

**BRIDGING THE GAP – SELLING
ALCOHOL AT A HOTEL YOU’VE
TAKEN OVER ON SHORT NOTICE**

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I. Introduction: Getting Hired For The Short Term Takeover (Or, Be Careful What You Wish For, You Might Get It)

If you are a hotel management company, or receiver, or other operator of hotels who or which manages hotels for other parties, you may find yourself in a position being offered the opportunity and challenge of taking over the operation of a hotel or hotels on very short notice. Those of you with previous experience in the hotel business know that in many states, one of the slowest deliverables upon takeover of a hotel, one of the most irritating, down-to-the-last-minute things that you will have to worry about when taking over operations at a hotel is obtaining either a liquor license in your name or some form of permission to lawfully sell alcohol upon taking over the hotel.

Further complicating things for you as the fortunate recipient of a contract to manage a hotel on short notice is the fact that the “liquor authority” that you will have to deal with in order to obtain your liquor license may include not one, not two, but as many as three separate and distinct liquor authorities. Depending on the state, you may have to obtain licenses and / or permits from a state liquor authority, agency, administration or board, and / or a county equivalent, and / or a city or municipal equivalent. And politics being what they are (“All politics are local.” Tip O’Neill) the local liquor authorities can very often be the most difficult and time consuming to deal with, rather than the state authorities. (“Unlimited power is apt to corrupt the minds of those who possess it.” William Pitt. Ok, no more quotes.) Throughout this discussion, in an effort to use the fewest possible words, where the word “state” is used to refer to liquor authorities or agencies, you should assume that we are also referring to all other possible liquor authorities with which or whom you will have to interact in order to obtain proper licensure.

On a related matter, the answer to almost every question about how the liquor licensing process works varies from state to state. Sure, there are consistent themes and common threads, but the devil is in the details and the details on how to proceed are not identical from any one state to any other. This is, of course, incredibly frustrating, but it is not going to change any time soon, so you have to deal with it. You will notice below, as stated above, certain recurring themes. Here are the most important: (1) Consult a liquor licensing practitioner who can provide you with guidance on the process and the pitfalls so that you will be fully informed and know what to look for during your due diligence. (2) Do your due diligence on the current liquor licensee, the liquor license and the liquor-related operations at the hotel as soon as you are asked to take over a hotel on short notice before you agree to take over operations. (3) Once you have agreed to take over operation of a hotel with a liquor license on short notice, do everything you can to get an application for liquor license on file as soon as you can, even if it is not perfect or 100% complete, provided it is complete enough not to be rejected. Below, you will find suggested additions to your due diligence checklist.

It should be noted at the outset that some states do not permit management companies to hold liquor licenses, some require the owner to hold the license and some require the owner and management company to be co-licensees. Still further states allow the parties -- the owner and management company -- to decide which of them will hold the liquor license. In any event, regardless of whether the owner will hold the license, or some combination of the owner and management company, or some other qualified party, the discussion and comments below apply to whomever or whichever party will take over the alcoholic beverage operations at a hotel on short notice.

If getting a liquor license is frustrating under normal conditions, it can be downright harrowing in a short term takeover. There are a limited number of ways to make it happen.

II. “How Can I Sell Alcohol At The Hotel I Took Over Last Night?” Let Us Count The Ways....

A. Obtain a new liquor license / transfer existing license

Of course, it would be ideal if either the short term takeover gave you enough time to obtain a liquor license of your own, in your own name, or to transfer the existing license, but that is extremely unlikely in most states. By definition, for the purposes of this discussion, a short term takeover of a hotel is one that occurs in less than thirty days. With one or two possible exceptions, almost no state will issue a new license or approve a transfer of a license in less than thirty days.

B. Obtain a temporary liquor license – transitional

On the path to either obtaining your own license or transferring an existing license to your name, many states, but by no means all states, will give you the opportunity to obtain a temporary or interim liquor license or permit. In most of the states that offer this option, the turnaround time for obtaining a temporary license is a matter of weeks, which you may not have in your short term takeover scenario. Some states, notably California, will issue temporary licenses in a matter of days, barring problems with the prior licensee or the location. Of course, where temporary licenses are available within the time you have before you take over the hotel, lots of stress can be avoided and the process of getting you fully licensed for ongoing alcohol sales at the hotel will be a lot less hectic. And be advised that virtually all states that issue temporary licenses require that a full application be submitted; it can easily take a week to put a full application together.

C. Obtain a state sanctioned interim license

Certain states have formalized the interim liquor licensing process in ways that are unique to their state. They have developed application forms and forms of authority to operate that do not translate easily to other states. These are not quite temporary licenses or permits nor are they quite interim management agreements (discussed below), but they do pose a solution to the problem of taking over the liquor operations at a hotel on very short notice. In Missouri, for example, the state has developed what it refers to as a Notice of Intent to Sell form. Through the use of this form, signed off on by the old licensee, the new licensee may operate the hotel and sell alcohol under the old license for a limited period of time while a new license is applied for. In Indiana, the state has created the Schedule MQ arrangement, which is similar to the Missouri Notice of Intent to Sell, and allows the incoming operator to operate on the old license, provided that the exiting licensee consents to this arrangement.

D. Enter a permitted interim management agreement

An interim management agreement is simply a contract between the old licensee and you, as the incoming operator (and soon to be new applicant for liquor license) in which the old licensee agrees to allow you, the new operator, to sell alcohol on its license. Some states expressly, or in practice, allow this sort of agreement. Most states that allow parties to enter such an interim agreement require that it be submitted to the liquor authority, which means that the agreement is subject to the review and approval of the liquor authority. This agreement, like any other private agreement, is negotiated between the parties, but the laws of certain states may require that certain terms either be included or not included. What sorts of terms? Simply put, terms that somebody will not like. Terms such as the profits or revenues from the sale of alcohol must be retained by or paid over to the old licensee or that ultimate control over the liquor operations be retained by the old licensee, if only on paper.

E. Enter an interim management agreement even if not expressly permitted

Many states do not allow parties to enter private interim management agreements, and at the same time do not offer any sort of temporary license or permit. In such states, the options for continuing to sell alcohol under a short term takeover become very limited and often parties enter an interim agreement, wherein the new operator is given permission to use the old operator's liquor license for some interim period, despite the fact that the use of the license in such a manner is not expressly permitted by the state's liquor laws. Based on experience, many state liquor license practitioners will tell you that although state law does not expressly permit interim agreements, it is common practice in their states for private parties

to enter such agreements and for the incoming operators to operate on the old operator's license. The first question becomes, what is the risk? (This is explored further below.) The second question is: what will the interim agreement include? (Of course, this question is also present even if the interim agreement is expressly permitted, as with the paragraph above, although in the states we are discussing in this paragraph the interim agreements will not likely ever be submitted to the state liquor authority and there are fewer state-law determined terms. Among the terms of greatest importance in the interim agreement are the duration of the agreement, the defense and indemnity provisions, the insurance provisions, and the method of operations of the business going forward, addressing such issues as how the alcohol will be purchased at wholesale, if the purchases will be made in the name of the old licensee, and how the purchases so made will be paid for. **BUT BEWARE:** Entering and relying on an interim management agreement in a state where they are not expressly permitted will not protect you from citation by the liquor authorities for selling alcohol without a license or possessing an interest in a licensed business without approval. In these states, an interim agreement merely serves the purpose of setting the terms between you and the prior licensee for the use of the license in the interim period between when you take over operations and when you get your own license.

F. Operate on the old license pursuant to "court order"

It may seem logical that you are "safe" to operate a licensed hotel, and sell alcohol, even under an existing license that is not in your name, if you have been granted a court order appointing you, or appointing a party who has designated you, as a receiver or legal successor in interest to the departing operator. Liquor authorities do not feel the need to be logical and are not legally bound to be logical, nor are they, necessarily, bound by court orders that do not specifically direct them to perform or refrain from performing certain specified actions. That is to say, liquor authorities are, by and large, state constitutionally empowered agencies with statutory authorities that generic court orders do not automatically trump. Court orders, to the extent that they are going to be relied upon to confer the right to operate hotels and sell alcohol therein, must be as specific as possible in order to give you some hope that they will be recognized by the relevant liquor authorities. Some court orders, if they are not from the "right" court, may have to be transferred to the right court (say, from federal court to state court or from one county court to another) in order for you to have any chance of obtaining the right to sell alcohol under an existing license. Some states will not allow you to sell alcohol under a license that is not in your name even if you have a court order suggesting that you have such a right. The liquor authority will conclude that the court simply does not have the power to order it to permit you to be licensed without the requisite filing, investigation, background checks,

fingerprinting, notice posting, etc., and will litigate the matter if you push it. Chances are, because of the expense, as well as the bridges you will burn, you won't want to push it.

G. Operate on the old license pursuant to "operation of law"

Smart lawyers, you know the type, the ones that know they're smart and let everyone know that they're smart, just can't understand why they can't continue to operate under the old operator's license "pursuant to the operation of law." What they mean by this, best we dummies can figure, is that when the assets of a former owner or defaulting borrower are transferred or assigned, pursuant to the terms of a lawful contract, assignment or court order, the acquirer, which is you or the party designating you, should have the right, under the operation of law, to use all the assets so acquired. And since the liquor license is just one such asset, then pursuant to the operation of law, you should be able to use the old licensee's license. The problem with this depends on the state you're in. In some states, liquor licenses simply are not transferable. In other words, they are not assets, they are purely privileges, personal to the licensee or permittee. In other states, they are a mixed asset / privilege, meaning they have value and can be sold and are subject to liens as between private parties, but as between the private party and the state, the license or permit is a privilege that cannot be transferred from one party to another without the express consent and approval of the state. There really is no state that expressly permits or acknowledges as legitimate the notion that an acquiring party may operate under the license of a former licensee under the operation of law without the consent and approval of the liquor authority.

H. Operate "in the shoes of" the old licensee

Perhaps the option that carries with it the most risk in a short term takeover is for a new operator to simply enter the hotel facility and start operating the business and selling alcohol "in the shoes" of the former licensee / operator. Under this scenario, no temporary permit would have been obtained and no interim agreement would have been entered into, no other state sanctioned interim arrangement would have been available and no court order would have been issued. Perhaps the former licensee or operator abandoned the property, or court proceedings have been initiated and the old operator is no longer on site, but no court order has yet been issued, for whatever reason. If there are valuable contracts for weddings or other private parties that require the service of alcohol, or litigation may be brought if the service of alcohol is not provided for such events, hard choices have to be made. If no other option is available and you decide that you simply cannot go without serving alcohol, you may be forced to serve as if you are "in the shoes" of the former licensee. There may be an

odd state or two that permit such a short term takeover strategy, but virtually all prohibit it. Further, most states' laws include a criminal provision if one serves alcohol without a liquor license, so this should be taken into consideration before you decide to go forward with this hard choice. And this is something that your employees – your servers and bartenders – may feel that they are entitled to know about, as they may be the ones who are charged.

I. Don't sell alcohol, give it away....If you're allowed

You may want to consider giving alcohol away in the interim – in that time between when you take over operations at the hotel and when you get your own liquor license – if there are no realistic, legal options for you to sell alcohol in the context of a short term takeover. In the event that the hotel you are taking control of is a limited service hotel, and alcohol sales are nominal and are really offered as a convenience to overnight guests and not as a draw or significant source of revenue, as in a full service hotel's lobby restaurant, giving away free alcohol for 60 days may cost you a lot less than a citation for illegal alcohol sales and the related legal fees and potential bad press. There are states, however, that do not permit you to give away alcohol, so be certain to check the state laws on the giving away of free alcohol, and such issues as whether you are permitted to give “free” alcohol to your guests only, before deciding to pursue this option.

III. “Your Solutions Pose No Solution. What Are The Risks If We Sell Anyway?” (Or, “The State I’m In Causes Me To Be In The State I’m In.”)

A. Risk of citation – generally

Citations are a tricky thing to analyze for a client. Well, some are easier than others. If you repeatedly serve minors or visibly intoxicated patrons, or stay open beyond permitted hours or offer offensively loud or lewd entertainment, you will get caught and eventually your license will be revoked or the state will not renew it. Those are the “low hanging fruit” violations (discussed more below). But other violations, such as trade practice violations, failure to report corporate ownership or officer changes and being behind on a change of licensee, which is what happens when there is a short term takeover, are a different class of violation that is more difficult to analyze. Clearly, if you take over a hotel and sell alcohol at the hotel without following all the applicable liquor laws and rules, you run the risk of a citation. Or at least the old licensee does. And you or your employees may run the risk of a criminal citation for selling alcohol without a license. How great is the risk? This depends on the state (and of

course local) jurisdiction and on the method of operation of the hotel, the significance or insignificance of alcohol sales (read: volume) at the hotel, the type of clientele at the hotel, the location of the hotel and its proximity to neighborhoods or other venues that draw the attention of enforcement officials, and luck – good or bad luck, depending on the situation. Specific issues related to the risks are discussed below.

B. Possible penalty –fines to revocation to criminal charges

The penalties for selling alcohol without first being properly licensed or permitted span an incredible range. The penalties range from a fine of a couple of hundred dollars to suspension or revocation of licenses or the delay in issuing or refusal to issue licenses to criminal charges for selling alcohol without a license. The likely penalty for selling without a license, as opposed to the range of possible penalties, is a fine ranging from a few hundred dollars to a couple of thousand dollars and, although not necessarily a formal part of the penalty, *per se*, a resultant delay in the issuance of the license applied for while the investigation into your violation is conducted and the citation resolved. Some form of a "cease and desist order," which directs you to stop selling alcohol until your license is issued, is also a good possibility. The looming spectre of a criminal charge against anybody involved in your operation is obviously a scary one, and while rare, is not unheard of. But how likely is any penalty? It is hard to say. More below.

C. Low hanging fruit

Enforcement officials are like jungle animals (and the rest of us) – they like to pick and eat the low hanging fruit. They like to file and prosecute the easy citations. Citations that take a lot of investigation and sifting through paper, are like fruit that is high up in the tree -- hard to pick. So if you take over a hotel and operate without 100% compliance with all licensing requirements, you are far less likely to be cited if you conduct yourself in a manner that bears no low hanging fruit. First, you ought not offer any sort of alcohol oriented promotion during the interim period between when you take over operation and when you obtain full licensure. Second, you ought to discontinue all alcohol oriented promotions that were put into effect by your predecessor unless they are as innocuous as new white bread. Third, whomever is running your food and beverage operations, be they new or someone who is staying on board from the old operator, better understand the state's liquor laws and better have clear instructions from you that all are to be very closely obeyed. Fourth, you need to make certain that you do not draw attention to the takeover, and change in licensee, with glitches like bouncing checks to liquor suppliers, beer wholesalers, wine vendors or state stores. Bounced check reporting

requirements will make these guys, who seem like your best friends, appear to be your worst enemies.

D. Non-priority violation

The easy stuff – drunk minors, drunk adults, disorderly operations – those are the priority enforcement matters. Changes of licensees on short notice are not a high priority. But if you flout the laws or you are seen by the liquor authority as a scofflaw, they will bring their weight to bear.

E. Bad publicity vs. nailing the big fish

Bad publicity is something that most people don't want, perhaps other than terrorists and Oscar Wilde (before he died, of course), and state liquor authorities are normally no exception to this. That is to say, they are usually not interested in shutting down alcohol sales at a hotel where the only thing "wrong" at the hotel, from a liquor law perspective, is that there is a new operator who happened to take over operations so quickly that it didn't have time to get properly licensed. (As opposed to a hotel that has had a horrible track record for low hanging fruit-type violations.) This is especially true where the hotel is a full service hotel and shutting down alcohol sales may mean closing a restaurant or two, closing banquet facilities and the like, causing people to be laid off, affecting other local businesses, etc. If the hotel you are taking over is such a hotel, you may qualify as Special, even despite Mr. Rogers (see below). Liquor authorities may consciously ignore a change of operator, even where the hotel is significant enough for the change in operator to garner attention in the popular media, unless the new operator gives the liquor authority some reason to pay attention or the prior licensee or operations at the hotel were problematic. On the other hand, there is at least a small percentage of enforcement officials, maybe those kids who always told on us when we were little who are now all grown up, who seem to take particular satisfaction in catching a big name licensee, or a high profile location, doing something, anything, wrong. They get to say, "I gotcha!" And even to see their handiwork in the newspaper, so the fact that you are Special, cannot be relied upon, necessarily, to get you safely through a tough period.

F. The disgruntled former employee

When you take over a hotel, you may find it necessary to "terminate a few positions." In street terms, people get the ax. People who get the ax are usually not happy, in fact some are downright mad. People who are downright mad after getting the ax and who know you have not complied with liquor laws, or any other laws, will inform the appropriate authorities of said behavior in short order. In street terms, they will rat you out faster

than bad news through fibre optic cable. Liquor enforcement people love disgruntled former employees. So, beware, the more “positions you terminate” who are aware that you are less than compliant, the more likely that enforcement authorities will know you are out of compliance.

G. The bounced check

Inevitably, while trying to lie low, and while operating on a previous licensee’s license, someone bounces a check. If you take over a hotel on short notice, and you are running between the rain drops trying to stay dry, and you are operating on the former licensee’s license, do not bounce a check to any party from whom or which you purchase alcohol of any kind. In most states, bouncing a check for the wholesale purchase of alcohol results in mandatory action of some kind; a mandatory investigation, a mandatory “no delivery listing;” a mandatory C.O.D. status; a mandatory citation. If you are not fully compliant, all of these mandatory actions are the tip of the iceberg, as they are likely to result in the discovery of your non-compliance and possibly the imposition of a greater penalty, such as an order to cease and desist alcohol sales until you receive your own license, or worse.

H. The unpaid taxes and the renewal problem(s)

You are likely replacing the previous operator at this hotel you are taking over because the previous operator was somehow less than ideal. One characteristic of an operator who or which is less than ideal is the failure to pay the bills on time. One bill or set of bills that can very negatively impact the liquor licenses at the hotel, if they have not been paid, – the old ones and the new ones – are the tax bills. States use the license transfer and renewal process as a way to bribe licensees into paying all state taxes. If you have to transfer an existing license, or in some states even obtain a new one, or if you have to renew an existing license, many states will not approve your request for license or renewal unless your taxes AND THOSE OF THE PRIOR LICENSEE are current. So, it is wise to check on the status of the current (soon to be former) licensee’s taxes as soon as you are asked to take over a hotel on short notice.

I. Don’t forget the civil liability

Serving alcohol includes very significant responsibilities. Drunk people hurt themselves and others. People who get hurt sue the people who they believe are to blame. If you step into the shoes of a prior licensee, and operate under its license, you may find that someone who was served alcohol by the prior licensee thinks it is perfectly reasonable to sue you, in addition to or instead of the prior licensee; after all, you are operating under its license. You should always get defense and indemnity

provisions from the prior licensee, who is often motivated to cooperate in exchange for some forgiveness of debt it is already receiving. In addition to such protection, you should always have solid insurance with terms that do not allow a denial of coverage under the conditions of your operation.

J. Your other licenses in the state...at risk?

It is possible, and should be taken into consideration, that if you take over a licensed hotel operation on short notice, and do so under less than ideal conditions, conditions that force you to operate without being in full compliance with applicable liquor laws, and if you get caught, you could jeopardize your other liquor licenses in the state. This is unusual, as most states enforce their liquor laws on a location-by-location basis, but you ought to examine the possibility.

K. Failure to ultimately get a license if “caught”

Perhaps a more frightening risk, than that of jeopardizing your other licenses in the state if you are caught in less than full compliance, is that of not actually ever getting fully licensed at the hotel you have come into on short notice. This is probably unlikely, although a significant delay is not unlikely if you or the former operator are cited in the interim period before you are issued your own license, but it is not out of the question if you are perceived as having been a scofflaw or as having committed some sort of fraud. As a result, it is always best to act as quickly as possible even if you have little time to act. Generally speaking, as soon as you can, file an application for full licensure with the appropriate authorities. Get on record that you applied at your very first opportunity. Be able to demonstrate that your contract to manage the hotel was dated “X” and you filed your application “X + #? days later,” with the number of days being as few as possible. This will demonstrate to the enforcement and licensing folks, if you are caught in non-compliance, that you did what you could as soon as you could.

IV. The Mr. Rogers Conundrum – If Everybody is Special Nobody is Special.....Special Cases and Special Interests...

It is no secret, special people and special places get special attention and special treatment. The hotel you are taking over on short notice may qualify as special, and as a result, your application for liquor license or temporary permit may be expedited or your non-compliance with every technical requirement may be overlooked. When are you special?

A. Bankruptcy, receivership, foreclosure – the witch’s brew

Aside from the lawyers (and possibly judges and law professors) who handle bankruptcy, foreclosure and receivership actions, nobody likes that stuff, wants to talk about it or even discuss it. As a result, some liquor authorities may cave in a little on some of their requirements if you have a court order coming out of such an action. But don’t be unduly comforted, because you cannot bully a liquor authority into waiving its requirements by waiving a court order in its face and, in an argumentative way, telling it that it has no right to investigate you or require you to produce the statutorily required information or application forms before approving you as a licensee or allowing you to purchase and sell alcohol within its borders. What you are likely to do is provoke it. A liquor agency will not take kindly to a court attempting to change its constitutional mandate, its statutory power, and will litigate with you. A state agency’s pockets are deep. Don’t litigate with it. Instead, use the court order as a persuasive tool, rather than a hammer, to evoke some degree of sympathy – after all, you are the one stuck in the witch’s brew of a bankruptcy or receivership – and cooperation.

B. The full service, marquis hotel in town and that special stew

As stated above, liquor authorities are not quick to shut down alcohol service at full service hotels that have otherwise not been an enforcement problem. This is especially true where the hotel is a marquis hotel, a landmark, a historic location, a centerpiece in town, an attraction, a mainstay in the economic stability, growth, revitalization, etc., etc., etc., of an area. If the hotel you are taking over qualifies, you might be special.

C. The governor’s daughter; the chosen few

Check the former licensee’s contracts for events, banquets, catering arrangements, etc. If the governor’s daughter is getting married, or the Emmy Awards are being hosted there, or the President is visiting, or Stephen Barth is speaking, in the interim period between when you take over and when you are issued your own license, you might be special. And such high profile events can be used to your advantage. (They can also cause the onset of peptic ulcers, but that is a medical issue.)

D. You’re the White Knight, all shiny and new

You may be able to paint yourself as a savior of sorts, an innocent one at that, riding in on a white horse, in a white suit of armor, to save the jobs and the business at the hotel you are taking over. Much like the hesitancy of closing down alcohol sales at a marquis hotel, a liquor authority may be hesitant to punish a new operator who is replacing a licensee that the

liquor authority is glad to see go. This is especially true if you have a prior good record with the state. You may be able to use the combination of your good deed – taking over the hotel and keeping it running – and your good record to get a fair amount of cooperation and expeditious treatment from liquor authorities.

V. Deep Holes For Tripping In The Dark Or “What Do You Mean, I Have To Renew The Liquor License, I’ve Only Been Operating The Hotel For One Week!” (Some Things To Add To Your Checklist)

A. Scheduled renewals

Liquor license renewals may come due immediately upon your entrance to the hotel or shortly thereafter and, depending on the method of selling alcohol in the interim you chose or are stuck with, how to handle the renewal could cause you very serious problems. In fact, for a variety of reasons, you may not be able to get through the renewal process and come out on the other side able to sell alcohol. Better add checking the expiration dates of the liquor licenses to your due diligence checklist BEFORE you agree to take over the operations.

B. Unpaid prior taxes

As with the renewal problem, if the prior operator left a big unpaid tax bill, which neither you nor the party who hired you are willing to pay, getting a liquor license quickly could be out of the question. Better add a search of the tax records to your due diligence checklist BEFORE you agree to take over operations and check the state liquor laws on how unpaid tax liabilities will affect your ability to operate in the short and long terms.

C. Licensees or licensed agents / managers

Many states require a local person to be “on” the license. The former operator and licensee may have either fired the person, or the person may have quit, before you came in or when you came in. Now, the most important thing to the licensing authority is that you confirm to it that the person they have on record as the licensed local agent or manager is present at the hotel. And further, if he or she is present at the hotel, they will let you operate on the old license in the interim. Better add checking on whether there is a local licensed agent or manager requirement and whether he or she is still employed to your due diligence checklist BEFORE you agree to take over operations at the hotel.

D. Bank accounts

You may have to pay for alcohol purchases in the interim period between when you take over and when you obtain your own license from a particular bank account in the name of the old licensee. You'll need to work out the details of this account, turnover of it, etc., before the old licensee is gone.

E. Unpaid vendors

As stated above, unpaid liquor, wine and beer vendors, sometimes through no fault of their own, can be your worst nightmare. You have to know if there are any unpaid vendors and the amounts they are owed. Add this to your checklist, too.

F. Liquor and beer vendors, delivery & non-delivery issues & C.O.D.

If there are unpaid vendors, be aware that the hotel you are taking over may already be on a state monitored non-delivery list or on a C.O.D. only basis. You need to know if these issues exist and how you are going to solve them if and when you take over. Add this question to your list.

G. "Routine" investigations

You may find that right after you take over operations an enforcement official drops by for a routine investigation. Most states allow such open visits or inspections without notice and allow the investigators to speak with whomever they choose. Simple questions asked of front desk or lounge employees, like "who employs you?" can open a can of worms. Be prepared.

H. Unaddressed or unresolved citations of prior licensee

You need to know whether the prior licensee has an unresolved citation or whether the enforcement agency is presently investigating it. The former should be easy enough to discover, but the latter may be very difficult to determine, as many states will not disclose whether or not there is an open enforcement matter. But it can't hurt to look into it and ask direct questions of the old licensee when you have the chance. Add this to your due diligence checklist.

I. Liquor inventories

Often the former operator leaves behind unused liquor inventories. Most states permit the transfer of liquor inventories from a former licensee / operator to a new one. If you are not licensed, you may not qualify as a

new licensee yet, but using up the old inventory generally should not be a problem. There are, however, restrictions in many states. You may need to take an inventory and it may need to be sworn to. You may need to discard open bottles, etc. You'll need to check the laws on the transfer of liquor inventories.

J. Inspections & coming up to code

In the process of applying for your own license, you will need to coordinate non-liquor inspections as a precursor or pre-condition to obtaining your liquor license, even a temporary license or permit in some states. These inspections include health permit and fire inspections and mechanical and building inspections, among others. And the surprise that something is "not up to code" and, therefore, you are not going to pass a mechanical inspection and, further, will not be issued your liquor license, is a surprise you don't want. Add checking inspections and related certificates to the list.

K. Existing contracts (weddings,...questionable groups)

In addition to knowing about the good contracts (governor's daughters' weddings), you need to check the contracts to determine if there are any contracts that may be questionable. Many states have very strict nudity provisions on licensed premises, for example, so the stripper's convention, during which they have strip-offs down to the flesh, could be a problem for licensed premises. Where your predecessor maybe didn't care so much about such things, you may.

L. Insurance certificates

You've been asked to operate a hotel under less than ideal conditions, so clearly you have some experience and you probably have a good reputation so you know how much insurance of various sorts hotels have in place. You will be asked to show your insurance certificates in certain states as a pre-condition to being licensed. Be prepared.

VI. Conclusion: "This Licensing Process Is A Joke!" That's Right, And Timing Is Almost Everything With Jokes....And Then There's That Other Thing....

Where did we start? If you are a hotel management or operations company and you are asked to take over a hotel on short notice, don't forget to consider how long it will take you to secure the right to sell alcohol. How important is the sale of alcohol to the bottom line at the hotel you've been asked to take over? In what state is it located? What sort of liquor licensing laws does that state have? How accommodating are the state's liquor laws for short term takeovers of licensed

businesses? Can I get a temporary license in five days? Will I be allowed to enter an interim agreement? Operate under the current license? Get defense and indemnification from the old operator? Transfer the old inventory to my ownership? You may well have no idea what the answers to these questions are when you are asked to take over a hotel, but in the process of deciding whether you are interested in the deal you are being offered, you better find out the answers before you agree to take over operations. In obtaining liquor licenses, especially when you're taking over a hotel on short notice, timing is almost everything, and creativity everything else. Just like with a joke. The minute after you are asked to consider taking over a hotel on short notice, you ought to look into these questions, and additional questions, as the answers are very likely to affect the money you can make – or can't make – as well as how long it will take you to become fully operational and to perform the obligations under the contract you signed, and whether you'll need to call the governor in order to legally serve alcohol at his daughter's wedding.