TO LIEN OR NOT TO LIEN (A LIQUOR LICENSE): UNDERSTANDING THE BENEFITS AND THE RISKS

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By: Paul S. Figg

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Any person or corporation holding a bona fide mortgage, lien or security interest in a liquor license issued by the Florida Department of Business & Professional Regulation, Division of Alcoholic Beverages & Tobacco ("ABT") can perfect the lien on such liquor license by filing an Application for Mortgagee's Interest in Spirituous Alcoholic Beverage License, form ABT-6022 with ABT. What does a lender have to gain by taking a security interest in an ABT license? The answer depends on the type of license. In Florida, there are two basic types of retail full liquor licenses (licenses that allow you to sell beer, wine and liquor at retail): (1) Quota Licenses; and (2) Special Licenses.

The number of Quota Licenses issued in each county in Florida is limited and based upon the population. Quota Licenses are the only type of liquor license that can be used for a nightclub or liquor store. Quota Licenses are awarded by lottery and outside of the ABT-run lottery may be purchased from a willing owner of a Quota License for around $150K – $175K. It is logical for a lender to take a security interest in a Quota License, because the lender/lienholder would be entitled to the proceeds of the foreclosure sale of the Quota License. The limitation on Quota Licenses creates value in the Quota License and helps to secure the debt.

Special Licenses are exceptions to the limitation on the number of Quota Licenses. Special Licenses are issued based upon the use and may be obtained as a matter of right, assuming the applicant is qualified to be licensed and the premises to be licensed meets the standards for the particular type of Special License. Special Licenses are specific to the licensed premises and cannot be moved to another location. One example of a Special License is the type of liquor license issued to hotels ("Special Hotel License"). There may be particular limitations applicable by county, but generally speaking a Special Hotel License requires that the licensee is the owner or lessee of the entire hotel premises, which must have not fewer than 100 rooms and derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms.

When a lender loans money to finance the purchase of a hotel, the lender will want to secure that debt as much as possible. But if the hotel has a Special Hotel License, does the recording of an ABT-6022 provide any security for the debt? The answer is no. Because a Special Hotel License can be obtained as a matter of right and cannot be moved to another location, there is no reason for anyone to purchase a Special Hotel License at auction. Absent security for the debt, is there any reason for a lender to take a security interest in the Special Hotel License or perfect such interest by filing an ABT-6022? That answer is more complicated.

Section 561.32(1)(b), Florida Statutes, provides that "any person having a security interest in an alcoholic beverage license is deemed to be interested indirectly in such license; and he or she shall be disclosed to the division …." ABT license applications require applicants to disclose any person with a direct or indirect interest in the liquor license sought. In the case of a loan on a hotel purchase, lenders ordinarily do not need to be disclosed on the ABT license application as having an interest in the business or liquor license because the purchaser of the hotel is usually a limited liability company owned by a REIT, which leases the hotel to an operating tenant. The owner never operates the hotel or holds the liquor license, so the loan to the owner

does not create an indirect interest business or liquor license.

In the owner/operator structure described above, the operating tenant operates the hotel and holds the liquor license. If the Lender also takes a security interest in the liquor license, the Lender will need to be disclosed on the ABT liquor license application and the security agreement will need to be provided to ABT for review. To put it mildly, additional agreements and complicated deal structures do not aid in ABT's review of a liquor license application. As a result, a Lender taking a security interest in the liquor license can complicate the licensing process and leave the hotel without a liquor license while ABT figures out whether the liquor license can be issued. This represents the risk that the lender must understand in deciding to take a security interest in a Special Hotel License.

Perfecting a lien in a Special Hotel License can provide the lender with a benefit. ABT is required to notify any lienholder of a pending liquor license revocation or suspension. So lenders can use lien registration with ABT as a means to monitor potential defaults on loans. The question becomes whether this benefit outweighs the potential risks.

For more information on liquor licensing in connection with hotels and restaurants, contact Paul S. Figg on the firm's Government & Regulatory Team.

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