

**MAINTAINING CONTROL OF YOUR LICENSED PREMISES:  
Licensees Need To Be Mindful of Regulations Governing "Rented" Space  
and Management Agreements**

*By: Michael J. Brown/September 2006*

Many licensees have separate rooms or areas in their licensed premises which may be "rented" for group meetings, private parties, or other special occasions where the people using the room or space will be limited by invitation only. These areas might include a ballroom at a hotel, or a specific themed room within a restaurant, or it may be just a specific area of a bar that is separated from the other areas of the bar by a railing or other temporary barriers. Sometimes, the "rented" area may be the entire premises if the group meeting or private party is large enough to take over the entire facility.

Licensees engaged in these types of transactions should remember that MLCC Rule R 436.1023(3) states, "*A licensee shall not lease, sell, or transfer possession of a portion of a licensed premises without the prior written approval of the commission.*" Many licensees mistakenly believe that this rule only governs permanent leases, sales or transfers of the licensed premises. In fact, however, the MLCC interprets this rule as also prohibiting temporary or daily leasing, sale or transfer of a portion of the licensed premises.

Thus, a licensee seeking to "rent out" its ballroom or specialty-themed room in its restaurant or bar must be careful of the language used in the transaction documents with its customer so as not to violate this provision of the MLCC Rules. The contract documents should refrain from using language that would appear to lease or transfer possession of a portion of the licensed premises to the customer (or customer group) during the special event being held on the licensed premises. In particular, the transaction documents should be careful to state that the licensee remains in possession and control over the entire licensed premises during the event. Additionally, the fee or consideration for the "rental" of the facility should not be tied to any possessory interest granted to the customer or group during the event, but should be deemed a service fee or other fee for the set-up/take-down of the room preparations rather than a lease fee or "room rental."

Licensees who are currently involved with, or are considering, such transactions should have their transaction documents reviewed by legal counsel familiar with the MLCC contract requirements.

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Licensees should also be mindful of this rule if they are utilizing a management company to run the licensed business. This may occur during a time when the owner/licensee decides to devote less of his or her individual time to the business and wants to utilize an outside management company to help run the business, or, the more common scenario is when the business is being sold and the prospective purchaser is drawn in to manage the business during the license transfer process.

Licensees operating under a management agreement should remember the rule prohibiting the lease, sale, or transfer of possession of the licensed premises prior to obtaining the Commission's approval. Additionally, licensees should also be mindful of Rule R 436.1041 prohibiting a licensee from obtaining a license for the use or benefit of another person. Management agreements must be specifically written so as not to violate one or both of these prohibitions. In particular, a management agreement must be structured in such a way that the licensee maintains control over the licensed premises at all times. The licensee must also maintain responsibility for compliance with the Michigan Liquor Control Code, Rules and related laws. There are also strict requirements governing compensation of the management company under the management agreement, and failure to abide by these requirements can subject the licensee to a violation. Under MLCC Rule R 436.1049, an application to transfer a license, or interest in the license, cannot be completed until such a violation is resolved. Thus, failure to draft a proper management agreement or to follow the terms of that management agreement can be detrimental to both the licensee and the manager if applying to transfer ownership of the license. The MLCC rules and regulations governing such agreements and the transfer of ownership of a license should be strictly adhered to by both the owner and the manager. The management agreement will almost certainly be reviewed by the MLCC investigator as part of any license transfer application. Licensees with questions about the proper term and fee structure to be used in a management agreement should contact legal counsel familiar with such agreements.