



INFORMATION FOR CLIENTS OF TEXAS ATTORNEYS

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Reducing Restaurant Liability in Texas

BY MATTHEW SANDERSON AND RALPH PERRY-MILLER

Whether your restaurant is doing well in this economy or feeling the squeeze, there are steps you should take as an owner to protect yourself from potential liability. The following answers to some of our most commonly asked legal questions should help reduce those liabilities to add more to your bottom line.

What are the top three ways to protect my restaurant and its name?

You should first form an entity, and then register the entity's name with the Secretary of State of Texas or your company's state of formation (be sure the name is available first). After formation of your entity, the best way to protect your restaurant's name nationwide is to register it as a trademark with the U.S. Patent and Trademark Office. Finally, make sure that your restaurant has proper insurance, both in the amount and in the type of coverage.

How can I gain leverage with vendors?

In any negotiation with third parties, one strategy to gain leverage is to determine who the competition is and to evaluate your vendor's competitors. After you evaluate the competition, you should assess leverage. If you can gain any leverage via your vendor's competition or your ability to use experience or contract terms to your advantage, you should use it. Next, terminate negotiations with vendors who fail to meet your criteria or who refuse to negotiate fairly. Finally, consider joining together with your competitors to form mutual buying groups and programs. These groups, if formed and governed correctly, can significantly increase your bargaining power with vendors.



Is it legal to transfer an alcohol permit, for instance when selling or transferring a restaurant?

Unfortunately, you may not transfer an alcohol permit to another person or entity. Section 11.06 of the Texas Alcoholic Beverage Code prohibits allowing any person to use another person's permit, and Section 61.02(a) provides that a permit/license is not a property right, which therefore further restricts the sale or use of the permit since it is not a piece of property.

Although you may not transfer a permit, under certain circumstances, parties may enter into a Management Agreement, wherein the current permit holder appoints the new owner as its agent for alcohol sales. In terms of the code, though, the current permit holder must ensure contractually and operationally that it remains in "effective" and "managerial" control of the alcohol sales, as

those terms are defined in the Texas Alcoholic Beverage Commission's Administrative Rules.

There are risks associated with this arrangement, though. For instance, the current permit holder could be liable for the alcohol-related activities, malfeasance, and crimes of the new owner as related to the distribution of alcohol.

What should managers know to protect the restaurant from employment-related lawsuits?

There are no guarantees to eliminate these types of suits, but it significantly helps when managers are honest with their employees. Managers should not say one thing and do another. Further, no manager should attempt to be a "best friend," which can often have unintended consequences when employees forget who is the boss. Next — and it seems



simple — those in charge must implement a zero-tolerance policy for sexual harassment. Finally, a good manager will act as a leader, set an example, and treat all employees equally.

Are there any operational strategies to help protect my restaurant's assets?

Yes. One strategy is to separate the operations from the assets via the use of legal entities. Through the use of two or more entities, one entity can own the assets. That entity will then lease the assets to the other operational entity, which runs the restaurant. That way, if the operational entity is sued, it will have

few assets available to satisfy judgments. However, if you are already in business, there could be risks to implementing this strategy due to its effects on existing creditors.

Where can I find quality resources for more information on protecting my restaurant?

You can find helpful and relevant information through the Texas Restaurant Association, its sub-chapters per city, and **TexasRestaurantLaw.com**. Each of these resources provides free, relevant, and compelling information to serve the needs of the roughly 53,000 restaurants in Texas. ❖

Matthew Sanderson and **Ralph Perry-Miller** are attorneys at the firm of Looper Reed & McGraw, P.C. They focus on representing clients with restaurants, bars, nightclubs, and other members of the Texas restaurant industry. For more information, visit their blog, **www.TexasRestaurantLaw.com**.



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