [Bus & P C §24073](#)); and

(4) Make an appointment at the appropriate office of the ABC.

It may take as long as four weeks to obtain an appointment to file a transfer application in many local ABC offices. If time is a factor, counsel should try to make an appointment to file the application early in the process.

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**“Unless a protest is filed or other complications arise, the license should be issued within 60–90 days after the ABC accepts the application.”**

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The forms should be completed but not signed. Both transferors and transferees should appear at the ABC appointment, bringing with them a certified copy of the recorded notice. The ABC staff person will witness the signatures on Forms 211A, 217, and 208A/B, and will supply the Publication Notice (if publication is required), the Posting Notice, and the Affidavit of Posting. If the transferors cannot appear at the ABC, their signatures on Form 211-A must be notarized before the appointment.

After the ABC has accepted the application, the parties must make any required publication, post the premises, return the Affidavit of Posting within 15 days, deposit the consideration into escrow within 30 days, and execute and send to the escrow agent Form 226 (Statement re Consideration). The transferees must also complete the LiveScan fingerprinting process. If the transferees have requested a Temporary Permit To Operate (see [Bus & P C §24045.5](#)), the ABC will issue the permit effective no sooner than 5 days after the application is filed. It is valid for 120 days. Unless a protest is filed or other complications arise, the license should be issued within 60-90 days after the ABC accepts the application. If issuance is delayed, the transferees should apply for an extension of the temporary permit beyond the initial 120-day period.

**COMMENT:** A person who applies for an alcoholic beverage license in his or her name alone (*i.e.*, not

with a spouse and not through a corporation or limited liability company) must complete Form 69, Statement of Citizenship, Alienage, and Immigration Status for State Public Benefits. This form is not required if two

### **HYPOTHETICAL**

In accordance with an Asset Purchase Agreement (Agreement), Foreign Corporation Subsidiary (FCS), a California corporation formed for acquisition purposes, proposes to purchase certain business operations from California Corporation (CC) with a combination of equity and debt secured by the transferred assets. The assets to be purchased (and the ABC licenses involved) include:

- (1) a restaurant in San Francisco that holds a Type 47 on-sale general eating place liquor license;
- (2) a grocery store in San Diego County that holds a Type 21 off-sale general liquor license obtained one year before the date of the Agreement (when CC won an ABC priority drawing; see discussion above); and
- (3) a 75-percent share ownership in CC-Subsidiary (CCS), which owns a gourmet grocery store in Orange County that holds a Type 20 off-sale beer and wine liquor license (the other 25 percent of the stock of CCS is owned by CCS-1, the president and general manager of CCS).

Foreign Corporation (FC), the 100-percent parent of FCS, is a Delaware corporation owned equally by four shareholders (A, B, C, and E). FC's president and one of its directors, A, is a single man residing in Seattle, Washington, who has a felony conviction on his record as a result of a fraud that occurred in 1975 when A was a young man. FC's secretary-treasurer, B, is a married individual residing in San Francisco, California, who recently sold a licensed beer distribution business and who has invested the proceeds from that sale in FC. C is a two-member Delaware limited liability company managed by two nonmember managers (C1 and C2) who reside in New York City. One 50-percent member is the C1 Family Trust, an off-shore trust formed for the benefit of C1's family, consisting of 22 individuals, with two trustees, C1 and C3. C1 is also a director of both FC and FCS. The other 50-percent member is F, a Delaware limited partnership with C2 as the general partner and 20 limited partners, none owning more than 10 percent. E is a New York

persons apply for a license or if one person applies as sole member of a limited liability company or sole shareholder of a corporation.

Stock Exchange-listed corporation. One of its officers, E1, is a director of both FC and FCS.

After the acquisition, FCS intends to employ A as its president and B as its secretary/treasurer in a San Francisco office. A and B will serve as president and secretary/treasurer, respectively, of CCS; and A, B, and CCS-1 will be appointed as the three directors of CCS following the completion of the transaction. The manager of the San Francisco restaurant, now employed by CC, will be retained by FCS in his present capacity after the acquisition, in accordance with an employment agreement. However, you have reason to believe that the manager of the San Francisco restaurant, although a loyal and effective employee of CC, may have hidden from his employer a police record of three felony convictions for drug-related offenses, the last of which was seven years ago. CC did not qualify this person as a manager with the ABC.

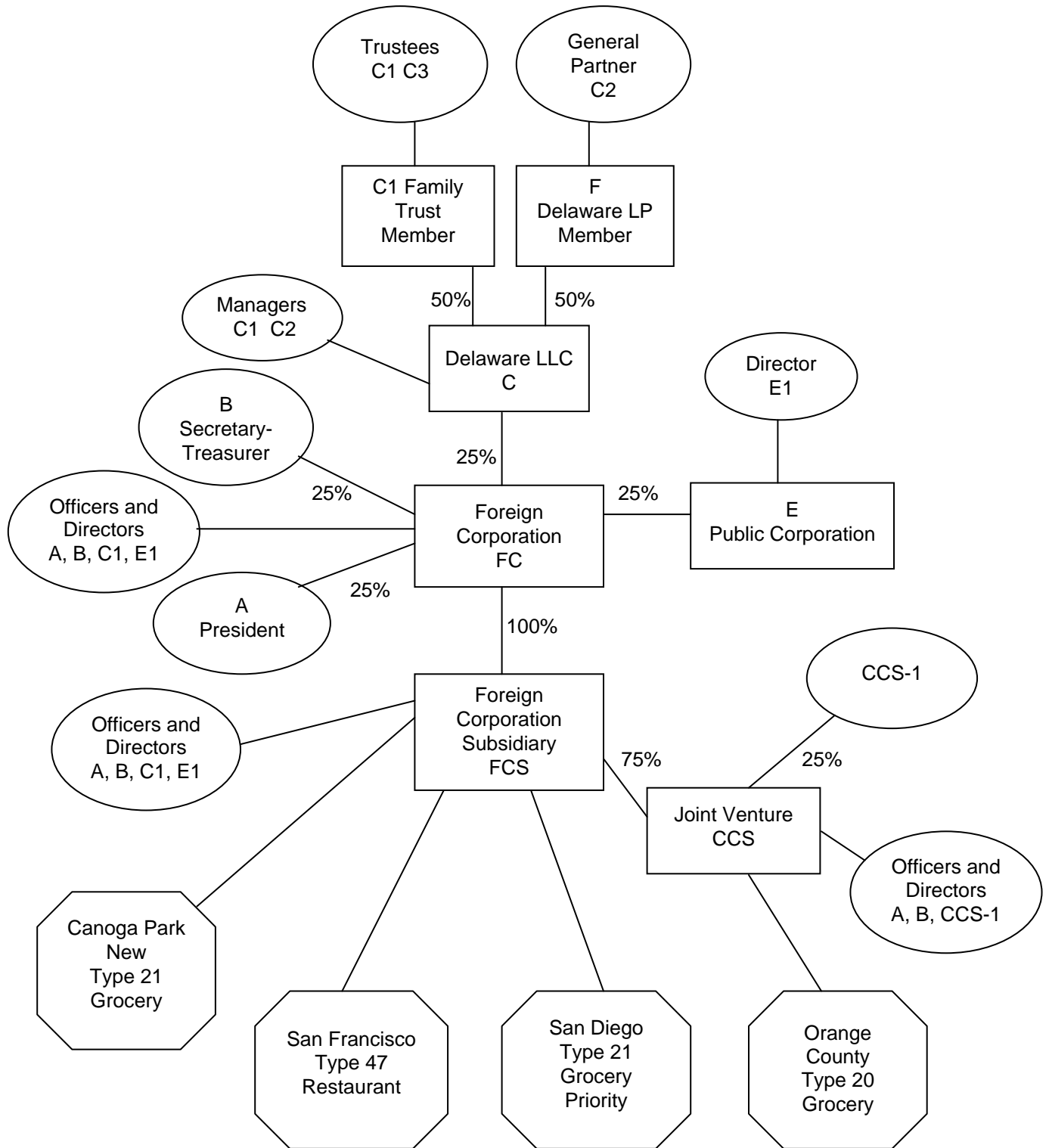
FCS has asked your advice on how to process the transfers of the existing ABC retail licenses so that all assets can be transferred on completion of due diligence, which is expected to take 30 days.

FCS has further informed you that it plans to apply for the double transfer of a Type 21 general off-sale license for a new grocery store to be opened in Canoga Park (Los Angeles County) within six months after the completion of the acquisition. You have been informed that a local Canoga Park association of concerned citizens intends to file a protest against the premises-to-premises transfer of the Type 21 general off-sale retail license necessary to open the proposed store because it is located in a designated high-crime area with an over-concentration of licenses. However, the local Chamber of Commerce supports the proposed location because FCS's presence will encourage other upscale retail merchants to relocate into the area.

Other lawyers are working on the corporate, tax, and other ramifications of the asset purchase. Your task is to advise FCS on how to process the alcoholic beverage licensing portion of the transaction.

The following diagram summarizes the transactions.

DIAGRAM OF TRANSACTIONS



## “Red Flags” and Special Regulations

The hypothetical includes a number of common “red flag” facts that should alert a practitioner to consult special regulations:

(1) The security provisions of the agreement should be examined for compliance with [Bus & P C §24076](#), which prohibits pledging a liquor license as security for a loan.

(2) The Type 21 “priority” license held by the San Diego grocery store is subject to [Bus & P C §§24070\(c\) and 24079](#), which prohibit the transfer of a priority license for two years except in [Bus & P C §24071](#) or hardship situations.

(3) A’s early criminal record may disqualify him under [Bus & P C §23958](#) unless appropriate evidence of rehabilitation is submitted.

(4) The ultimate ownership of C by a trust requires qualification of both the trust and the trustee (see *In re Local 38 Convalescent Trust Fund (June 29, 1973) ABC App Bd No. AB-3486*).

(5) The hidden criminal record of the San Francisco restaurant manager triggers [Bus & P C §23788.5](#) and [4 Cal Code Regs §57.6](#) requirements and may bar his employment by FCS.

(6) E’s status as a public corporation exempts it from the stockholder recordkeeping and reporting requirements that otherwise apply to corporations ([Bus & P C §23405\(c\)\(1\)](#)).

(7) B’s recent sale of his licensed beer distribution business may result in his disqualification under the tied-house laws ([Bus & P C §§25500–25511](#)) if he maintains any interest in the transferred business (e.g., a promissory note from the buyers of his business for the balance of the purchase price).

(8) Even though the parties want control of the assets to be transferred at the completion of due diligence, the seller cannot receive the consideration out of the escrows until after ABC approval.

(9) Any temporary operating permit issued to the buyer in order to transfer operating control of the assets in accordance with the parties’ schedule triggers the special COD rules described in [Bus & P C §24045.5](#), and the buyer and seller run the risk that the transfer could ultimately be denied, with resulting “unwind” problems for the parties.

(10) The protest likely in the Canoga Park project may result in a substantial delay of FCS’s planned store opening and require issuance of an interim permit to operate under [Bus & P C §24044.5](#).

## Planning for the Transfer: Initial Steps

### Review the Agreement

Counsel should review the underlying sales agreement, noting whether ABC approval is specified as a condition to consummation of the transaction, whether the consideration and security arrangements are lawful, and whether the purchase price has been properly allocated.

### Escrow of Consideration

CC and FCS will be able to allocate the purchase price among the assets in such a way that CC will not be required to wait 60-90 days to receive all of the consideration. However, the parties must allocate the consideration among the assets and businesses in their written agreement and separately state a reasonable consideration for each “licensed business.”

The consideration allocated to the purchase of the 75-percent stock interest in CCS need not be placed in escrow. Depending on whether the bulk transfer requirements are waived, CC can receive this consideration at closing.

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**“Each location should have a separate escrow. While this is more expensive, it has the advantage of making only the appropriate amounts of consideration available to the creditors of each separate licensed business.”**

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For the San Francisco restaurant, any consideration allocated to real property interests need not be placed into escrow if the parties specify the allocation to real property and if the balance of the consideration is “reasonably” allocated to the liquor-licensed business (license, furniture, goodwill) at the restaurant. An on-sale general eating place license requires that food be available, so allocation to the liquor-licensed business should include assets related to food preparation and service as well as alcoholic beverage sales and service.

The parties’ allocation for the liquor licensed San Diego grocery store can exclude real property, non-liquor inventory, and furniture, fixtures, and equipment unrelated to the sale of alcoholic beverages. Funds to be placed into escrow for this location must include, at a minimum, the allocation for the license, the cost of the liquor inventory being transferred, and the value of any furniture, fixtures, and equipment devoted to the sale of alcoholic beverages.

Each location should have a separate escrow. Although this is more expensive, it has the advantage of making only the appropriate amounts of consideration available to the creditors of each separate licensed business. It also offers the possibility that if one license issues ahead of the others, the other licensed premises can end their "cash-only" status earlier than otherwise would be possible.

### Prepare a Diagram (Flow Chart) and Checklists

For any licensing project, it is very useful to construct a flow chart (see the diagram on p 81) and planning checklist (see appendix) at the outset. This should be done with the help of persons who are most likely to have complete information about the licensee's ownership structure.

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**"The ABC will not accept partial submissions, so counsel must be assured that all required individuals have completed the necessary papers before scheduling an appointment with the ABC."**

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Using a diagram and checklist ensures that all necessary entity and individual forms are completed and submitted to the appropriate ABC office. The flow chart is useful when explaining the transactions and entities to the ABC, can serve as a basis on which to request waivers of certain requirements (such as fingerprints for out-of-state spouses), and can often help expedite the processing of application materials. Most importantly, the flow chart and planning checklist can ensure that no required persons are omitted from the licensing process.

Counsel generally should circulate the required forms to all individuals (and spouses of 10-percent-or-more shareholders or other owners) identified in the charts, requesting that the completed forms be returned to counsel for checking. By careful monitoring of the Form 208A/B personal and financial affidavits and drivers' license copies, counsel can maintain control of the process and effectively keep the client advised of the application's progress and the expected timing of submission of documents to the ABC. The ABC will not accept partial submissions, so counsel must be assured that all required individuals have completed the necessary papers before scheduling an appointment with the ABC.

### Establishing a Base File

When a single licensee (FCS in the hypothetical) will hold three or more licenses in more than one county, the ABC allows the licensee to establish a single "base file" in which all original personal and corporate qualification documents will be held. This spares the licensee from submitting duplicate original qualification documentation in each ABC district office in which the same entity holds a license, and focuses in one location the ABC investigative effort concerning the persons and entities involved. Typically, the base file is established at the request of the licensee in the district office of its choice, generally the office where most of the licensed premises or the licensee's corporate headquarters are located.

In our case, San Francisco, where B intends to set up the corporate offices, is the most appropriate location to request creation of a base file. However, because the hypothetical actually involves two different transferee entities (*i.e.*, FCS as transferee of the San Diego and San Francisco properties; CCS "as newly constituted" as transferee of the Orange County property), the San Francisco base file is appropriate only for the transactions in which San Francisco-based FCS is the transferee. Although in some cases the ABC will consider using base-file information in other-licensee filings, the Orange County District Office may require duplicate documentation for the CCS transaction.

### ABC Appointments and Timing of Process

The timing for final ABC approval of the transfer varies, depending on the circumstances. Final approval of a license transfer takes at least 30 days (because of the 30-day posting requirement). Most ABC district offices presently estimate that processing takes from 60 to 90 days or more. In the author's experience, this estimate is accurate. Further, most ABC district offices require that appointments for filing be made from one to three weeks in advance of the filing date. Considering that processing cannot begin until the complete documentation package is filed, counsel should be cautious in advising clients of realistic time estimates for project completion. If time is tight, counsel should make an early filing appointment with the district office that will handle the transaction.

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**Appendix****CHECKLIST 1.***Qualification  
of Buyer***QUALIFICATION OF BUYER—DOCUMENT PLANNING CHECKLIST**

This checklist identifies the documents that must be submitted for the following entities:

**1. Corporate Qualification Filings for FCS  
(as proposed licensee and shareholder of CCS)**

- Corporate Questionnaire (Form 243) (for CCS filings)
- Certification—Tied House (Form 140)
- Articles of incorporation
- Stock register and copies of share certificates
- Minutes of appointment of officers and directors
- Permit to issue stock or evidence of exemption (may be waived)
- Notarized Personal/Financial Affidavits (Form 208A/B) from:
  - A as president and director of FCS;
  - B as secretary/treasurer and director of FCS; and
  - C1 and E1 as directors of FCS
- Drivers' license copies from A, B, C1, and E1
- Letter describing evidence of rehabilitation of A
- United States Bureau of Alcohol, Tobacco and Firearms Special Tax Registration on Form ATF F 5630.5 (not part of ABC application)

**2. Corporate Qualification Filings for FC  
(as parent company of FCS)**

- Corporate Questionnaire (Form 243)
- Certification—Tied House (Form 140)
- Articles of incorporation
- Stock register and copies of share certificates
- Minutes of appointment of officers and directors

- \_\_\_ Notarized Personal/Financial Affidavits (Form 208A/B) from:
  - \_\_\_ A as president, director, and shareholder of FC (same as above);
  - \_\_\_ B as secretary/treasurer and shareholder of FC (same as above); and
  - \_\_\_ C1 and E1 as directors of FC (same as above)
- \_\_\_ Additional notarized Personal/Financial Affidavits (Form 208A/B) from A's and B's wives, as spouses of FC shareholders
- \_\_\_ Drivers' license copies from A's and B's wives

### **3. Limited Liability Company Qualification Filings for C (as 25-percent shareholder of FC)**

- \_\_\_ Limited Liability Company Questionnaire (Form 256-LLC)
- \_\_\_ Certification—Tied House (Form 140)
- \_\_\_ Articles of organization (Form LLC-1)
- \_\_\_ Signed copy of operating agreement
- \_\_\_ Minutes appointing managers, unless appointed in operating agreement
- \_\_\_ Notarized Personal/Financial Affidavits (Form 208A/B) from C1 as manager of C (same as above)
- \_\_\_ Additional notarized Personal/Financial Affidavits (Form 208A/B) from C2 as manager of C
- \_\_\_ Driver's license copy from C2

### **4. Trust Qualification Filings for Trustees of C1 Family Trust (as 50-percent member of C)**

- \_\_\_ Copy of trust agreement, with identification of beneficiaries
- \_\_\_ Certification—Tied House (Form 140)
- \_\_\_ Notarized Personal/Financial Affidavit (Form 208A/B) of C1 as trustee (same as above)
- \_\_\_ Additional Notarized Personal/Financial Affidavits (Form 208A/B) from C3 as trustee
- \_\_\_ Driver's license copy from C3

### **5. Limited Partnership Qualification Filings for F (as 50-percent member of C)**

- \_\_\_ Limited Partnership Questionnaire (Form 256)
- \_\_\_ File-stamped copy of LP-1

- \_\_\_ Copy of Limited Partnership Agreement
- \_\_\_ Certification—Tied House (Form 140)
- \_\_\_ Notarized Personal/Financial Affidavit (Form 208A/B) of C2 as general partner (same as above)
- \_\_\_ Notarized Personal/Financial Affidavit (Form 208A/B) from C2 spouse as spouse of general partner
- \_\_\_ Driver's license copy from C2's spouse

**6. Corporate Qualification Filings for E  
(as 25-percent shareholder of FC)**

- \_\_\_ Corporate Questionnaire (Form 243)
- \_\_\_ Certification—Tied House (Form 140)
- \_\_\_ Most recent annual report

**7. Stock Transfer Filing for CCS  
(more than 50-percent change in shareholders)**

- \_\_\_ Corporate Questionnaire (Form 243)
- \_\_\_ Certification—Tied House (Form 140)
- \_\_\_ Articles of incorporation
- \_\_\_ Stock register and copies of share certificates
- \_\_\_ Minutes of appointment of officers and directors
- \_\_\_ Notarized Personal/Financial Affidavits (Form 208A/B) from:
  - \_\_\_ CCS-1 (as officer, director, and 25-percent shareholder of CCS) if current personal affidavit on file is more than 6 months old;
  - \_\_\_ A as officer and director of CCS (may be incorporated from above filings)
  - \_\_\_ B as officer and director of CCS (may be incorporated from above filings)
- \_\_\_ Corporate Questionnaire (Form 243) for FCS and its parent entities (with all supporting documentation submitted above)



**CHECKLIST 2.**

License  
Transfers

**LICENSE TRANSFERS—DOCUMENT PLANNING CHECKLIST****1. San Francisco Restaurant (On-Sale Type 47)**

- Escrow opened
- Notice of Intended Transfer (Form 227) recorded in San Francisco
- Application for Alcoholic Beverage License (Form 217) signed, with notarized signatures, by two officers of FCS
- License Transfer Request (Form 211-A) signed, with notarized signatures, by two officers of CC, including initials to allow Temporary Operating Permit
- Premises qualification documents:
  - Zoning Affidavit (Form 255) and conditional use permit if required by local zoning
  - Diagram of Licensed Premises (Form 257) completed and signed on both sides of form
- Statement re Consideration Deposited into Escrow (Form 226) furnished to escrow holder
- Affidavit of Posting (Form 293) filed with ABC within 5 days after posting
- Affidavit of newspaper publication of notice filed with ABC after publication

**2. San Diego Grocery Store (Off-Sale Type 21)**

- Escrow opened
- Notice of Intended Transfer (Form 227) recorded in San Diego County
- Application for Alcoholic Beverage License (Form 217) signed, signatures notarized, by officers of FCS as Transferee
- License Transfer Request (Form 211-A) signed, signatures notarized, by officers of CC, including initials to authorize Temporary Operating Permit
- Premises qualification documents:
  - Zoning Affidavit (Form 255) and conditional use permit if required by local zoning
  - Diagram of Licensed Premises (Form 257) completed and signed on both sides of form
- Statement regarding Consideration Deposited into Escrow (Form 226) furnished to escrow holder

- \_\_\_ Affidavit of Posting (Form 293) filed with ABC within 5 days after posting.
- \_\_\_ Petition to Condition License (carryover of restrictions on transfer until 2- and 5-year periods elapse)

### **3. CCS-Orange County Grocery Store (Off-Sale Type 20)**

- \_\_\_ Notice of Transfer of Corporate Stock (Form 227-A) recorded in Orange County
- \_\_\_ Application for Alcoholic Beverage License (Form 217) signed, signatures notarized, by officers of CCS
- \_\_\_ Premises qualification documents should be waived by district office
- \_\_\_ Affidavit of Posting (Form 293) filed with ABC within 5 days after posting

### **4. New Grocery Store in Canoga Park (Off-Sale Type 21)**

- \_\_\_ Escrow opened
- \_\_\_ Record Notice of Intended Transfer (Form 227) in Los Angeles County
- \_\_\_ Application for Alcoholic Beverage License (Form 217) signed, signatures notarized, by officers of FCS as transferee
- \_\_\_ License Transfer Request (Form 211-A) signed by transferor(s), signatures notarized, of open-market license.
- \_\_\_ Premises qualification documents:
  - \_\_\_ Statement/Information re Residences (Rule 61.4) (Form 247)
  - \_\_\_ Statement re Schools, Churches, Hospitals, Public Playgrounds, Parks and Youth Facilities (Form 251)
  - \_\_\_ Zoning Affidavit (Form 255) and conditional use permit if required by local zoning
  - \_\_\_ Diagram of Licensed Premises (Form 257) completed and signed on both sides
  - \_\_\_ 500-foot mailing to local residences (Form 207-E)
  - \_\_\_ Proof of 500-foot mailing filed with ABC (Form 207-F)
- \_\_\_ Statement regarding Consideration Deposited into Escrow (Form 226) to escrow holder
- \_\_\_ Affidavit of Posting (Form 293) filed with ABC within 5 days after posting
- \_\_\_ Affidavit of Publication of Notice of Intention (Form 207-E).

**TABLE.**  
*ABC and  
 BATF Forms*

**KEY ABC AND BATF FORMS**

<b>ABC FORM</b>	<b>DESCRIPTION</b>
69	Statement of Citizenship, Alienage, and Immigration Status for State Public Benefits
140	Certification Concerning Chapter 15 Tied-House Restrictions
207	Public Notice of Application To Sell Alcoholic Beverages (posting notice, premises-to-premises transfer)
207-A	Notice of Application To Sell Alcoholic Beverages (one-time publication)
207-B	Public Notice of Application for Ownership Change (posting notice, person-to-person transfer)
207-C	Notice of Application To Sell Alcoholic Beverages (3-time publication)
207-E	Notice of Intention To Engage in the Sale of Alcoholic Beverages (mailed notice to residences within 500' radius)
207-F	Declaration of Service by Mail (re Residences 500' Radius)
208A	Individual Personal Affidavit
208B	Individual Financial Affidavit
211-SIG	Application Signature Sheet (for applications not signed at the District Office)
211-A	License Transfer Request
217	Application Questionnaire
226	Statement re Consideration Deposited in Escrow
227	Notice of Intended Transfer of Retail Alcoholic Beverage License Under <a href="#">Sections 24073 and 24074, California Business and Professions Code</a> (recorded-asset transfer)
227-A	Notice of Intended Transfer of Retail Alcoholic Beverage License Under <a href="#">Section 24071.1 or 24071.2, California Business and Professions Code</a> (recorded-stock transfer)
231	License Action Request
243	Corporate Questionnaire
247	Statement/information re Residences (Rule 61.4)
251	Statement re Schools, Churches, Hospitals, Public Playgrounds, Parks and Youth Facilities
255	Zoning Affidavit
256	Limited Partnership Questionnaire
256-LLC	Limited Liability Company Questionnaire
257	Diagram of Licensed Premises

ABC FORM	DESCRIPTION
293	Affidavit of Posting
ATF FORM	
F 5630.5	Special Tax Registration and Return

**FORM.**

Asset Purchase  
Agreement:  
Contract Provision

**ASSET PURCHASE AGREEMENT**

— *[Paragraph No.]* — **Liquor Licenses and Associated Assets.** On the terms and subject to the conditions contained in this Agreement, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase and accept from Seller, the Liquor License Assets, free and clear of all Encumbrances other than Permitted Encumbrances. As used in this Agreement, the “Liquor License Assets” means Alcoholic Beverage License No. — *[number]* — (Liquor License), and liquor beverages, barware, and other assets owned by Seller that cannot be transferred before the sale of the Liquor License. Notwithstanding anything in this Agreement to the contrary, the Liquor License Assets shall be transferred to Buyer under the terms and subject to the conditions set forth in Exhibit — *[specify letter]* — attached and incorporated by this reference. The parties acknowledge and agree that the Liquor License Assets shall be transferred after the Closing and that such transfers are conditioned on the approval of the Department of Alcoholic Beverage Control (ABC). If the ABC fails to approve the transfer of the Liquor License Assets, then, except as otherwise agreed to by the parties in writing, the failure

*[Add one of the following alternatives:]*

*[Alternative 1: For Seller]*

(a) shall not constitute a default by Seller of this Agreement, (b) shall not affect or impair the terms and conditions of this Agreement, and (c) shall not provide Buyer with any rights or remedies to rescind, cancel, or modify this Agreement or the transactions contemplated by this Agreement.

*[Alternative 2: For Buyer]*

shall give Buyer the option to rescind this Agreement and return the Liquor License Assets to Seller and require that Seller return any consideration received by Seller under this Agreement.

[Continue]

## EXHIBIT \_\_[specify letter]\_\_ TO ASSET PURCHASE AGREEMENT

## Transfer of Liquor License Assets

1. *Transfer of Assets.* Subject to the terms and conditions of this Agreement and subject to the approval by the California Department of Alcoholic Beverage Control (ABC), Seller agrees to sell and Buyer agrees to purchase the Liquor License Assets.

2. *Allocation of Price.* The purchase price for the Liquor License Assets (Liquor Assets Purchase Price) shall be allocated as follows:

License	\$ _____
Furniture, Fixtures, and Equipment	\$ _____
Inventory	\$ _____
Goodwill	\$ _____
<b>TOTAL</b>	<b>\$ _____</b>

3. *License Escrow.*

a. To effectuate the transfer of the Liquor License Assets and to comply with California [Business and Professions Code §24074](#) (all further statutory references in this Exhibit are to the California Business and Professions Code), concurrently with the Closing, Seller shall open an escrow for the transfer of the Liquor License Assets (License Escrow) with \_\_[name and address of escrow holder]\_\_ (License Escrow Holder).

b. As of the Closing, (1) Buyer shall deposit the Liquor Assets Purchase Price into the License Escrow and (2) Seller shall execute Section I of Form 226 and deliver it to the License Escrow Holder. The License Escrow Holder shall then execute Section II of Form 226 and file it with the ABC in \_\_[specify location]\_\_, to advise the ABC that the Liquor Assets Purchase Price has been deposited into escrow.

c. The License Escrow Holder is instructed to complete the sale and purchase of the Liquor License Assets under the terms of this Agreement and applicable statutes. The parties acknowledge that the terms and conditions of the License Escrow shall be conducted under [Bus & P C §§24049 and 24074–24082](#), and that the License Escrow Holder is authorized and instructed to handle creditor claims and obtain tax releases in accordance therewith. The License Escrow Holder is hereby directed, and may be directed further by supplemental escrow instructions, to handle funds under [Bus & P C §§24049, and 24070–24082](#).

4. *Application to the ABC.* On opening of the License Escrow, Seller and Buyer agree to file an application with the ABC for the transfer of the Liquor License. Seller and Buyer further agree to execute, concurrently with the filing of the application, documents reasonably requested by either party to permit Buyer to operate the business under a [Bus & P C §24045.5](#)

temporary operating permit, effective on the later of the closing date or not less than five (5) days following the date of filing the application.

**5. *Conditions to Closing.*** Consummation of the transfer of the Liquor License is contingent on the approval of the ABC. The parties acknowledge and agree that the actual close of the License Escrow shall be on or immediately following the ABC approval of the transfer of the applicable Liquor License from Seller to Buyer.

**6. *Additional Documentation.*** Seller and Buyer agree to execute a Notice to Creditor of Bulk Transfer/Notice of Intention to Transfer Liquor License  *[unless exempted or waived by Buyer]* , a bill of sale, and all additional documents reasonably requested by either party to close the License Escrow. The License Escrow Holder will be authorized to use and deliver all such documents reasonably requested by either party to complete the terms and purpose of the License Escrow.

**7. *Further Assurances.*** The parties agree that they will do all things reasonably requested, including but not limited to responding quickly to requests from the ABC, to accomplish the processing of the transfer application.

**8. *Fees and Costs.*** Seller and Buyer shall each pay half of the escrow fees. Buyer shall pay all other application and other costs (other than Seller's attorney fees) in connection with the application filed with the ABC or the transfer of the Liquor License Assets.

**9. *Agreement.*** Seller and Buyer understand and acknowledge that all other terms and conditions of the transfer not otherwise stated in this Exhibit, or not in conflict with the terms hereof or the transfer contemplated hereby, shall be in conformity with the terms and conditions of the Agreement.

Please read carefully and sign below.

*I have read all of the above and declare under penalty of perjury that each and every statement is true, correct and complete.*

CA

93

21. APPLICANT SIGNATURE <b>X</b>		22. TITLE
23. DATE	24. PLACE	25. ATTEST (ABC Employee or Notary Public)

FC

I/we hereby authorize the Department of Alcoholic Beverage Control, or any of its officers, to examine and secure copies of financial records consisting of signature cards, checking and savings accounts, notes and loan documents, deposit and withdrawal records, and escrow documents of my/our financial institution(s) or any financial records established in connection with this business. This authorization to examine records at any financial institution may be revoked at any time. I/we also authorize the Department of Alcoholic Beverage Control, or any of its officers, to examine and secure copies of any business records or documents established in connection with this business including, but not limited to those on file with my/our bookkeeper.

I/we also read all of the above and declare under penalty of perjury that each and every statement is true and correct.

9. APPLICANT SIGNATURE

X

10. DATE

11. PLACE

12. ATTEST (ABC Employee or Notary Public)





