

# Interim Management Agreements

(32B Chapter 18, 32B-5-309, & R82-5-102)

## I. ALWAYS NOTIFY DABS OF ANY CHANGE OF OWNERSHIP IMMEDIATELY

Notify your compliance specialist if there is **ANY CHANGE** in ownership of the corporation, partnership, LLC, sole proprietorship, or similar entity that holds the license or if there is a change in the entity that manages the retail licensee.



- Call your compliance specialist to find out if you will need to do a change of ownership application and go before the DABS Commission for approval.
- Failure to do so may result in suspension or revocation of the license.
- You must do this whether or not you need an interim management agreement (IMA).



## II. HOW DO I KNOW IF WE NEED AN IMA?

If the new buyer of a business:



- Has purchased a business with an alcohol license
- Desires to continue operating the day-to-day sales of alcohol
- But the new buyer is not yet approved by the commission for a license . . .

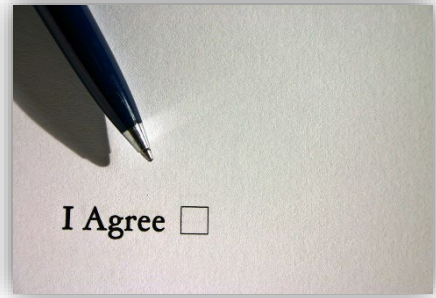
Then the buyer and seller must enter into a written agreement to facilitate a smooth transition of alcohol sales – THE IMA

The new buyer may only manage alcohol sales and operations during the transition if they **understand that the DABS license and all revenue from the sales of alcohol do not belong to them. It still belongs to the seller who still holds the license.** However, the buyer can be reimbursed for any alcohol they purchase for the seller.

**NOTE: The seller must maintain the required bond, insurance, and business license during the transition period, as these are statutory requirements to hold a license. However, the buyer may agree to reimburse the seller for any necessary costs incurred to maintain the bond, insurance, and business license.**

### III. HOW DO I WRITE AN AGREEMENT?

There is a specific list of requirements for writing an agreement by you or your attorney. There is also a form that can be signed as a stipulation, agreeing to the IMA process. The form can be found on the DABS website: [GO HERE](#) You may also find the form in the change of ownership application packet.



#### LIST OF REQUIREMENTS:

1. Because the current DABS licensee (transferor or seller of the business) still holds the DABS license, all proceeds from the sale of alcohol at the licensed business must still flow to them and NOT to the new applicant/owner of the business because the new applicant is not yet licensed. This is true during the transition period even if the buyer has acquired the lease or owns the premises.
2. During the transition period, revenue must still be reported, and sales and income taxes must be paid under the DABS licensee's account numbers.
  - a. If the current DABS licensee (transferor/seller of the business) will remain on the premises to operate the business during the transition period but no longer owns or has rights to the building and equipment, the seller of the business may lease back the facility and equipment from the new owner under a management agreement.
  - b. If the current DABS licensee (transferor/seller of the business) still owns or has rights to the building and equipment, then the seller of the business may hire the new owner/applicant to manage and operate the business during the interim period for a reasonable fee (fair market value).
3. The duration of the IMA between the current DABS licensee and the new applicant/owner will begin when the sale is completed and is limited to the period during which the new owner is actively applying for a DABS license with the commission and the newly awarded license is no longer conditional. The new owner must agree to use their best efforts to obtain the license.
4. The bond, insurance, and business license must remain in the name of and be the responsibility of the current DABS licensee during the interim period. However, the new buyer may agree to reimburse the seller of the business for any necessary costs to maintain the bond, insurance, and business license during the interim period (for instance, on a pro-rata basis).
5. The current DABS licensee is ultimately responsible for any violations that occur during the interim period, and the violations will go on the seller of the business's violation history record. However, the new DABS applicant/owner may agree to pay any fines and costs associated with any violation that occurs during the interim period.
6. The current DABS licensee (seller of the business) is ultimately responsible for timely renewing the DABS license if the renewal cycle occurs during the period of the agreement. However, the buyer may agree to reimburse the former owner for any renewal fees.

#### **IT CAN'T JUST GO ON & ON & ON &**

**The agreement is limited to the time a buyer is actively applying for a DABS license *AND* the new owner *MUST* actively apply to obtain the license.**

7. Not until final approval of the change of ownership which includes conditional requirements have been met, may the proceeds from the sale of alcohol for the period following the transition period begin to flow to the new buyer.

8. The agreement ends on the day after the day the commission grants the DABS license, or until the newly issued conditional license is no longer conditional.

#### IV. OK! I NEED AN AGREEMENT. WHAT DO I DO NOW?

Before a retail licensee finalizes an agreement, it must be submitted to DABS for approval. DABS compliance specialists may guide the licensee to remedy any errors or omissions. But, remember, not until the agreement has been approved by DABS can the seller allow the buyer to use their license during the transition.

As is noted in the "list" the duration of the management agreement will begin when the sale is completed and is *limited to the period during which the new owner is actively applying for a DABS license with the Commission and the new license is no longer conditional*. The new owner must agree to use their best efforts to obtain the license.

Before a retail licensee enters into an Interim Management Agreement it must be submitted to DABS for approval.

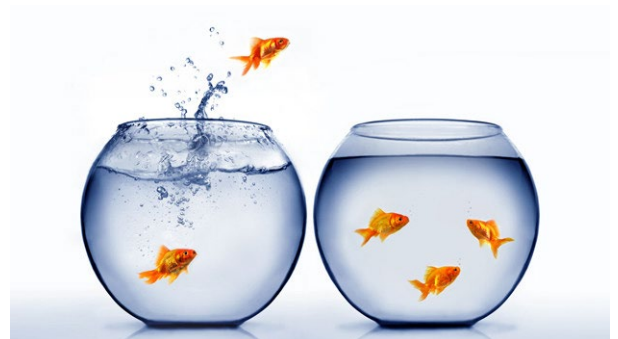
Once the license change of ownership is approved by the Commission and the new license awarded is no longer conditional, the agreement ends.

#### V. THERE IS ALWAYS AN EXCEPTION

The exception to needing an agreement is IF an *entity itself has an internal change* of ownership of:

- 51% or more of the shares of stock in a corporation
- A new general partner in a Partnership or
- 51% or more of the interests in an LLC

In this case, the business entity has 60 days to submit an application to DABS, which effectively gives this type of change of ownership a longer notification period. They are also NOT subject to the interim management agreement since the entity that holds the license is never actually replaced.



**NOTE:** NEW local licensing may or may not still be required for this type of change of ownership. Check with your local jurisdiction.