FOSTER GRAHAM MILSTEIN & CALISHER, LLP
ATTORNEYS AT LAW

FGMC Newsletter **Second Quarter 2012**

"Landlord Rights in a Tenant's Liquor License" by Brian C. Proffitt

Liquor-licensed establishments are a critical component to the success of many commercial properties. Whether a retail liquor store anchoring a strip center, a build-to-suit chain restaurant drawing traffic from a nearby interstate, or a white tablecloth restaurant in an upscale hotel, liquor-licensed establishments bring attention – and foot traffic – to retail centers. As a result, landlords and property managers have a strong incentive to attract and maintain liquor-licensed businesses among their commercial properties. What many landlords are unaware of, however, is that they may have a legal right to retain those liquor licenses even after a licensee departs.

In Colorado, liquor licenses are issued to a specific "Licensee" for a particular "Premises." When a Licensee voluntarily chooses to vacate its property, it generally has the right to change the location of its Premises (if it is remaining in business at a new location) or to transfer its liquor license to an incoming business. In such instances, it makes sense for the landlord to work with the Licensee in order to effectuate a smooth transition to the next tenant.

But in cases where a Licensee is evicted, the tenant's liquor license may pass to the landlord (or a new tenant of the landlord's choosing) by operation of law. This transfer does not occur automatically, however, and a landlord must make timely application to the local licensing authority in order to perfect the transfer. By timely exercising its rights, the landlord may preserve the liquor license for a future tenant (and by obtaining a temporary liquor license, could continue operating a liquor-licensed business with minimal interruption). If the landlord does not preserve its rights, however, the local licensing authority may revoke the license due to the tenant's loss of possession, the liquor license may lapse, or the license may be surrendered by the former Licensee. In these latter instances, a new liquor application would be required and no liquor sales could occur from the Premises during the application process.

By knowing their rights, landlords and property managers may make the vacant Premises more marketable to prospective tenants, may save prospective tenants expense and time in obtaining a liquor license, may preserve customer patronage in a particular liquor-licensed location, and can minimize the financial disruption to itself and its remaining tenants due to the eviction of a liquor-licensed business.

For questions about Colorado liquor licensing, please contact Brian directly at (303) 333-9810 or via email at brian@fostergraham.com