

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**

300 Owner and Financial Interests; Trade Names

301 (Formerly Rule 3) A Rule Requiring Prior Approval by the Commissioner of Changes in Ownership, Officers, or Directors, Financial Interest, or Lease

As authorized by law, the Commissioner may refuse approval of changes in the ownership, officers or directors, financial interest, or lease in connection with any license. For this purpose, no such change shall be implemented until reported to and approved by the Commissioner in the following manner:

1.0 Changes of ownership (no publication is required)

1.1 Entire Change:

1.1.1 Whenever the entire ownership of a license of a licensee is being changed, the following shall be filed with the Commissioner on behalf of the new owner or owners:

- 1.1.1.1 An application.
- 1.1.1.2 A financial statement of the proposed licensee.
- 1.1.1.3 Personal financial statements of all individuals, partners, or stockholders holding at least 10 percent or more of the corporate stock.
- 1.1.1.4 Notarized statements in the form prepared by the Commissioner, [Form \(A-2\)](#) signed by all individuals who after the change is made, will have an ownership interest directly or otherwise with the criminal record of each. However, if the corporation or club is listed on a stock exchange or traded over the counter, or is the holder of a multiple activity club, the criminal history of individual stockholders, officers or directors shall not be submitted, but instead an affidavit completed by each giving permission to the Commissioner to request the criminal history from the proper police department.
- 1.1.1.5 Copy of the agreement of terms of the sale or other exchange of financial interest, including stock distribution.
- 1.1.1.6 Deposit of \$1,000 application process fee [4 **Del.C.** §554(x)].
- 1.1.1.7 Minutes of meeting establishing officers and/or directors, copies of stock certificates and/or any other corporate documentary information as the Commissioner deems necessary.
- 1.1.1.8 Certification from the State Tax Division that all obligations regarding the applicant are current.
- 1.1.1.9 Copy of certificate of incorporation, if applying as a corporation, or proof of partnership agreement explaining interest and profit/loss distribution.
- 1.1.1.10 Letter of approval from the licensee from whom the license is to be transferred.
- 1.1.1.11 Lease, if the premises is not owned by the applicant; or copy of deed if applicant owns the premises.
- 1.1.1.12 Floor plan containing elevation, including dimensions of all rooms and seating arrangement of entire premises.

1.2 Partial Change.

1.2.1 Whenever only part of the ownership of a license or licensee is being changed, the following shall be filed with the Commissioner on behalf of the new owner or owners.

- 1.2.1.1 An application.
- 1.2.1.2 A financial statement of the licensee as of the time after the change is made.
- 1.2.1.3 Personal financial statement of the new applicant or partners.
- 1.2.1.4 Notarized statements in the form prepared by the Commissioner ([Form A-2](#)) signed by all individuals who, after the change is made, will have an ownership interest, directly or otherwise, including criminal record.
- 1.2.1.5 Copy of the agreement of terms of the sale or other exchange of financial interest, including stock distribution and consideration given.

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- 1.2.1.6 If a corporation or club, a statement consenting to the change in ownership signed and sealed by the president and secretary currently approved by the Commissioner. A partnership shall submit copy of change in original agreement.
- 1.2.1.7 Deposit of \$1,000 application process fee [4 **Del.C.** §554(x)], but this fee shall not apply to applications for change of officers, directors or stockholders of a corporate licensee if there is no change in the majority of stockholders or majority of directors.

2.0 Change of ownership of corporation or club solely through the sale of shares of stock by stockholders

When a corporation or club is involved and the change of ownership is being made solely through the sale or exchange of the shares of stock by stockholders, the corporation or club and the stockholders shall comply with subsection 1.2 above and file a statement consenting to the change in ownership signed and sealed by the president and secretary currently approved by the Commissioner.

3.0 Changes in officers and directors of a corporation or club when sales of corporate stock are not involved

Persons elected as officers and directors shall each submit to the Commissioner, within thirty (30) days of the election, a notarized statement in the form prepared by the Commissioner ([Form A-2](#)), and the corporation or club to which they have been elected shall submit in writing to the Commissioner within seven (7) days after the election the names, resident addresses, and offices held of the new officers and directors. If the Commissioner desires further documentation, the licensee may be required to furnish such other records or statements requested by the Commissioner. Any new officer or director is not qualified to act as such in matters pertaining to the Rules of this Commissioner and the Liquor Control Act until approved by this Commissioner.

4.0 Changes in Financial Interest

No persons shall obtain a financial interest of any kind, other than as owner or stockholder or club member reported pursuant to this rule, in a license or license holder without previously submitting full details to the Commissioner; provided, however, that such requirement shall not be construed to apply to loans made to a licensee or a license holder which do not involve repayment based on the volume of business or a percentage of profits of the licensee or license holder.

5.0 Changes in Lease

No change shall be made in a lease as to the parties, as to any of its terms or conditions, or to create or modify a rental based upon the license holder's volume of business or profits without first being submitted to the Commissioner, except that any change in the amount of rent (when there is no change in the method of computing rent) need not be submitted to the Commissioner.

6.0 Exceptions

- 6.1 The requirements of this Rule shall not apply to corporations or clubs which are listed on a recognized stock exchange or have stock which is traded over-the-counter, unless any such corporation or club changes all of its stock ownership. However, all corporations and clubs which are listed on a recognized stock exchange or have stock which is traded over-the-counter shall be required to submit an [A-2 form](#) and affidavit as provided in subsection 1.1.1.4 of this Rule on behalf of the corporate or club officer responsible for the operation of the alcoholic beverage service for which the license was procured. Additionally, a list of all officers and directors must be submitted at each license renewal.
- 6.2 If a corporation or club not excluded under subsection 6.1 of this rule changes any class of its stock ownership by more than 25 percent during the effective year of the license as a result by the acquisition of stock by new persons, then all of the applicable requirements of this Rule shall apply. However, if a corporation or club, not excluded under subsection 6.1 of this rule, changes any class of stock ownership by 25 percent or less during the effective year of the license as a result of the acquisition of stock by new persons, the only requirements are notification of the stock change, which shall be reported by the corporation or club in writing to the Commissioner within seven (7) days after such stock transfer together with a copy of the terms of the sale or other exchange of financial interest, including stock distribution and consideration given, and submission within thirty (30) days thereafter by each new stockholder of the notarized statement in the form prepared by the Commissioner ([Form A-2](#)) and copies of the stock certificates.
- 6.3 If one or more stockholders of a corporation or club, not excluded under subsection 6.1, transfers himself of all or any part of his stock ownership back to the corporation or to any of the other Commissioner approved

stockholders, the corporation or club shall notify the Commissioner of the stock change within seven (7) days and shall submit a copy of the terms of the agreement of sale or transfer including stock distribution and consideration given along with copies of stock certificates.

- 6.4 The requirements of this Rule shall not apply to holders of multiple activity club licenses. However, all multiple activity clubs shall be required to submit an [A-2 form](#) and accompanying affidavit as provided in subsection 1.1.1.4 of the Rule on behalf of the club officer responsible for the operation of the alcoholic beverage service for which the license was procured. Additionally, a list of all officers and directors must be submitted at each license renewal.
- 6.5 If the license is held by tenants by the entirety and one spouse dies, the surviving spouse need not comply with the above provision of subsection 1.2 of this Rule but shall make request to the Commissioner for change in the license for its issuance to the survivor and at that time submit a death certificate.

7.0 Arrests and/or Convictions

Any arrest and/or conviction of an approved licensee, member of a club, officer, director or stockholder must be submitted to the Commissioner within seven (7) days indicating the date, charge and disposition.

8.0 Commissioner Approval or Disapproval

The Commissioner may disapprove for cause as defined, but not limited to 4 **Del.C.** §543 (a) through (f) any new individuals, officers, directors, partners, stockholders, leases, or debts in connection with a license. All submissions made to the Commissioner in compliance with this Rule shall be approved or disapproved in writing mailed to the license holder or applicant making the submission within sixty (60) days after they are received by the Commissioner.

19 DE Reg. 775 (02/01/16)

302 (Formerly Rule 49) A Rule Requiring a Lease to be Filed with the Commissioner

Each application for a license for the sale of beer, wine, and spirits must be accompanied by a lease for the premises, unless owned by the applicant, which must provide landlord's expressed permission for the sale of alcoholic liquors on the premises. In the event that a final order from a court of competent jurisdiction provides for possession of the premises to be awarded to the landlord, the Commissioner may revoke the license fourteen (14) days after a proposed revocation order is sent to the licensee at the last address provided to the Commissioner.

19 DE Reg. 775 (02/01/16)

303 (Formerly Rule 44) A Rule Governing Financial Interests in Various Licensees

The terms "importer," "manufacturer," and "retailer" as used in this rule shall include (in addition to the definitions given in 4 **Del.C.** §101) all persons with an interest in the business of importing, manufacturing or retailing, whether as a sole proprietor thereof, a partner, a director or officer or stockholder or member of a corporation, or as an employee of any such business.

No manufacturer or importer of alcoholic liquor shall have any financial interest, direct or indirect, in any business holding a license for the retail sale of alcoholic liquor.

No manufacturer or retailer of alcoholic liquor shall have any financial interest, direct or indirect, in any business holding a license for importing alcoholic liquor.

Nothing contained in this Rule shall prohibit any person from owning qualifying or non-income producing shares held as a condition of membership in any non-profit social organization or bonds or debentures issued by such organization to the members thereof.

19 DE Reg. 775 (02/01/16)

304 (Formerly Rule 50) A Rule Regarding Approval of Trade Names

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No licensee shall use or operate under any trade name unless approved by the Commissioner.

19 DE Reg. 775 (02/01/16)