

CHANGE OF OWNERSHIP or STRUCTURE

APPLICABLE LAW:

NEW MEXICO LIQUOR CONTROL ACT: 15.11.21.10 DISCLOSURE OF OWNERSHIP:

A. Applicants must fully disclose all ownership interest in the liquor license, as required by Subsection A of Section 60-6B-2 NMSA, upon application for a liquor license, or for transfer of ownership of a liquor license, or for change in structure, or for lease of a license, by filing an application on forms prescribed by the director.

B. The following shall be fully disclosed in writing to the division:

- (1) if the licensee **is a corporation or limited liability company**, the principal officers, directors, and each stockholder known to the corporation as owning more than ten percent of the stock in the corporation, or the manager or members owning more than ten percent of the membership interests in the limited liability company;
- (2) if the licensee **is a trust**, the trustee and any persons entitled to receive regular and substantial distributions of principal and income or benefit from the trust. The director may request a copy of the trust agreement for review, but need not make the trust agreement part of the application;
- (3) if the licensee is an association, all principal officers, and directors;
- (4) if the licensee **is a subsidiary**, all principal officers, directors and stockholders of the parent; however, in the case of a publicly traded corporation, only the names and addresses of those stockholders known to the corporation to own ten percent or more of such securities need be disclosed;
- (5) if the licensee **is a partnership or joint venture**, all of the general partners, limited partners or joint venturers entitled to ten percent or more of the profits earned or other income paid by the partnership;
- (6) **if the parent company**, general partner, limited partner or joint venturer of any licensee **is itself a corporation**, limited liability company, trust, association, subsidiary, partnership or joint venture, **then all of the information required shall be disclosed for the entity as if it were itself a licensee**, so that full disclosure of ultimate ownership is achieved;
- (7) **if one person owns interests** in a corporation, limited liability company, partnership, trust, joint venture or as an individual, in any combination, **that add up to ten percent or more of the total ownership of the license**; and
- (8) The director may require disclosure of additional information to ASSURE FULL DISCLOSURE OF THE APPLICANT'S STRUCTURE AND FINANCIAL RESPONSIBILITY, including structure and financial arrangements enabling actual control and profiting by ineligible persons or entities.

C. The director may determine that any or all of the documents required in Subsection B of 15.11.21.10 NMAC are confidential, and shall be returned to the applicant after sufficient division review and not made a part of the application file. The application file shall note such determinations.

D. **Percent ownership in stock** of a corporation or other entity shall be determined based on the percent ownership in the total amount of stock that has been issued, excluding treasury stock issued to the corporation or other entity.

E. **If any person or entity** holding an office or an interest in the license that is required to be disclosed has been **convicted of a felony in any jurisdiction**, it shall be disclosed.

F. IF THERE IS A CHANGE IN ANY OF THE INFORMATION REQUIRED TO BE DISCLOSED by statute or these rules, the licensee shall provide the necessary information to the division within 30 days of the change unless earlier disclosure or approval is required by the act or these rules. [15.11.21.10 NMAC - Rp, 15 NMAC 11.2.1.10, 4/25/2017]

NMLCA: 15.11.23.8 CHANGE OF OWNERSHIP:

A. **All licensees must notify the division of any reportable change of ownership** of the licensee or agent lessee by filing an application for change in ownership with the division, together with the filing fee shown on the fee schedule of these rules. The division shall determine whether the reportable change of ownership requires an application for change in ownership or an application for change in structure.

B. A reportable change of ownership in a transferrable license **arises when any of the following events occurs** since the last application was filed with the division:

- (1) if the licensee is a **CORPORATION**: when a total of ten percent or more of its stock is transferred or when there is a merger or consolidation of the licensee with another entity;
- (2) if the licensee is a **LIMITED LIABILITY COMPANY**: when ten percent or more of the membership interests are transferred or when there is a merger or consolidation of the licensee with another entity;
- (3) if the licensee is a **GENERAL PARTNERSHIP**: when there is any change or removal of any general partners;
- (4) if the licensee is a **LIMITED PARTNERSHIP**: when there is any change of general partners, or any change of limited partners contributing ten percent or more of the total value of the contributions made to the limited partnership or any change in the limited partners entitled to ten percent or more of the profits earned, or other compensation by way of income paid by the limited partnership;
- (5) if the licensee is a **TRUST**: when there is any change in the trustees or beneficiaries; or
- (6) if the licensee **IS ANY OTHER LEGAL ENTITY** that is not a corporation, limited liability company, general partnership, or limited partnership: any person or entity becomes the owner of ten percent or

more interest through one or more transactions or when a total of ten percent or more interest in the licensee entity or license has been transferred. [15.11.23.8 NMAC - Rp, 15 NMAC 11.2.3.8, 4/25/2017]

15.11.23.9 REPORTABLE CHANGE IN STRUCTURE:

A. All licensees must notify the division of reportable changes in the structure of the licensee by filing an application with the division, together with the filing fee shown on the fee schedule of these rules.

B. A change in structure **arises when the persons or entities with ultimate ownership interests in a license do not change, but the means by which they exercise control will change.** A reportable change in structure is limited to any of the following events:

- (1) any change of manager;
- (2) any change in a principal officer or directors of a licensee that is a corporation or limited liability company;
- (3) any change in the legal entity under which the licensee operates, for example, an individual licensee changing to a corporation which is wholly-owned by the same licensee or between corporate entities wholly owned by the same licensee;
- (4) any change in general partners, or in limited partners who already own ten percent or more, of a partnership;
- (5) any change in ownership between the shareholders who continue to own ten percent or more of any corporate entity;
- (6) a change in subsidiary ownership within the same parent company; or
- (7) any change in the trustee or beneficiary of a trust who has control over trust property and income or receives substantial and regular distributions from the trust.

C. A reportable change of structure required by this section **does not require a hearing** by the division or by the local governing body.

D. THE DIVISION MUST BE NOTIFIED WITHIN 30 DAYS OF A REPORTABLE CHANGE in structure by filing application for change of structure and providing all documents and information the division deems necessary to ensure full disclosure and qualification of all persons and entities. [15.11.23.9 NMAC - N, 4/25/2017]

15.11.23.10 PROHIBITED CHANGES IN OWNERSHIP OR STRUCTURE:

A. A person may not hold a ten percent or more interest in a license when such person would not satisfy the requirements of Sections 60-6B-1 or 60-6B-1.1 NMSA 1978.

B. A noncitizen may hold an interest in a license, subject to other qualifications provided in the act and these rules, unless the director determines that holding such interest in a license would be contrary to the public health, safety and morals of the state, or any community therein.

C. This rule does not authorize the transfer of any stock or other ownership interest of any licensee whose license is not otherwise transferable under the provisions of the act.

D. The director, upon notification of any change in ownership or structure, may require any entity or person who has obtained an interest in any license, or other entity, to complete and provide all documents and information the director deems necessary to **ensure full disclosure and qualification of all persons and entities.**

E. No license will be issued when the applicant is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for which arises out of the exercise of the privilege of a liquor license; **or if citations for violations of the act are unresolved at the time of filing** the application.

[15.11.23.10 NMAC - N, 4/25/2017]

15.11.23.11 CORPORATION NAME CHANGE; BUSINESS NAME CHANGE:

A. A licensee that is a corporation that changes the name of the **corporation must file a written notification** with the division, **together with a fee of fifty dollars (\$50).** The licensee must also file with the division a copy of the **certificate of the amended articles of incorporation** issued by the state in which the corporation was formed reflecting the name change. **The name change must also be registered with the state of New Mexico.**

B. Any licensee that changes the doing business name under which it operates a liquor license must file an application for change of DBA (“doing business as”) name with the division together with the application filing fee.

C. If the division deems the name change acceptable, the division shall change the name on its records and issue a license which reflects the new name. The licensee may not use the new name until a license is issued.

D. Upon receipt of the license reflecting the new name, the licensee shall return the old license to the division. [15.11.23.11 NMAC - Rp, 15 NMAC 11.2.3.9, 4/25/2017]

15.11.23.12 TRANSFER OR CHANGE OF OWNERSHIP UPON DEATH, FORECLOSURE, OR BANKRUPTCY:

A. Dispenser's licenses and retailer's licenses **may be transferred as personal property** upon attachment, execution, repossession by a secured party or lien holder, foreclosure by a creditor, appointment of a receiver for the licensee, death of the licensee, filing of a petition of bankruptcy **by or for the licensee**, incapacity of the licensee or dissolution of the licensee.

B. Any receiver, trustee, conservator, personal representative, special master or other person who obtains control over a license, shall **notify the division within 30 days** of his or her appointment by filing an application including fees and providing the division with all relevant documents relating to the appointment, which may include but not be limited to, death certificates, wills, and court orders.

C. The division will presume that such person or entity will intend to operate said license if the license is not placed into voluntary suspension pursuant to Section 60-6B-7 NMSA 1978 **within 30 days** of the event that resulted in possession, except in cases where the person or entity is:

(1) a special master appointed by a court; or

(2) a financial institution.

D. Any subsequent transfer by a person who obtains possession of a license because of circumstances described in this section **shall be subject to all provisions of the act relating to the transfer of licenses.**

E. **No license will be issued when the applicant is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico**, the liability for which arises out of the exercise of the privilege of a liquor license; or if citations for violations of the act are unresolved at the time of filing the application.

[15.11.23.13 NMAC - Rp, 15 NMAC 11.2.3.10, 4/25/2017]

15.11.23.13 SERVER REPORTS: Licensees must submit reports quarterly to the department listing all servers employed by the licensee in the previous quarter. [15.11.23.13 NMAC - Rp, 15 NMAC 11.2.3.11, 4/25/2017]

NMSA §60-6B-6. Corporate licensees; limited partnership licensees; reporting.

A. A **corporation** that holds a license issued under the Liquor Control Act [~~60-3A-1~~ NMSA 1978] shall notify the director within thirty days after the occurrence of any change in the officers, directors or holders of more than ten percent of the voting stock of the corporation, giving the names and addresses of the new officers, directors or stockholders. A corporate licensee shall also notify the director immediately of a change of agent by filing a new power of attorney. The director shall by regulation define what corporate changes, including but not limited to transfer of stock, merger and consolidation, constitute transfers of ownership of corporate licenses and shall, upon making such a determination, order appropriate compliance with the Liquor Control Act, **provided that a transfer of ownership of a corporate license shall not be deemed to occur where ultimate ownership of the corporation does not change.**

B. A **limited partnership** that holds a license issued under the Liquor Control Act shall notify the director within thirty days after the occurrence of any change of general partners or of limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other compensation by way of income paid by the limited partnership. The director shall by regulation define what limited partnership changes constitute transfers of ownership of limited partnership licenses and shall, upon making such determination, order appropriate compliance with the Liquor Control Act, **provided that a transfer of ownership of a licensee that is a limited partnership shall not be deemed to occur where ultimate ownership of the limited partnership does not change.**

C. A **legal entity** that is not a corporation or limited partnership and that holds a license issued under the Liquor Control Act shall notify the director within thirty days after the occurrence of any change in the trustees, partners, owners or members of more than a ten percent interest in the entity, giving the names and addresses of the new trustees, partners or owners. The director shall by regulation define what entity changes constitute a transfer of ownership of such entity's license and shall, upon making such determination, order appropriate compliance with the Liquor Control Act, **provided that a transfer of ownership of a licensee shall not be deemed to occur where there is no change in the ultimate ownership of the legal entity**