

# Liquor License Transfers: Three Debts That Survive Closing

By Adam Barnosky on June 25, 2025



The transfer of an alcoholic beverages license from one party to another is a routine part of retail, restaurant, and hotel transactions. While parties often rely on governmental approvals as the benchmark for closing on a license transaction, such licensing approvals do not necessarily mean the license is free from financial liabilities, which could impact a purchaser of the license, even after it changes hands.

For buyers, as well as commercial lenders providing financing as part of a restaurant or hotel transaction, understanding these “post-closing” risks is critical. There are three primary categories of debt that can survive a license transfer: trade debt, state tax debt, and secured debt. Each debt can disrupt operations, delay license approvals, or jeopardize the license altogether if not addressed properly before closing.

## 1. Trade Debt (Liquor Distributors & Wholesalers)

It is important to ensure the seller of a liquor license has no outstanding trade debts at the time of closing. “Trade debt” refers to unpaid amounts owed by the current license holder (seller) to alcohol wholesalers or distributors. Such debts are tied to both the seller and the license, even after the license has been transferred to a new owner.

Under M.G.L. c. 138, § 25, retail licensees are deemed delinquent after sixty (60) days of non-payment for alcohol purchases and placed on a weekly delinquency list maintained by the Alcoholic Beverages Control Commission (ABCC). The statute provides, in part:

*“No [wholesaler] shall sell or deliver...alcoholic beverages to a licensee whose name is posted on the delinquent list, except for payment in cash on or before delivery, and no licensee who is posted on the delinquent list shall purchase or accept delivery of any alcoholic beverages except for payment in cash on or before delivery.”*

In practical terms, this means wholesalers are legally prohibited from delivering any product to a delinquent licensee unless a cash payment is made in full in advance or at the time of delivery. Importantly, this restriction does not disappear with a license transfer. The statute explicitly states that:

*“Whenever the license of any licensee whose name appears on the delinquent list is transferred, the name of the transferee shall appear in the place and stead of the transferor, as of the date of license transfer, in the same manner as if no transfer had occurred.”*

Because trade debt follows the license, an acquisition from a delinquent seller may immediately result in the new owner being placed on the delinquency list. For a new

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restaurant, hotel, or retailer, this is a significant roadblock and can lead to an immediate interruption to liquor deliveries, operational delays, or less-than-ideal purchase terms (i.e., cash upon delivery).

One caveat worth noting: While state law mandates that a liquor license subject to the delinquency list retains post-transfer debt, bankruptcy courts have concluded that the statute does not confer lien status on liquor wholesalers and that any encumbrance arising from the delinquency list is discharged upon a sale by a bankruptcy trustee. *In re Gloucester Espresso, Inc.*, 568 B.R. 158 (2017)

## 2. State Tax Debt (Sales Tax & Unemployment Tax)

Ensuring a seller has paid state taxes is critical for both the license transfer process and to prevent any unexpected liabilities post-closing.

Under M.G.L. c. 62C, § 49A, the state prohibits agencies and boards from taking certain actions and approvals on applications without proof of compliance with tax payments and filings. This requirement applies to applications before the ABCC, including liquor license transfers. The law states:

*“Upon receipt of the application... the department or other entity charged with issuing the right or license shall confirm that the applicant is in good standing with respect to all returns due and taxes payable to the commissioner as of the date of issuance of the confirmation.”*

When a liquor license transfer is submitted to the ABCC, the agency requires clearance letters from both the Department of Revenue (DOR) in the form of a Certificate of Good Standing and the Department of Unemployment Assistance (DUA) in the form of a Certificate of Compliance, which confirm that the seller has no outstanding tax liabilities. If the seller has not filed or paid taxes, the license transfer will be delayed until the debt is resolved and the applicable certificates are submitted to the ABCC.

From a buyer's perspective, unpaid taxes pose a significant risk. Even after securing local approval, the transfer cannot proceed at the state level if the seller has unresolved tax issues. This is also important even after the certificates are provided to the ABCC with a transfer application, as tax liabilities that accrue after submission but prior to closing could affect the license. In certain circumstances, the DOR has the authority to levy or attach the liquor license as an asset or, in rarer cases, unwind or stay a transfer if it determines the license was conveyed without satisfying outstanding tax debt.

## 3. Secured (and Unsecured) Debt

In Massachusetts, a liquor license can be pledged as collateral, which is a **popular tool for restaurant financing**. Under M.G.L. c. 138, § 23, licensees may grant a security interest in the license itself, and lenders can perfect that interest by filing a UCC-1 financing statement. These liens are enforceable, and, like any other perfected security interest, they do not disappear simply because the license is transferred. A buyer who unknowingly takes on a license with an outstanding security interest may be exposed to claims or enforcement by the lender. M.G.L. c. 138, § 23, states, in relevant part:

*“Any license granted under the provisions of this chapter may be pledged by the licensee for a loan, provided approval of such loan and pledge is given by the local licensing authority and the [Alcoholic Beverages Control Commission].”*

In addition to “perfected” pledges (i.e., pledges that have been approved by local licensing authority, the ABCC, and on record with a UCC-1), buyers should also be cautious of blanket

“all assets” liens that may have been granted by the seller in prior financing arrangements. These security interests, often included in commercial loan agreements, will reference “all assets of the debtor” or similar language and may not expressly name the liquor license. That said, the existence of such a lien, even if unperfected and likely unenforceable, can still present significant post-closing complications. A buyer may have to deal with a lender’s claim to a license and devote time and resources to defending litigation, which may delay opening or disrupt business operations. While courts may ultimately reject such claims, the legal and financial burden of addressing them often falls on the buyer.

#### **Best Practices to Avoid Post-Closing Liabilities:**

Avoid entering into a license transfer transaction without a well-drafted and negotiated Purchase and Sale Agreement (PSA). Here are some general tips to include in your PSA to avoid post-closing issues and ensure a license is transferred without financial liabilities to the buyer:

1. Include strong seller representation and warranty language regarding the status of tax payments, pending or threatened litigation, existence of liens, pledge, and trade debt.
2. Conduct UCC lien searches as part of transaction diligence.
3. Include the right to reasonable post-closing holdbacks or escrow arrangements if there are any doubts about outstanding obligations.
4. Require the seller to produce a “non-delinquency” letter from the M&S Services Bureau (a wholesaler credit agency which monitors licensees placed on the state’s delinquency list), which will confirm whether the licensee is in good standing and not currently flagged as delinquent.
5. Obtain updated DOR and DUA certificates prior to the license transfer application submission and as a closing deliverable.
6. For potential liens, require the seller provide a payoff letter from all lenders, release of pledge, and UCC termination filings at closing.
7. Include a “bring-down certificate” to be executed by the seller at closing, which will confirm that the representations and warranties made in the PSA remain accurate as of the closing date.

Even the most seemingly straightforward transactions come with risks, both known and unknown. While a liquor license transfer may appear final upon ABCC approval, a buyer should never rely upon the regulatory transfer as evidence of an absence of financial liabilities. However, an informed buyer with a thorough PSA, coupled with careful investigation during diligence and appropriate deliverables at closing, can mitigate risk and acquire a license that is “free and clear” and ready to use on day one.

**Adam Barnosky** chairs RIW’s **Restaurant & Hospitality Practice Group** and handles alcoholic beverage licensing, commercial real estate, and corporate transactions for the retail, restaurant, and hospitality industries, including the representation of restaurant groups, hotels, sports and entertainment companies, food halls, retailers, hospitality borrowers and lenders, and award-winning chefs and operators. Adam can be reached at [arb@riw.com](mailto:arb@riw.com)

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