

# New York Liquor Laws and Licensing

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# The Four Questions



# STATE REGULATION OF LIQUOR SALES

A. Policy. It is necessary to regulate and control the manufacture, sale and distribution of alcoholic beverages for the “purpose of fostering and monitoring temperance in their consumption and respect for and obedience to law.”

B. State’s Powers. The State’s exercise of strict control of all traffic in alcoholic beverages to protect the health, welfare and safety of the public is a proper exercise of its police power. The ABC Law is exclusive and statewide in scope. Regulation is a right granted to the State by the Twenty First Amendment.

C. Executive Authority. The State Liquor Authority (“SLA”) is created in the Executive Department to determine whether the “public convenience and advantage” will be promoted by the issuance of licenses to traffic in alcoholic beverages. The SLA has broad discretionary authority to issue or not issue a license. It is a privilege; there is no inherent right to a liquor license.



# STATE REGULATION OF LIQUOR SALES

## (Contd.)

### D. Powers of SLA include:

1. To issue or refuse to issue licenses or permits.
2. To limit the number of licenses of each class to be issued.
3. To revoke, cancel or suspend licenses or permits for cause, and to impose civil penalties.
4. To hold hearings and subpoena witnesses.
5. To prohibit the sale of alcoholic beverages during public emergency.
6. The State cannot control personal use.

E. License Required. No person may sell any alcoholic beverage at retail within the State without first obtaining the appropriate license therefor. Violation of this provision is a misdemeanor.

F. Licenses Not Transferable. A license cannot be transferred to any other person or any other premises except in the discretion of the Authority. It may not be pledged or deposited as collateral security. It is the policy to prevent undesirable persons, ineligible to secure a license, from operating a liquor business through another licensee as a “blind.”

# TYPES OF RETAIL LICENSES

## A. On-Premises Licenses.

1. License to sell liquor at retail for consumption on premises.
2. Special license to sell liquor at retail for consumption on-premises.
3. Hotel License.
4. Cabaret Liquor License.
5. Wine and/or Beer Licenses.
6. Summer or winter licenses.

## B. On-Premises Licenses Not Open to General Public

1. Not-for-profit Club Licenses.
2. Catering Establishment License.



# TYPES OF RETAIL LICENSES (Contd.)

## C. Off-Premises Licenses.

1. Beer.

2. Liquor Store.

(i) No person can hold directly or indirectly more than one package store license in New York.

(ii) Applicant must show that licensing the premises would serve the public convenience and advantage.

(iii) No other business can be conducted on the licensed premises.

(iv) SLA can consider growth activity, density of population, proximity of other stores and decline in their sales.

# TYPES OF RETAIL LICENSES (Contd.)

## D. Special Permits.

1. Liquidator's Permit. A licensee who is liquidating or selling his business may sell his entire stock of alcoholic beverages to another licensee with a liquidator's permit. The alcoholic beverages sold must be in the original sealed containers.

2. Temporary Retail Permit for Transfer Applications. This may be issued to the transferee of a retail license to continue the operation of a retail premises during the period of a transfer application. Issuance of the permit is no assurance that the transfer application will be granted. The conditions and requirements of such a permit are:

- The premises shall have been operated under a retail license within 30 days of the date of filing the application for a temporary permit.
- The retail license for said premises shall have been deposited into safekeeping pursuant to the rules of the SLA.
- The applicant for the temporary permit shall have filed with the SLA an application for transfer of the retail license at such premises.

3. Temporary Permits for New Applications. Does not apply in New York City or where the 500 Foot Rule applies.

4. Caterer's Permit. A permit may be issued to on-premises licensees, effective for 24 hours, to sell alcoholic beverages at a particular private affair, function, occasion or event that is catered in a hotel, restaurant club or ballroom premises other than their own licensed premises and in premises not covered by any other license, and which function is not open to the general public.

5. All Night Permit.

6. Beer and wine permit.



# TYPES OF RETAIL LICENSES (Contd.)

## D. Other Applications

1. For approval of Corporate Change/Endorsement. Community Board notice is required if 80% or more is transferred.
2. For permission to make alterations to Premises.
3. Renewals.
4. Petition to Remove.
5. Change in Method of Operation.



# PERSONS THAT MAY OR MAY NOT BE LICENSED

- A.** A “Person” that can be licensed to sell alcoholic beverages includes an individual, partnership, corporation, society, joint stock company, officer appointed by a club, or a limited liability company.
- B.** The application must disclose the name and residence of each person interested or to become interested in the licensed business, and must disclose the names, ages, citizenship and home address of all officers, directors and shareholders if a corporation (except if there are more than ten shareholders, then only those holding ten percent or more of any class of shares).
- C.** When a landlord or management company has to be joined on the lease.
- D.** In acting upon applications, the SLA shall carefully evaluate the “character, fitness, experience, maturity and financial responsibility of each applicant.”



# PERSONS THAT MAY OR MAY NOT BE LICENSED

## (Contd.)

### E. Persons Ineligible To Be Licensed. The following persons are prohibited from trafficking in alcoholic beverages:

1. A person convicted of a felony, or certain misdemeanors, unless subsequent to each conviction the person has received an executive pardon, certificate of good character from the board of parole, or a certificate of relief from disabilities
2. A person under the age of twenty-one.
3. A person not a citizen of the United States or an alien lawfully admitted for permanent residence. If the applicant is a corporation, it is sufficient if each of its principal officers and more than one-half of its directors are citizens or lawful aliens. Nationals of countries having reciprocal trade treaties with the United States, may not, however, be prohibited from trading in alcoholic beverages.
4. A person who has had any liquor license revoked for cause until the expiration of two years after such revocation.
5. A police commissioner, police inspector or other police official of any police department in the state cannot be directly or indirectly interested in the manufacture or sale of alcoholic beverages. The spouse of such a police official is not so precluded.



# PERSONS THAT MAY OR MAY NOT BE LICENSED

## (Contd.)

F. “Tied House” Rule. It is unlawful for a manufacturer or wholesaler to be interested directly or indirectly in any premises where any alcoholic beverage is sold at retail, or loan any money to any person engaged in the manufacture or sale of any alcoholic beverage at wholesale or retail. The law also prohibits any such person from making any gift or rendering any service of any kind whatsoever to any licensed person which in the judgment of the SLA “may tend to influence such licensee to purchase the products of such manufacturer or wholesaler.” The “tied house” rule is an absolute prohibition and the SLA does not have discretion in the matter. *RIHGA Intern. USA, Inc. v. SLA*, 84 N.Y. 2d 876.

A licensed brewer may apply for a license to sell beer, wine or liquor for on premises consumption in a restaurant owned and operated by him in or adjacent to the brewery for which he is licensed.



# PREMISES THAT MAY BE LICENSED

A. Types of Premises. The types of premises that can be licensed include the following:

1. Premises in which the principal business shall be the sale of food or beverages at retail for consumption on the premises.
2. Premises in which the principal business shall be the operation of a legitimate theatre, concert hall or opera house.
3. Premises in which the principal business shall be the operation of a bowling establishment, public dance hall or night club featuring regularly scheduled cabaret entertainment.
4. Premises that are part of a facility, the principal business of which shall be the providing of adult recreation in the form of golf, tennis, swimming, skiing, ice skating and boating.
5. Premises in which the principal business shall be the accommodation of athletic or sporting events, expositions or other similar events.
6. Excursion and sightseeing vessels, with restrictions.



## PREMISES THAT MAY BE LICENSED (Contd.)

### B. The following requirements apply to licensed premises:

1. No retail license may be granted unless the applicant is the owner, or the lessee under a written lease for a term not less than the particular license period. Short term leasing arrangements or concession agreements from governmental agencies are permitted. A management company may be a licensee.
2. Premises must comply with all statutory requirements, and must conform with all applicable building and fire codes and other governmental regulations.
3. The premises must be under the exclusive dominion and control of the licensee.
4. Each licensed premises shall provide separate sanitary facilities for both sexes. This may be waived by the SLA provided there is a satisfactory showing that such facilities are in an area adjacent or approximate to the licensed premises and available to the patrons thereof.

# PREMISES THAT MAY BE LICENSED (Contd.)

C. 200 Foot Rule. No retail license for on premises consumption of liquor shall be granted for any premises which is on the same street or avenue and within two hundred feet of a building occupied exclusively as a school, church, synagogue or other house of worship.

1. Bona Fide Church or School. If it is not, proscription does not apply. A private chapel offering public meditation and prayer is not a “church.” A nursery school or college is not a “school” within this rule.

2. Same Street or Avenue. The school, church or synagogue must be on the same street or avenue. If it is not, even if it is within 200 feet of the premises to be licensed, that alone is not a proper ground for denial of a license. A school located on a corner may be considered on the same street or avenue as each intersecting street.

3. Exclusive Use. The building must be used exclusively as a church, school or synagogue. This means “principal” or “primary,” and uses incidental to the main exempt purpose will not defeat the exception. A pastor’s apartment or periodic lodging of church members are not deviations from such primary use. Primary use is also not effected by bridal showers or birthday parties or use for educational purposes. Renting out church space for baseball card or jewelry shows was not church exclusive use. The statute was amended in 2007 to identify uses that do not destroy the “exclusivity” requirement. Church may accept payment of expenses to help defray costs related to another party’s use of the building.

# PREMISES THAT MAY BE LICENSED (Contd.)

## C. 200 Foot Rule.

4. How Measured. The measurement is to be taken in a straight line from the center of the nearest entrance of such school, church or synagogue to the center of the nearest entrance of the licensed premises. An emergency door or exit or a door with no exterior hardware is not deemed an “entrance.”

5. No Waiver. A church, school or synagogue cannot waive this prohibition as it is a matter of public policy. (But see 7(c) below.)

6. Beer and Wine. The rule only applies to full liquor, not a beer and wine license.





# PREMISES THAT MAY BE LICENSED (Contd.)

## C. 200 Foot Rule.

### 7. Exceptions to 200 Foot Rule:

a. The proscription does not apply to any premises on or at which a license has been in existence continuously from a date prior to the date when a building on the same street or avenue and within 200 feet has been occupied exclusively as a church, school or synagogue.

b. Renewals will not be denied to any premises maintained as a bona fide hotel, restaurant, catering establishment or club on or prior to December 5, 1933.

c. A license may be issued to a private member not-for-profit club notwithstanding the “200 foot” rule if the club is affiliated or associated with such school, church or synagogue and the school, church or synagogue has filed notice with the SLA that it has no objection.

d. A not-for-profit corporation operating premises as a legitimate theatre provided that the availability of alcoholic beverages shall not be advertised in a manner visible from the street.

e. A hotel liquor license may be granted in which a restaurant liquor license currently exists for premises which serve as a dining room for guests of the hotel and a caterer’s license to a person using the permanent catering facilities of a church, school or synagogue pursuant to a written agreement between such person and the authorities in charge of such facilities.

8. License cannot be denied because of presence of schools, churches or synagogues outside 200 feet.

# PREMISES THAT MAY BE LICENSED (Contd.)

D. 500 Foot Rule. No retail full liquor license for on-premises consumption shall be granted for any premises which shall be in a city, town or village having a population of 20,000 or more, within 500 feet of three or more existing premises licensed and operating with an on-premises liquor license, except that the SLA may issue the license, if after consultation with the municipality or Community Board, and after holding a hearing upon notice to the Community Board and the applicant, it determines that granting the license would be “in the public interest.”

1. Procedural Requirements. The SLA must notify the Community Board at least 15 days in advance of the 500 Foot Rule hearing unless waived; and must state and file in its office its reasons for issuing the license. Failure to specify the reasons is an error of law.

2. Application to Transfer and New Licenses. The 500 Foot Rule applies to an application for new licenses and for transfer of an existing license unless a license has been in existence at the premises continuously on or prior to November 1, 1993.



# PREMISES THAT MAY BE LICENSED (Contd.)

## D. 500 Foot Rule.

3. Measurement Is A Radius. Unlike the 200 Foot Rule, the 500 Foot Rule is not limited to only three or more licensed premises on the same street or avenue.

4. The Public Interest. The SLA may consider any or all of the following in determining whether public convenience and advantage and the public interest will be promoted by the granting of licenses at a particular unlicensed location:

(i) The number, classes and character of licenses in proximity to the location and the particular municipality or subdivision thereof.

(ii) Evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies.

(iii) Effect of the grant of the license on vehicular traffic and parking in proximity to the location.

(iv) The existing noise level at the location and any increase in noise level that would be generated by the proposed premises.

(v) The history of liquor violations and reported criminal activity at the proposed premises. However, alleged criminal activity on the premises standing alone does not warrant disapproval of premises absent showing of ownership interest between new applicant and former owner.

(vi) Any other factors specified by law or regulation that are relevant to determine the public convenience and advantage and public interest of the community.

(vii) Neighborhood opposition is not a sufficient legal reason to deny a license.

(viii) The fact that the licensed premises may generate tax and wage revenues is not a sufficient public interest.

(ix) License cannot be denied on speculation that it would be operated in violation of law, and letters from State legislators and others protesting application does not itself warrant denial.

# PREMISES THAT MAY BE LICENSED (Contd.)

## E. Premises For Which No License May Be Granted

1. See 200 Foot Rule Above.
2. Where a license for any premises has been revoked, the SLA in its discretion may refuse to issue a license for a period of two years after such revocation for the licensed premises or any part of the building containing such licensed premises.
3. Premises permitting gambling may not be licensed, with the exception of playing bingo games or as a simulcast facility or simulcast theatre and the sale of lottery tickets issued under the New York State Lottery Law on the licensed premises.
4. A motion picture theatre. Unless it is a restaurant.

# THE APPLICATION PROCESS

A. Pre-Filing Notice Requirement. Written notification to clerk of the town, village or city, or in the case of the City of New York the appropriate Community Board, of an intent to file an application for an on-premises liquor license must be given not less than 30 days prior to filing an application. This applies to renewals and alterations as well.

B. Community board questionnaire.

C. Appearance at community board.

D. Stipulation on method of operation.

E. Filing Applications with State Liquor Authority. Include personal questionnaires, financial documentation, area survey, bond, personal identification, floor plans, menu, formation documents, certificate of occupancy, lease, source of funds, etc.

F. Post-Filing Notice Requirement. Every person applying for a license must give public notice of the application once a week for two successive weeks. The publication must be made within 10 days after the date of filing with the SLA. Notice in the form prescribed by the SLA must be posted in a conspicuous place at the entrance to the premises. Notice must be posted within 10 days after filing the application and shall remain posted throughout the pendency of the application. Publication is also required upon issuance of the license.



# THE APPLICATION PROCESS (Contd.)

G. Fingerprinting. Beginning January 1, 2010 the DCJS, and the SLA, no longer will accept paper fingerprint cards for in-State individuals. Fingerprints must be taken, with a Live Scan system electronically after the application is filed, although out of State residents may still use ink cards.

H. 500 Foot Rule Hearing.

I. SLA Investigation. The SLA will not approve a license application if there are pending violations against the existing or prior licensee for the same premises..

J. Conditional letter of approval.

K. Self Certification Program. Beginning in September 2009 the SLA approved a temporary self certification program to allow attorneys filing retail applications to certify them and fast track the application.

L. Rehearing or Article 78 proceeding. Exhaust administrative remedies.



# CHANGES AFTER LICENSE ISSUED

A. Change in Facts. If there is any change, after the granting of the license, in any facts required to be set forth in the application, a verified notice of such change shall be filed with the SLA within 10 days of such change. Failure to do so, if willful and deliberate, is cause for revocation.

B. Application for Approval of Corporate Change. A change of the officers, directors or shareholders of a corporate licensee must be first approved by the SLA. A licensee is entitled to a hearing if disapproved. This provision shall not apply if there are 10 or more stockholders and the change involves less than 10% of the stock.

C. Application for Endorsement Certificate. To be filed for a name change of license or address correction, death of a licensee, court appointment of a representative, new owner by gift or inheritance, change of business form from sole proprietorship to a corporation where the sole proprietor remains the sole stockholder, officer and director, and a change of members of an LLC. This also applies for a change in the members of an LLC.

# CHANGES AFTER LICENSE ISSUED (Contd.)

D. Application For Approval of Alterations to Premises. Before any “substantial alteration” to a licensed premises may be undertaken, an application for approval must be made.

1. Substantial Alteration includes any enlargement or continuation of licensed premises, any other physical change that materially effects the character of the premises, material changes to dining or kitchen facilities, any change in location or size of bars. It also includes a decrease of more than 10% in the number of seats, installation of stage, relocation of any entrance or window.

2. Minor Alteration is one costing and valued at less than \$10,000 and which does not materially affect the character of the premises or the physical structure. Notice of minor alterations must be given to the SLA with an affidavit and if the SLA does not object within 20 days permission is deemed granted.

3. No approval is required for replacing booths with tables and chairs and vice versa provided the booths do not exceed 42 inches in height; installing a suspended partition or screen; replacing kitchen equipment.



# CONTINGENCIES

Full vs. partial contingencies in lease and asset purchase agreements.



# REVOCAION, CANCELLATION AND OTHER PENALTIES

Any violation of the ABC Law or the Rules of the SLA can subject licensee to a variety of penalties, including cancellation, revocation, imposition of a fine, forfeiture of the bond, suspension. Additionally, a violation, including making a false statement in a liquor license application, may be a criminal offense. The nature of the penalty imposed is discretionary with the SLA, though it must rest upon a rational basis.



# REVOCAION, CANCELLATION AND OTHER PENALTIES (Contd.)

## A. Common Grounds for Revocation.

1. Sale to minors.
2. Availing.
3. Disorderly premises.
4. Focal point for police attention.
5. Failure to notify.
6. Unapproved alterations.
7. Unlicensed security.
8. Violation of method of operations.
9. Not bona fide.
10. Health, building or fire code violations.
11. Felony conviction.
12. Exceed lawful hours.



# REVOCAION, CANCELLATION AND OTHER PENALTIES (Contd.)

## B. Penalties. ABC Law, Sec. 118.

1. Revocation. Any other licenses held by licensee or its principals may be revoked as well. Licensee cannot reapply for two years.
2. Cancellation. Licensee may immediately reapply.
3. Proscription. The SLA may proscribe the premises from any future licenses for two years.
4. Suspension, monetary fine, bond claim, letter of warning.
5. Conditional no-contest pleas.
6. Nuisance Abatement Proceeding by City of New York.

