

10 liquor licensing tricks of the trade

By Matthew J. Fogelman



In my years of practicing liquor licensing law before local boards and commissions and the state's Alcoholic Beverage Control Commission, I've picked up a few "tricks of the trade" that may prove helpful to lawyers representing restaurateurs, bar and club owners, supermarkets, hotels, wholesalers and distributors — basically any entity seeking any type of alcohol beverage license.

The list is not intended to be exhaustive by any means, but simply represents some things to keep in mind when helping clients traverse the often-cumbersome licensing maze.

1 Give yourself at least three months from the time the application is submitted to the local municipality until the license is actually issued, and be ready for the process to take even longer than that. Once all the application paperwork is submitted to the town or city, a hearing date is set. If the application is approved at

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the local level, it then goes to the ABCC, where an investigator performs his own inquiry. If approved at the ABCC level, the application goes back to the municipality, which then issues the license. Your clients should understand and appreciate that having experienced counsel on their side can make the process go more smoothly and, hopefully, more quickly.

2 Don't forget to notify the abutters of the hearing for a new license. The hearing for the new license application must be advertised in the local newspaper, with notice sent to abutters by certified mail. The municipality will usually assist with the process. You often have to deal with the assessors' office to obtain the proper abutter list. You also have to give the certified mail return receipts to the town, to show proof of service.

3 Make sure your client has paid all taxes to the commonwealth if a license is being transferred or purchased from another entity. The transferee or buyer needs to make sure the transferor/seller does not owe back taxes, because any delinquency must be resolved with the Department of Revenue and Department of Unemployment Assistance before the license can be approved.

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4 The licensee's manager must be a U.S. citizen. He does not have to be a Massachusetts resident, but is expected to be on the licensed premises for a minimum of 40 hours a week, overseeing the restaurant's liquor operations and staff. If the proposed manager was born overseas, he will have to produce citizenship/naturalization papers. All proposed managers must prove citizenship, usually in the form of a birth certificate.

5 In Massachusetts, the manager's name actually goes on the license itself. You and your client must notify the municipality promptly if the manager abruptly quits, and then you have to apply for a "Change of Manager." Many towns take this quite seriously and will not look upon your client kindly if the manager changes but the municipality is not informed and the client fails to apply, expediently, for the official manager change designation.

6 While the ABCC does not require that all servers be "TIPS-trained" (the alcohol training course commonly available, including online), most towns do re-

quire that servers and employees be trained in alcohol service. Some companies, particularly larger chains, may have their own training programs. Smaller entities should be sure to check with the town's requirements on training requirements.

7 Establishments that do not serve alcohol on the premises (such as liquor stores and supermarkets) must be reminded that Massachusetts law limits the number of licenses that any one entity can hold to three. There is legislation being bandied about to raise the cap, but for the time being the limit is three. See G.L.c. 138, sec. 15.

8 Depending on where you are applying for the license, you may have to meet (and try to gain support from) a local neighborhood group. The group may (at least initially) be opposed to "another liquor license" in the neighborhood. This is particularly true in some Boston locales, especially if near a college campus.

9 Depending on where the proposed licensed establishment is located, you may or may not be able to procure a license directly through the municipality itself. This stems from a complicated Massachusetts formula/quota system, which bases the number of



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licenses on population. If there are no available licenses through the town, your client will be forced to seek one on the open market, which can be cost prohibitive. Full liquor licenses can command more than \$250,000 in some Boston neighborhoods, while licenses in the suburbs can sell for \$100,000.

10 Above all, make sure the proper paperwork has been submitted. The required documents range from a copy of the lease to floor plans, from bank statements to a CORI form for the manager and his birth certificate.

Bonus tip: If your client wants to obtain a wholesalers' license from the ABCC, he needs to first apply for and obtain a federal basic permit from the U.S. Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau (www.ttb.gov). 