



**EAT, DRINK AND BE WARY:
RESTAURANT LEASING AND LIQUOR LAWS**



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**EAT, DRINK AND BE WARY:
RESTAURANT LEASING AND LIQUOR LAWS**

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What Makes **Restaurant** Leasing

Different from All Other
Leasing

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A Brief History of Leasing from Biblical Times to Present



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Special Considerations for Restaurant Leasing

- Description of Premises/Definitions
- Legal descriptions
 - Diagrams
 - Basement space
 - Patio—outdoor plaza
- Roof issues
 - Signage (including exterior walls)
 - Satellite
 - Cable TV

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Timing Issues

- Lease Commencement Date
- Fixturing & Permitting Period
- Rent Commencement Date
- “Drop dead” date

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- Initial Construction Alterations
- Typically more extensive for restaurants
- More issues
- Greater investment/lead time
- Landmarked-building issues

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- Lease Commencement Date
- Fixturing Permitting Period
- Construction Issues
 - Landlord delay
 - Licensing delays
 - Co-tenancy or other store opening

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- Rent Commencement Date
- Landlord seeks earliest possible date
- Tenant seeks conditions, e.g., liquor license in place
- Sliding date in light of domino effect
- Free rent period?

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Fixed Rent

- Conditions Precedent
- Free Rent Periods
- Co-tenancy Requirements

Shopping Center Context

- Percentage Rent
- “Gross Sales” Defined
 - Limit: Exceptions and Exclusions
- OTHERS: exclusives, continuous operation, “go-dark”, “kick-out,” co-tenancy, radius restrictions, CAM charges, +++

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Use

- Landlord seeks to define limitations with specificity
- “and for no other purpose”
- Tenant seeks flexibility/use changes
- Common law: any tenant use that is legal
- Assignment and sublet flexibility

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- Use
 - Type of restaurant
 - Menu limits
 - Liquor % requirements
 - Lease exhibit
 - Use descriptions not specifics
 - Types of food, not specific items

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- Use – Zoning – Liquor License
 - Landlord seek to limit contingency for liquor license
 - Unless problem with premises
 - Are premises “licensable”
 - Profitability may depend on liquor license
 - Liquor % requirements
 - Tie-in to other lease clauses, e.g., rent commencement date
 - Cost to operate without liquor license.

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- Use – incidental purposes
 - Landlord seek to limit
 - Tenant seeks flexibility
 - Sale of merchandise v. ancillary sales
 - Exclusivity re: restaurant type

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- Utilities
- Trade Fixtures
- Signage
- Assignment/sublet
- Continuous operation v. special operating hours

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- Trash removal
- Odors/Venting
- Grease traps/waterproofing
- Ingress/egress/deliveries
- Alterations
- Ownership of improvements

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- Parking
- Insurance
- Roof rights
- End of term





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The end of Part 1



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Start of the Part 2

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The Four Questions



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State Regulation of Liquor Sales

- Powers of State Liquor Authority (SLA)
(ABC Law, Sec. 17)
- License Required for Commercial Premises
- Licenses Not Transferable

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Types of Retail Licenses

- On-Premises Licenses
- Off-Premises Licenses
- Special Permits
- Post-License Applications

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Persons That May or May Not Be Licensed

- Disclose All Owners
- Persons Ineligible To Be Licensed
- “Tied House” Rule (“No” Means “No”)
- Source of Funds

Premises That May Be Licensed

- Types of Premises
- Requirements That Apply to Licensed Premises
- Certificate of Occupancy
- Toilets

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The Famous 200-Foot Rule ("No" Still Means "No")

- Bona Fide Church or School
- Same Street or Avenue
- Exclusive Use
- How Measured
- No Waiver
- Exceptions to 200-Foot Rule

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The Even More Famous 500-Foot Rule

- When It Applies
- Application to Transfers and New Licenses
- Measurement is a Radius
- The Public Interest

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The Application Process

- Pre-Filing Notice Requirements
- Community Board Questionnaire
- Appearance at Community Board
- Stipulation on Method of Operation
- Filing Application with State Liquor Authority
- Post-Filing Notice Requirement

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The Application Process (cont.)

- Fingerprinting
- 500-Foot Rule Hearing
- SLA Investigation
- Conditional Letter of Approval
- Self-Certification Program
- Rehearing or Article 78 Proceeding

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Special Permits

- Temporary Retail Permit on Transfer Applications
- Temporary Permits on New Applications
- Caterer's Permit
- Liquidator's Permit
- After Hours Permit
- Warehouse Permit

Changes After License Issued

- Changes in Facts
- Application for Approval of Corporate Change
- Application for Endorsement Certificate
- Application for Approval of Alterations to Premises

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Common Grounds For Revocation

- Sale to Minor
- Availing
- Disorderly Premises
- Focal Point of Police Attention
- Failure to Notify
- Unapproved Alterations

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Common Grounds For Revocation (continued)

- Unlicensed Security
- Violation of Method of Operations
- Not Bona Fide
- Health, Building or Fire Code Violations
- Felony Convictions
- Exceed Lawful Hours
- Unapproved Trade Name

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Penalties

- Revocation
- Cancellation
- Proscription
- Suspension
- Monetary Fine, Bond Claim, Letter of Warning

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Package Store Licenses

- Only One Allowed
- Serve Public Convenience and Advantage
- Considerations



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