



**MEYNER AND LANDIS LLP**  
COUNSELLORS AT LAW

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**Liquor License Liens – A “Sisyphus” Task\***

We routinely caution our lender clients that there is no effective way to secure a lien on a New Jersey liquor license given the broad prohibitions in the New Jersey Alcohol Beverage Act (“NJABC”) prohibiting any pledge or security interest in a liquor license. Notwithstanding this, lenders routinely take a UCC-1 security interest in business assets including the liquor license, either by direct reference to the license or indirectly by referring to general intangibles. Lenders also take a pledge of the ownership interest in the entity owning the liquor license. Yet, we have not seen lenders willing to exercise on a valid pledge and submit a twelve (12) page ABC application to take proper title to a liquor license after default. A simple sale of the ownership interest under the pledge itself may be a violation of the NJABC, and the transfer of the lender’s ownership pledge interest to a third party transferee without borrower’s consent may be rejected by the municipality as an improper transfer of the liquor license.

When the owner entity files bankruptcy, the Bankruptcy Trustee routinely rejects any claim of a secured interest in the liquor license, including proceeds from a sale, relying on NJABC law, leaving the lender as an unsecured creditor. This position was recently confirmed in the case of “In Re Circle 10 Restaurant LLC”, 519 B.R. 95 (Bankr. D. N.J. 2014). In this case, the secured lender was rebuffed in its argument that it had a right to proceeds from a liquor

license sale based on its UCC-1 filing. Interestingly, the New Jersey Division of Alcohol Beverage intervened in the case arguing the intent of the NJABC law was to prohibit any liquor license lien. Relying on the protective provisions of NJABC, the Division argued that liquor licenses are subject to issuance and control by the Division as to ownership for any potential transfer (In this case, there was also a claim of the landlord that it had an option in its lease to buy the liquor license at a fixed price. This claim was withdrawn based on the fact that the option was an executory contract, which could be rejected by the Bankruptcy Trustee).

The lesson to be learned from the Circle 10 case is that a lender cannot rely on the liquor license as part of its collateral package. We find the best approach is to work consensually with the borrower to sell the liquor license so that the lender can obtain the proceeds from its sale without Bankruptcy Trustee taking a strong arm approach and depriving the lender of the proceeds of sale. Try as we might, it is a Sisyphus task to secure a secured lien on a liquor license in New Jersey!

\*In Greek Mythology Sisyphus was a king who was punished for his chronic deceitfulness by being compelled to roll an immense boulder up a hill, only to watch it roll back down, and to repeat this action forever.

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