

THIRTY-TWO QUESTIONS ON BUYING A HOSPITALITY BUSINESS

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One otherwise perfect night, you open your eyes from a deep sleep and say out loud, “I’m going to buy a hospitality business.” Your spouse is now awake and responds: “With all the practical experience you have in running successful businesses, why in the world would you do that?” The first question you might ask is: why indeed? Why do that to yourself, your family and your friends. This must be the best deal you’ve ever dreamed up to entice you into this undertaking. But shouldn’t you really step back, get organized, and think and plan this through? Your heart says charge blindly forward. Your head says: slow down and do this one step at a time. The end result will probably demonstrate whether your heart or head won.

If you can think this through, here are some questions that should be asked along the way:

The Approximately 32 Questions:

1. Do you know what you’re buying? Are you buying the business or the business and the real property? Take a look at what you’re buying. Before you sign something, know what’s being sold. **2.** If it’s a leasehold interest, are there prohibitions and conditions against operating the type of business you intend for the location? Do you need landlord’s consent? Is the lease term long enough? **3.** If it’s a real property purchase, are there deed restrictions? **4.** Have you included sufficient contingencies in the

transaction agreement to back out of the deal if you cannot obtain the uses you need for this business? For example, are you still in the deal if you need a beer and wine license but can't get one? Can you back out of the deal and escape? If you're interested in unimproved land are you sure it isn't something out of a 1950's Florida real estate swamp sale? **5.** Have you or your lawyer checked to make sure the person selling you the land actually owns the land? **6.** Have you determined what the zoning restrictions on the land are? Recall that Business and Professions Code Section 23790 disallows the ABC from issuing a license in violation of a local zoning ordinance.

7. While you're looking at the land or the building where some business currently exists, what's near it? Schools within sight, houses or apartments within reach, playgrounds, hospitals, and other licensed premises nearby should be noted and may become important depending upon the rest of your analysis. **8.** Are there any neighborhood organizations you might want to know about? Be alert for CAVE dwellers: Citizens Against Virtually Everything (Thank you, Deputy Division Chief Joe Cruz) who are just waiting anxiously to file a protest against whatever it is you have in mind for the location regardless of how wonderful it will be.

9. Do you have a purchase – operational – business plan? Have you considered tax implications and discussed these plans with your accountant and tax advisor? **10.** Have you identified all the administrative agencies which have jurisdiction over your business, from Health to Fire, to Police, to Building, to Labor Department and the California Secretary of State?

11. If this is an existing business, does this business have an ABC license? Has it ever had an ABC license? If it is not presently an ABC licensed premises but once was, how long ago was it licensed? What happened to the license? **12.** Has there been an application for an ABC license denied recently? Do you know if there was a license “revoked for reasons pertaining to the premises” within the preceding year or a license application denied within the year under the terms of ABC Rule 66?

13. What local permits are necessary to engage in the business you want? Have you checked the municipal code? **14.** Do you need a license to sell cigarettes? **15.** Do you need a special permit to have a vending machine, an arcade, video games, a pool table, an ATM or a food stand or to provide dancing and entertainment and live or recorded music?

16. If an existing licensed business, what is its present structure? Is it owned by a sole proprietor licensee? Is it a partnership? Is it a corporation? How about a limited liability company? **17.** If a corporation (or LLC), is it in good standing with the State of formation? Do you really want to buy a corporation suspended by the Secretary of State since 1962? **18.** Are you buying the assets of the corporation or shares of stock? What percentage of stock are you buying? If you’re buying shares of stock but not all the stock, who are the other shareholders? What indictments for crimes involving moral turpitude are pending against them? **19.** If you’re buying the stock of the corporation, what liabilities are you purchasing? If you simply purchase a corporation, do you know what assets and liabilities may well be included in this purchase? Are you familiar with all the corporation’s assets and liabilities? Do you know how to determine the assets and

liabilities? Do you know the benefits to purchasing all the stock of this presently licensed existing corporation without debt and without liabilities? **20.** Do you understand the ramifications of buying a corporation that has an ABC license?

21. What happens if a new officer, director or shareholder doesn't meet ABC criteria for qualification? What does the ABC do about that?

22. If you're buying an existing licensed premises not in the form of a corporation or LLC, or if you are buying only the assets of a corporation or LLC and not the stock (or LLC membership), does Section 24074 apply? **23.** Is escrow required to be opened before the filing of a transfer application?

Remember those houses and apartments next door? Rule 61.4 conditionally disallows the ABC from issuing an original license (or premises to premises transfer) to premises within 100 feet of the residence. **24.** Does the rule apply to premises licensed and operated with the same type of license? How about if the business has been closed for a while? Does it matter how long?

25. If you are buying raw land or need to tear down and build up or extensively remodel a previously unlicensed site, do you wait until you are finished with construction to buy a license, open escrow and make application? There have been multi-million dollar pantheons constructed with no ABC license ready to issue. That could be a tough opening or a tough first year. How long is too long to wait for an ABC license? Even if you're expecting 18 months of construction, when is a good time to start the application process? **26.** If the license is ready to issue before the construction is

complete (yes, miracles happen), can the license can be issued nevertheless? Are there statutes or rules to guide you in that regard?

If you are entering into a lease or a purchase, you want to negotiate (or have your lawyer negotiate) the deal contingent on receiving all necessary licenses and permits to engage in the type of business you have in mind. Paying rent before you can open is misery itself. Paying rent for a business that just can't be licensed at all is worse.

27. If you are purchasing a distilled spirits license for either an on-sale or off-sale premises, when should escrow close? **28.** Can the license seller withdraw the license from escrow? **29.** What happens to the application if he or she does? **30.** If the seller can withdraw the license from the process, do you have to buy another license and start again? This firm has sought and received injunctions keeping sellers from withdrawing their licenses from in-process application cases. An escrow written correctly is a good weapon to have in that law suit.

31. In the instance where you are not buying an existing, open, operating business and where you have drawn a protest to your application, you may qualify for an Interim Retail Permit under Section 24044.5, but under what criteria? **32.** As with a Temporary Permit, the IRP is valid for 120 days, but can it be renewed at the department's discretion?

And One Answer:

Now that you've awakened with this great idea to buy a hospitality business, if you think you can or should do this alone, dream on. Some of these questions you can answer yourself. Some require a professional consultant. Some require a lawyer. Many require all of the above Or, you could buy that real estate in Florida.

"Solomon, Saltsman & Jamieson are attorneys practicing in the areas of Hospitality Transactions, ABC law, ABC Appeals Board cases, and all related Land Use Matters such as City and County Conditional Use Permits, Variances, Police and Fire permits, Entertainment law, and Gambling Law; as well as Business and Personal Injury litigation. Solomon, Saltsman & Jamieson can be reached at 800 405 4222."