

TOP QUESTIONS TO ASK BEFORE YOU SIGN A LEASE FOR YOUR FLORIDA RESTAURANT OR BAR



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I field frantic calls from potential clients on a daily basis -- folks who have signed a lease, are knee-deep in construction permitting, and then realize that they will have a hard time getting a liquor license. I hear things like: “The landlord told me I wouldn’t have an issue getting a liquor license, but now the City is saying the space isn’t zoned for a restaurant” or “I don’t understand! The person who sold me the business said the liquor license was included! Why won’t the City approve it?”

A word of caution: you may not want to sign a lease or buy a property for any type of use that involves a liquor license without being certain that you will ultimately be able to get a license for that space. A big part of what I do is assist clients with site selection for uses involving alcohol, including performing zoning due diligence, having discussions with municipal zoning staff, and determining how feasible it will be to get an alcohol-related business up and running.

Here are some things to look out for when you are scoping out a new space for your new restaurant, bar, nightclub, liquor store, convenience store, or any other business involving alcohol sales or service:

1. What type of liquor license do you need?

I’ve written a few [articles](#) on this issue, but the basics are as follows:

2COP license: Allows you to sell beer and wine by the glass, or in sealed containers (on-premise or package sales). With this type of license, the Florida Division of Alcoholic Beverages and Tobacco (“DABT”) does not care if you sell any food, but the city or county your business is in may care. The cost of this license is roughly \$400 per year, but varies by county.

4COP SFS license: “SFS” stands for “special food service.” This is a full liquor license (beer, wine and spirits/hard liquor) for a restaurant with at least 2,500 square feet and space to serve 150 people at one time, for on-premise consumption only. Note that this breakdown of square footage and what essentially amounts to a seating requirement can vary throughout Florida, but the 2,500/150 threshold applies to

Miami-Dade County, for example. No matter where you are in the State, 51% of your gross F&B revenue will have to come from food and non-alcoholic beverages – and yes, the State does indeed check that percentage carefully to make sure you are a legitimate restaurant, instead of a bar posing as a restaurant. There are additional nuances here in terms of how to calculate square footage and seating, but that is a topic for another day.

Unlike the 2COP license, the 4COP SFS *does not* allow for package sales. Again, this type of license is really meant to help bona fide restaurants sell full liquor as part of the dining experience, without having to incur the high price of buying a quota liquor license (see below), so the license is limited to on-premise consumption.

4COP quota license: This license sounds similar to the 4COP SFS license, and is indeed similar in that it is also a full liquor license (beer, wine & spirits). However, a 4COP quota license does not require the same levels of square footage, seating, or percentage food sales as an SFS. It is called a “quota” license because there is only a certain quota/amount of these licenses available in each county. To be exact, the State will allow one license per 7,500 people in a particular county.

The 4COP quota license is typically the type of license that a bar or nightclub ends up getting, because those types of venues often cannot meet the requirements for the less costly 4COP SFS license. Unlike the 4COP SFS license, a 4COP quota license *does* allow for package sales in addition to sales by the drink. Both on-premise and off-premise sales are allowed under this type of license.

A 4COP quota license has to be purchased from someone who already owns one. It is an asset, just like a car or a house, and the purchase process includes a thorough due diligence to make sure the license is “clean.” I do not broker these licenses myself, but do help facilitate purchase and sales through outside brokers. I can represent either the buyer or the seller in drafting or reviewing the purchase and sale agreement, and other documents needed to close on a liquor license transaction. I can also act as an escrow agent and oversee the closing process, much like a real estate attorney would do with a residential home closing. Some buyers need to finance the purchase of this license, and financing involves additional documents that need to be reviewed, like loan terms and security agreements.

These licenses are expensive, with prices varying by county. In Miami-Dade County, you can expect to pay close to \$180,000 for a 4COP quota license. In counties where there is a smaller supply of available licenses, the cost can be upwards of \$500,000. Even if you buy one of these licenses from an existing owner, you still need to go through an application process with the DABT, since the DABT needs to approve your business to activate the license at a particular location.

These are the most common types of liquor licenses for establishments that sell alcoholic beverages by the drink. There are less common liquor licenses for uses at golf courses, tennis clubs, beach clubs, bowling alleys, performing arts centers, etc.

2. Does the space have an existing liquor license?

Even if the answer to this question is “yes,” you will still need to dig deeper. Are you taking over a restaurant, but plan on operating the space as a bar instead? This could change things. The way you plan on using the space will dictate not only the type of liquor license you will need, but also how the local municipality (city or county) will treat your business from a zoning perspective. Some municipalities do

not care if you are a bar or a restaurant, and are fine with either type of use, so long as you are not in a residential neighborhood. Other cities are very strict about where you can open up a bar or nightclub, or even a restaurant. Zoning issues are covered in more depth in the next section.

Also, just because a seller is offering you a liquor license does not mean you will automatically get the license approved by the DABT. The DABT reviews each application individually, and it may be that someone involved in your business does not qualify to hold a liquor license for some reason (criminal past, for example).

A quick note -- before you take over a space because the seller is promising to give you their liquor license, it is wise to do a full review of the license itself to make sure the license is active, valid, and in good-standing. The seller's liquor license could have a pending administrative case, have fines assessed against it, or the license could be compromised in some other way.

So, buying or leasing an establishment with an existing liquor license is not a slam dunk, but can certainly make things easier in some instances.

3. What is the zoning of the property?

I have also written [articles](#) on zoning-related issues, but I cannot overemphasize the importance of verifying zoning compliance. Each county in Florida is broken up into multiple municipalities, and each municipality (city) has its own set of laws regulating how land can be used and how businesses can operate within its borders. For example, Miami-Dade is broken up into over 30 municipalities, so Coral Gables will treat bars differently than Hialeah or Miami Beach. There is no one-size-fits-all answer when it comes to zoning issues. Note that some properties fall within unincorporated areas of the County, so the County itself will actually regulate zoning issues.

The applicable city or county will ultimately need to sign off on your liquor license application. This means that when you are close to opening, you (or your attorney) will bring the application in for zoning signature. The City will review your application, check the type of business you are trying to open, and do their background research to make sure your business is allowed in that location. In some instances, the municipality may require that you go through a public hearing process before the municipal planning board or city commission for a variance or special exception to allow the type of use you are proposing.

For obvious reasons, some cities do not want liquor sold or served near schools, churches, parks, etc. Other cities want to prevent an overconcentration of liquor licenses in a particular area, so they impose requirements that, for example, a bar be located at least 1,500 feet from another liquor license. These requirements are referred to as "distance separation requirements." Some cities will require that any bar or nightclub submit a liquor radial survey to show that there are no schools within 1,000 feet, for example. Again, some cities do not care how far away a bar is from a school, but other cities have strict laws on the issue. These distance separation requirements and how to calculate those distances (as the crow flies or pedestrian path) vary by municipality.

4. Is the space properly equipped?

If you intend to serve food or beverages, you will likely need to have an on-site grease trap. If you are taking over a bank space and turning it into a restaurant, this may require that you break into the foundation of the building to install a grease trap, or increase the capacity of water piping or sanitary

systems. Before signing a lease, it makes sense to have a firm understanding of whether you will be able to convert the location into a usable space for your business. This may involve discussions with an architect, engineer, and the local building department.

5. What other licenses will my business need?

In order to operate your alcohol-related business in Florida, a few other types of licenses may be needed, including but not limited to:

- Florida Division of Hotels and Restaurants food service license;
- Grease trap permit, or other environmental permits;
- Municipal and County business tax receipts and/or certificates of use;
- Certificates of occupancy;
- Fire alarm permits; and
- Fire safety permits.

6. Does the lease properly protect me?

This is a loaded question, which requires a fact-specific analysis based on your business needs. Depending on the amount of construction work that needs to be done at the location, you may consider asking, among other things, for tenant improvement allowances and/or to delay the date you have to start paying rent. You may also want to ask for additional protections, like a licensing contingency that allows you to terminate the lease without penalty if you are not able to obtain necessary permits within a certain time period. Alcohol-related businesses tend to have very specific needs, and it is important to have someone with familiarity with food and beverage law and operations review the lease before you sign it.

These are just some top-level considerations when considering a lease for a business involving alcohol sales or service, and this article is not an exhaustive list of potential issues. If we can be of assistance during any stage of your process, please do not hesitate to reach out.

About the Author:

[Valerie L. Haber](#) is a [Florida liquor license and alcohol beverage law attorney](#) in the firm's Alcohol Law and [Food Law](#) Practice Groups. She concentrates her practice on advising all three tiers of the alcohol beverage industry including wineries, breweries, and distilled spirits suppliers, distributors, and retailers. Valerie's practice includes counsel relating to federal, state, and local laws governing the sale, distribution, importation, manufacturing, and marketing of alcoholic beverages, including beer, wine, and spirits. Valerie works closely with national retailers, including restaurants, supermarkets, movie theater chains, and other on and off-premise businesses, through all phases of development and licensing, including land use and zoning diligence and approvals. She also has experience drafting management and promotional contracts for alcohol industry members, including hotels and golf courses, and regularly advises clients on the legal risks associated with promotional activities. Valerie also assists clients with local liquor licensing, including restaurant, hotel and occupational licensing.