

INFORMATION REGARDING THIRD-PARTY CLAIMS UPON A LIQUOR LICENSE

While a license is property between a licensee and third parties, it is a privilege between the PLCB and the licensee. 47 P.S. § 4-468(b). Accordingly, a third party may perfect a security interest in the license as it would any other type of intangible property (e.g., UCC-1, security agreement, etc.). However, because a license is not recognized as property as between the PLCB and the licensee, the PLCB does not recognize security interests claimed by third parties solely via the execution or presentation of such security interests. Therefore, while a license may be subject to a security interest on behalf of one or more third parties, the PLCB recognizes only the named licensee(s) as having an interest therein.

Pursuant to the above, the PLCB **may** accept any of the following types of documents as *prima facie* evidence that a third-party claimant has acquired an interest in a license:

1. A valid order of a court of competent jurisdiction, explicitly conveying the rights in the license to a specific third party claimant;
2. A Writ of Execution together with a Sheriff's Bill of Sale explicitly conveying the rights in the license to a specific third-party claimant;
3. A valid sale conducted pursuant to the Uniform Commercial Code. All documentation showing compliance with the procedures set forth in 13 Pa.C.S.A § 9601 *et seq.* must be provided; or
4. A sworn affidavit executed by a third-party claimant or counsel for a third-party claimant, along with any applicable supporting documentation, representing, at minimum, that:
 - a. the licensee is in default of a written agreement (i.e., a security agreement or other financial agreement) that authorizes the third-party claimant to act on behalf of the licensee (whether by virtue of a separately executed, irrevocable power of attorney or otherwise) as a result of such default;
 - b. all necessary and required procedures, and all applicable laws have been followed pursuant to any underlying written agreement(s); and
 - c. the licensee either (depending on the circumstances):
 - i. does not dispute the claimed default;
 - ii. is legally precluded from disputing the claimed default; or
 - iii. cannot be located after a reasonable search by the third party claimant.

Any documentation presented by a third-party claimant in support of its position may be challenged and rebutted by the named licensee and/or additional third-party claimants, provided that any such challenges are supported with proper documentation and are made in a timely manner.

Keep in mind that the PLCB is not a court of general jurisdiction and is not authorized to resolve property rights in a dispute between a licensee and third parties, nor can it be made a party to such dispute. Befwick of Philadelphia, Inc. v. Cobblestones, Inc., 353 A.2d 459 (Pa. 1976). Therefore, the PLCB will give substantial weight to any documents presented by a third-party claimant which appear to be legally valid on their face. In the event that the PLCB receives documentation appearing to be facially valid from a third-party claimant, and the named licensee and/or additional third-party claimants dispute such documentation, the named licensee and/or additional third-party claimants may be required to provide an order from a court of general jurisdiction to support their respective positions (if they have not already done so).

Unless and until the PLCB determines that a third-party claimant has acquired the rights to a license, the named licensee(s) retains its privileges in the license, including the right to transfer the license to another party.

To be clear, when a license is acquired by a third party by virtue of its status as personal property, what is conveyed is not the right to sell alcohol or otherwise use the license, but rather the right to renew, transfer or otherwise control the license itself. In order for a third party to use the license, an application to transfer the license must be submitted to and approved by the Board.

In the event that a third party is recognized by the PLCB as having acquired the rights to a license, the license remains subject to all applicable laws, regulations and agreements. The following list identifies several issues that frequently arise in these circumstances. Note that this list is not exhaustive:

- The license must be renewed and validated as set forth in the Liquor Code. 47 P.S. § 4-470.
- If the license is not renewed within two years after its expiration, it ceases to exist and may not be reactivated. 47 P.S. § 4-470.
- Safekeeping status must be maintained or extended, if applicable. 47 P.S. § 4-474.1.
- Any conditional licensing agreement in effect against the license and premises remains in effect, unless it expires by its own terms, or the PLCB approves its termination. 47 P.S. §§ 4-404, 4-470.
- The transfer of the license to a subsequent purchaser is subject to approval by the PLCB.

- Transfer and renewal of the license require that both the previous license holder and the purchaser obtain tax clearance certificates from the Pennsylvania Departments of Revenue and Labor & Industry. 47 P.S. § 4-477.
- Any pending citations issued against the license must be satisfied prior to transfer.
- Any unserved penalties for adjudicated citations must be satisfied. (See Guidelines for Conversion of Outstanding Suspensions to Fines in License Transfer Cases.)
- Restaurant, hotel, club, distributor and importing distributor licenses may usually only be transferred within the county where located. 47 P.S. § 4-468.
- For a sheriff's sale:
 - If the license is in safekeeping, the PLCB should not be named as garnishee as it is exempt from garnishment actions under Pennsylvania law. 42 Pa. C.S.A. § 8521.

The Writ of Execution need not be filed in Dauphin County, even if the license is in safekeeping.

The sheriff is not required to seize the license (i.e., the physical piece of paper issued to the licensee) prior to the sale, as this does not affect the right of the licensee to operate until the sale is completed. Although a licensee must display the license to legally operate, the PLCB, upon request, will issue a duplicate license to the licensee. The original license is only valid when used by the named licensee at the named location. It may not be transferred without PLCB approval. What is sold at a sheriff's sale is the right to apply for the transfer of the license in question. If a license is seized it should be sent to the Bureau of Licensing, Northwest Office Building, Harrisburg, PA 17124-0001 within fifteen days.

- Unopened liquor bottles and beer should not be sold at the sheriff's sale unless the sale includes the liquor license. Liquor may, at the PLCB's discretion, be sold back to the PLCB for refund. Unopened beer may be returned to the distributor or supplier who sold it to the licensee. 40 Pa. Code §§ 9.111-9.113.
- If the debtor satisfies the judgment prior to sale, the sheriff may return the original license to the named licensee. The local solicitor should be consulted with regard to disposition of any property, including the license.