

STATE OF NEW YORK  
LIQUOR AUTHORITY

To: All licensees

Subject: Surrender and safekeeping of licenses

Pursuant to Section 53.1(d) of the Rules of the Authority, a licensee may be subject to disciplinary action if the “licensed premises ceases to be operated as a bona fide premises within the contemplation of the license issued for such premises, in the judgment of the Authority.” It has long been the position of the Authority that, when a licensed business is closed, either temporarily or permanently, or the licensee has otherwise ceased conducting licensed activities, the premises is no longer “bona fide.” This Advisory is intended to provide guidance to licensees with respect to actions that must be taken if the licensed business is closed, either temporarily or permanently, or the licensee has otherwise ceased conducting licensed activities.

If the licensed business will be closed for less than two weeks, no action is required in order for the premises to remain “bona fide.” If the licensed business temporarily closes or otherwise temporarily ceases licensed activities for more than two weeks, the license certificate must be placed in safekeeping. If the licensed business is permanently closing or otherwise permanently ceasing licensed activities, the license certificate must be surrendered. The following are instructions with respect to the safekeeping and surrender of a license certificate.

- Surrender of license certificate

If a licensee permanently ceases using its license (for example, because the business is being closed or the business has been sold to another entity) before the expiration date of the current license certificate, the licensee certificate must be submitted to the Authority for surrender. To submit a license certificate for surrender, the licensee must complete the petition for surrender found on the reverse side of the license certificate, or complete the separate Petition for Surrender form that can be found on the Authority’s website.

Please note that the submission of the license certificate and Petition for Surrender does not complete the surrender process. The petition for surrender must be approved by the Authority. Pursuant to Section 127 of the Alcoholic Beverage Control Law, if there is a disciplinary proceeding pending against the licensee, or if a disciplinary proceeding is commenced within thirty days after the submission of the petition for surrender, the Authority cannot approve the surrender until the disciplinary proceedings are resolved.

Once the petition for surrender has been approved, the licensee may be eligible for a refund of the unused portion of the licensee fee. This refund, pro-rated based on the number of full months remaining on the license, is available to any licensee who submits the license certificate and petition for surrender at least one month before the date of expiration of the license certificate. However, if a disciplinary proceeding is pending, or is commenced within thirty days after the submission of the petition for surrender, the Members of the Authority may direct that any refund be forfeited if the disciplinary charge or charges are sustained.

Please note that any refund will be issued in the name of the licensee. In the case of a corporation, limited liability company or partnership, the refund cannot be issued to individual principals of the licensed entity. Upon approval of the Petition to Surrender, the license privileges

shall be terminated and the license listed as “inactive.” In the event the licensee intends to resume operations, an application for a new license must be submitted.

- Safekeeping

If the licensed business temporarily closes or otherwise temporarily ceases licensed activities for more than two weeks, the license certificate must be placed in safekeeping with the Authority. Removing the license certificate from the licensed premises and “keeping” it somewhere “safe” is not sufficient. The license certificate must be submitted along with written instructions from the licensee directing that the license certificate be kept in safekeeping. The license certificate will remain in safekeeping until such time as the licensee directs and arranges for the return of the license certificate to the licensed premises.

The licensed premises must be ready to open and operate at the time the license certificate is removed from safekeeping. The Authority may request that the licensee submit proof to demonstrate that the business is ready to resume operations. When the license certificate is removed from safekeeping, it is for use at the licensed premises set forth on the license certificate. If the licensee intends to resume business at another location, an application to remove the license to the new location must be submitted to and approved by the Authority before the license certificate may be taken out of safekeeping.

With the exception of class “C” beer wholesaler licenses<sup>1</sup> or unless approved by the Authority if good cause is shown, no license certificate may remain in safekeeping for more than six months. At the conclusion of that six month period, a licensee must be prepared to either: take the license certificate out of safekeeping and resume licensed activities; surrender the license; or request and obtain approval for an extension of the time the license certificate may be kept in safekeeping. The failure of the licensee to take one of these actions will subject it to disciplinary action.

To obtain an extension of the time the license certificate may be kept in safekeeping, the licensee must submit a written request to the Authority’s Deputy Commissioner of Licensing. The request must be submitted no later than the end of the fifth month that the license has been in safekeeping. The request must explain why there is good cause to approve the extension. Examples of good cause include natural disasters and fires that require significant repairs or rebuilding of the licensed premises, and litigation between the licensee and landlord that prohibits the licensee from occupying the premises. Reasons such as remodeling, renovations, or searches for new locations to move the licensed business do not constitute good cause to grant an extension.

Safekeeping does not result in a termination of the license privileges. Those privileges are suspended while the license certificate is in safekeeping. The licensee remains responsible for renewing the license if it expires while the license certificate is in safekeeping. The licensee is not

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<sup>1</sup> New “C” beer wholesale licenses are not available. A new licensee can only obtain such a license by: a) purchasing an existing business that holds such a license; and b) filing a transfer application. Nor can an existing “C” licensee surrender its current license certificate and obtain a new license for another location at a future date. Accordingly, the Authority will continue to allow “C” beer wholesaler license certificates to remain in safekeeping indefinitely without the need for approval by the Deputy Commissioner of Licensing. However, the license certificate may not be removed from safekeeping unless the licensee identifies a specific location where the business will be located. If the location is not the address set forth on the license certificate, an application to remove the license to the new location must be submitted and approved.

entitled to any refund of the license fee for the period during which the license certificate was in safekeeping.

- Additional bars

The certificate issued for an additional on-premises bar does not have to be placed into safekeeping if that bar is temporarily closed/out-of-service. If the licensee intends to permanently cease using the bar, the certificate must be surrendered.

- Seasonal on-premises licenses

For businesses that operate on a seasonal (winter or summer) basis, the license may be placed into safekeeping when the business is closed or the licensee may obtain a seasonal license.

- Rescission of prior Full Board guidance

Bulletin #579 (issued on January 17, 1996) is hereby rescinded.