

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 21 LICENSES AND PERMITS - APPLICATIONS

15.11.21.1 ISSUING AGENCY: The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.11.21.1 NMAC - Rp, 15 NMAC 11.2.1.1, 4/25/2017; A, 9/28/2021]

15.11.21.2 SCOPE: These rules apply to all licensees and applicants for licensure under the act.
[15.11.21.2 NMAC - Rp, 15 NMAC 11.2.1.2, 4/25/2017]

15.11.21.3 STATUTORY AUTHORITY: Sections 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.11.21.3 NMAC - Rp, 15 NMAC 11.2.1.3, 4/25/2017]

15.11.21.4 DURATION: Permanent.
[15.11.21.4 NMAC - Rp, 15 NMAC 11.2.1.4, 4/25/2017]

15.11.21.5 EFFECTIVE DATE: April 25, 2017, unless a later date is cited at the end of a section.
[15.11.21.5 NMAC - Rp, 15 NMAC 11.2.1.5, 4/25/2017]

15.11.21.6 OBJECTIVE: This rule is intended to establish general standards for the application and issuance of licenses under the act.
[15.11.21.6 NMAC - Rp, 15 NMAC 11.2.1.6, 4/25/2017]

15.11.21.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in this rule have the same meanings as set forth in the act.
[15.11.21.7 NMAC - Rp, 15 NMAC 11.2.1.7, 4/25/2017]

15.11.21.8 LICENSE APPLICATION:

- A.** The director is authorized to prescribe all forms called for or required by the act or these rules. All filings with the division shall be accompanied by such affidavits, documents, fees and other supporting data as the director shall require.
- B.** All documents, records, affidavits, fees, supporting data or information requested by the division with regard to any application shall be furnished within 30 days from the date requested by the division, or the application may be disapproved, unless good cause is shown.
- C.** All applications for liquor licenses shall be made on the forms prescribed by the director whether filed electronically, by mail or in person.
- D.** All substantially complete applications received shall be date and time stamped by the division. Applications that are not substantially complete will not be processed and returned to the applicant with a notice of all deficiencies.

[15.11.21.8 NMAC - Rp, 15 NMAC 11.2.1.8, 4/25/2017]

15.11.21.9 RESIDENT AGENT DESIGNATION:

- A.** Except for sole proprietors, every licensee shall designate a “resident agent” to accept service of all orders and notices of the division. The resident agent must have:
 - (1) no conviction for:
 - (a) any felony in any jurisdiction, or
 - (b) two convictions for violations of the act within any twelve-month period;
 - (2) limited power of attorney and authority to bind the applicant to matters related to liquor sales and operations;
 - (3) authority and ability to accept service of all orders, subpoenas, notices and other legal documents from the division, including any notice of charge pursuant to the act on behalf of its principal; and
 - (4) residency in the state of New Mexico.
- B.** To designate a resident agent, a licensee shall file, with the division, an application on division forms. The designation of resident agent may be terminated upon written notification to the department by either the

licensee or the resident agent. A licensee shall have 10 days from the date of termination of the agency relationship to file an application for a new resident agent. Any application filed more than 10 days from the date of termination of the resident agent shall be accompanied by an additional fee as set forth at 15.11.26.9 NMAC.

C. A licensee may designate as many resident agents as it deems necessary for the operation of the business.

D. The application fee for designation of each resident agent shall be as set forth at 15.11.26.9 NMAC.

E. The designation of a resident agent shall not relieve the licensee of any responsibilities or liabilities to the division for violations or compliance with the act.
[15.11.21.9 NMAC - Rp, 15 NMAC 11.2.1.9, 4/25/2017]

15.11.21.10 DISCLOSURE OF OWNERSHIP:

A. Applicants must fully disclose all ownership interest in the liquor license, as required by Subsection A of Section 60-6B-2 NMSA, upon application for a liquor license, or for transfer of ownership of a liquor license, or for change in structure, or for lease of a license, by filing an application on forms prescribed by the director.

B. The following shall be fully disclosed in writing to the division:

(1) if the licensee is a corporation or limited liability company, the principal officers, directors, and each stockholder known to the corporation as owning more than ten percent of the stock in the corporation, or the manager or members owning more than ten percent of the membership interests in the limited liability company;

(2) if the licensee is a trust, the trustee and any persons entitled to receive regular and substantial distributions of principal and income or benefit from the trust. The director may request a copy of the trust agreement for review, but need not make the trust agreement part of the application;

(3) if the licensee is an association, all principal officers, and directors;

(4) if the licensee is a subsidiary, all principal officers, directors and stockholders of the parent; however, in the case of a publicly traded corporation, only the names and addresses of those stockholders known to the corporation to own ten percent or more of such securities need be disclosed;

(5) if the licensee is a partnership or joint venture, all of the general partners, limited partners or joint venturers entitled to ten percent or more of the profits earned or other income paid by the partnership;

(6) if the parent company, general partner, limited partner or joint venturer of any licensee is itself a corporation, limited liability company, trust, association, subsidiary, partnership or joint venture, then all of the information required shall be disclosed for the entity as if it were itself a licensee, so that full disclosure of ultimate ownership is achieved;

(7) if one person owns interests in a corporation, limited liability company, partnership, trust, joint venture or as an individual, in any combination, that add up to ten percent or more of the total ownership of the license; and

(8) The director may require disclosure of additional information to assure full disclosure of the applicant's structure and financial responsibility, including structure and financial arrangements enabling actual control and profiting by ineligible persons or entities.

C. The director may determine that any or all of the documents required in Subsection B of 15.11.21.10 NMAC are confidential, and shall be returned to the applicant after sufficient division review and not made a part of the application file. The application file shall note such determinations.

D. Percent ownership in stock of a corporation or other entity shall be determined based on the percent ownership in the total amount of stock that has been issued, excluding treasury stock issued to the corporation or other entity.

E. If any person or entity holding an office or an interest in the license that is required to be disclosed has been convicted of a felony in any jurisdiction, it shall be disclosed.

F. If there is a change in any of the information required to be disclosed by statute or these rules, the licensee shall provide the necessary information to the division within 30 days of the change unless earlier disclosure or approval is required by the act or these rules.

[15.11.21.10 NMAC - Rp, 15 NMAC 11.2.1.10, 4/25/2017]

15.11.21.11 FINGERPRINTS:

A. Applicants shall provide fingerprints in compliance with Subsection B of Section 60-6B-2 NMSA 1978.

B. Unless otherwise determined by the director, a licensee is not required to submit new fingerprints when an application is filed for any of the following reasons:

- (1) to add a licensee's spouse to the license; however, the spouse must submit fingerprints;
- (2) when a husband and wife are the licensees, to transfer the ownership interest of a deceased licensee to his or her surviving spouse; however, if any part of the interest of the deceased spouse goes to any person other than the surviving spouse, that person must submit fingerprints; or
- (3) by a licensee with no prior arrest record to obtain an ownership interest in an additional license or to lease another license.

C. Fingerprints shall be taken:

- (1) under the supervision of, and certified by a New Mexico state police officer, a county sheriff or a municipal chief of police, or, if a nonresident, under the supervision and certification of comparable officers in the applicant's state of residence; or
- (2) in the discretion of the division, by a private agency qualified to take and certify fingerprints, provided the private agency submits to the division written authorization from any of the agencies referenced in Paragraph (1) of Subsection C of 15.11.21.11 NMAC.

D. Any applicant required to submit fingerprints must separately submit a completed personal data affidavit page of the application for liquor license, current within one year from the date the application is submitted.

E. If the applicant is a publicly traded corporation, no fingerprints or affidavits shall be required, and no further disclosure shall be required beyond the requirements of Subsection B of 15.11.21.10 NMAC.

F. Where each applicant required to be fingerprinted by these rules submits a sworn and notarized affidavit stating that he or she has not been convicted of a felony in any jurisdiction and pending the results of background investigations, a temporary license for 90 days may be issued if the applicant satisfies all other application requirements.

G. An applicant who files a false affidavit shall be denied a license, and any false affidavit is grounds for revocation of a license.

[15.11.21.11 NMAC - Rp, 15 NMAC 11.2.1.11, 4/25/2017]

15.11.21.12 LICENSED PREMISES:

A. The applicant shall provide the division with proof of the applicant's right to sole occupancy of the real property or the portion of the real property where the proposed license is to be operated in the form of a valid lease, deed, management agreement, or an equivalent legal document in the name of the applicant. All documents submitted must be fully executed and dated.

B. Upon request, the applicant shall provide the division with proof of the current owner of record for the real property or portion thereof.

C. Floor plans for the controlled access area within the licensed premises must be provided showing the entrances and exits, kitchen, storage, sale, service and consumption areas. All areas must be clearly labeled on 8 and ½ by 11 inch paper, either hand-drawn or professionally rendered.

D. Floor plans must show:

- (1) every level of the controlled access area of a licensed premises including the square footage for the controlled access area of the licensed premises as a whole, and separately for each level and for any patio;
- (2) all clearly labeled areas where alcoholic beverages are sold, served or consumed;
- (3) an exterior footprint of the licensed premises, including any patios, fences, walls, and dimensions;
- (4) if the applicant is a hotel whose entire establishment will be the licensed premises, floor plans must be submitted for each floor where public rooms in which alcoholic beverages will be sold, served or consumed are located, clearly designating the public rooms;
- (5) the interior and exterior premises through photographic pictures, if requested by the director; and
- (6) orientation of the premises relative to the nearest streets and to at least one cardinal direction.

E. In the event that the premises are proposed for a structure to be built, the applicant shall provide sufficient architectural plans that reflect the exact location and layout of the structures and patios to serve as the controlled access area of the licensed premises.

[15.11.21.12 NMAC - Rp, 15 NMAC 11.2.1.12, 4/25/2017; A, 9/28/2021]

15.11.21.13 LEASES OF LIQUOR LICENSES:

- A.** A person who operates a liquor license under a lease agreement with the licensee must be a licensed “agent lessee”. The agent lessee compensates the licensee for use of the license and is entitled to all profits, and is responsible for all losses, from the operation of the license.
 - B.** To designate an agent lessee there shall be filed with the division such fees, forms, documents and information as are required by the division. The lease agreement must contain provisions that the license is leased in its entirety.
 - C.** The designation of an agent lessee shall not require posting of the licensed premises or a hearing by the state or local governing body, if the license to be leased is located at the latest approved licensed premises for the license.
 - D.** The designation of agent lessee may be terminated by mutual written agreement between the parties, by court order or in accordance with terms of the lease agreement.
 - E.** The division will not approve the designation of any person as agent lessee who does not possess the same qualifications required of persons to obtain a license under the act.
 - F.** An application fee of two hundred fifty dollars (\$250) will be paid for each designation of agent lessee.
 - G.** The designation of an agent lessee shall not relieve the licensee of any responsibilities or liabilities to the division for violations or compliance with the act.
 - H.** A lease of a license will not be approved when the licensee is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for which arises out of the exercise of the privilege of a liquor license; or if citations for violations of the act issued more than three months prior to the date of the lease application are unresolved at the time of filing the lease application, unless the licensee and the division are involved in a formal administrative or judicial resolution process.
- [15.11.21.13 NMAC - Rp, 15 NMAC 11.2.1.13 4/25/2017]

15.11.21.14 COMPLIANCE WITH FEDERAL LAW

Applicants, including but not limited to, applicants to either manufacture or sell alcohol as a wholesaler, must submit proof of compliance with all applicable federal laws pertaining to liquor licensure, including, but not limited to, all necessary permits approved by the United States department of the treasury, alcohol and tobacco tax and trade bureau.

[15.11.21.14 NMAC - N, 4/25/2017]

15.11.21.15 GROUNDS FOR DENIAL OF LICENSES: The director may deny any application on any of the following grounds:

- A.** failure to satisfy any of the applicable requirements of this part upon final review;
 - B.** any fraudulent statement or evidence submitted in connection with an application;
 - C.** upon finding that prior violations demonstrate a pattern or practice of violations contrary to public health and safety and the purposes of the act;
 - D.** if granting of an application would result in a person holding a ten percent or more interest in a license when such person would not satisfy the requirements of Section 60-6B-1 NMSA 1978;
 - E.** if granting the application is contrary to the public health, safety, or morals; or
 - F.** if the application does not include all completed pages of the required form, all necessary fees, corporate documents, conveyance instruments, fingerprint cards, zoning clearances, and affidavits regarding distances from a church or school that will require waivers from the local governing body and waivers.
- [15.11.21.15 NMAC - N, 4/25/2017; A, 5/30/2017]

HISTORY OF 15.11.21 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ABC Regulation No. 3A-2.(A), Agency Responsibility of License Regulation 3A-2.(A), Interpreting and Exemplifying Section 60-3A-2 NMSA 1978 (1981 and 1984 Supp.), filed 1/18/1985;
AGD 3A-2(A), Agency Responsibility of License, filed 9/25/1990;
ABC Regulation No. 6B-2.(C), Completion of Application Regulation 6B-2.(C), Interpreting and Exemplifying Section 60-6B-2 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985;
AGD 6B-2(B), Completion of Application, filed 9/25/90; AGD 6B-2(F), Disclosure of Ownership, filed 9/25/1990;
AGD 4B-5(A), Forms, filed 9/25/1990.

History of Repealed Material:

AGD Regulation 6B-2(D), Random Drawing, filed with the State Records Center and Archives on 9/25/1990, has been repealed.

15 NMAC 11.2.1, Licenses and Permits - Applications, filed 3/14/1997 - Repealed effective 4/25/2017.

Other History:

15 NMAC, 11.2.1, Licenses and Permits - Applications, filed 3/14/1997 was replaced by 15.11.21 NMAC, Licenses and Permits - Applications, effective 4/25/2017.