BEER LAW CENTER

November 4, 2023

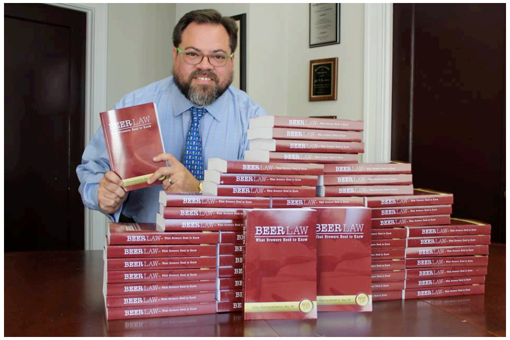
Pitfalls of Buying (or Selling) a Brewery

Overview

- Introduction
- Planning
  - What are you buying (or selling)?
    - Assets vs Company
  - How are you financing?
    - Loan closing
- Mechanics of the Transaction
  - Purchase Agreement
  - Closing
- Post-closing Operation
  - Punchlist items and account reconciliation

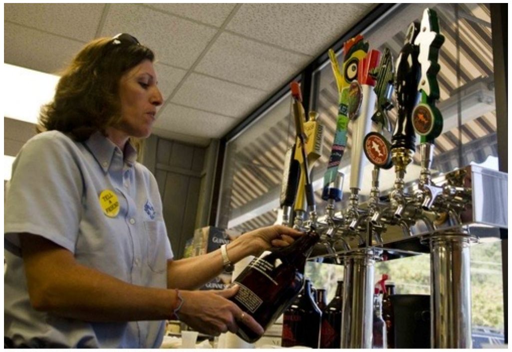
Introduction

- Beer Law Center®
  - Small firm
  - Focused on the craft beverage industry
  - Full-service business support for the alcohol producer and seller
- John Szymankiewicz Esq, PE
  - Lawyer as career 2.0
  - Background in chemical engineering and pharmaceutical production
  - Licensed Professional Engineer
  - 20+ years as a homebrewer
  - 10+ years working exclusively with the craft bev industry
  - Author *Beer Law: What Brewers Need to Know*
  - BJCP Certified Beer Judge
  - Certified Cicerone
  - WSET Level 2 - Wine



Pitfall #1 – Failure to Plan

- Planning Issues
  - Not enough time
  - Not understanding the mechanics
  - Not understanding the business
- Remember – this isn't like buying a sofa, or even some other kind of business
- Timeline
  - From the time you agree on a purchase price plan on at least 60 days to close
    - More if you're financing the transaction
  - Plan for time for Due Diligence
  - Plan for bumps in the road as well



More on Planning

- What are you buying? (Pitfall #2)
  - Assets
  - Company
  - Liability and tax issues
- How are you paying for this?
  - Loans, especially SBA, take time to close (Pitfall #3)
    - Financing approval
    - Guarantees
- Are there other loans already on the business?
  - Liens that have to be paid off (Pitfall #4)
- How are you organized (as a Company)?
  - Does that make a difference for the purchase?
- What about the operation of the business until closing? (Pitfall #5)

Elysian Brewing tanks.jpg Wikicommons 3.0

Mechanics

Find a brewery or buyer

Negotiate / Letter of Intent

Purchase Agreement

Due Diligence / Financing

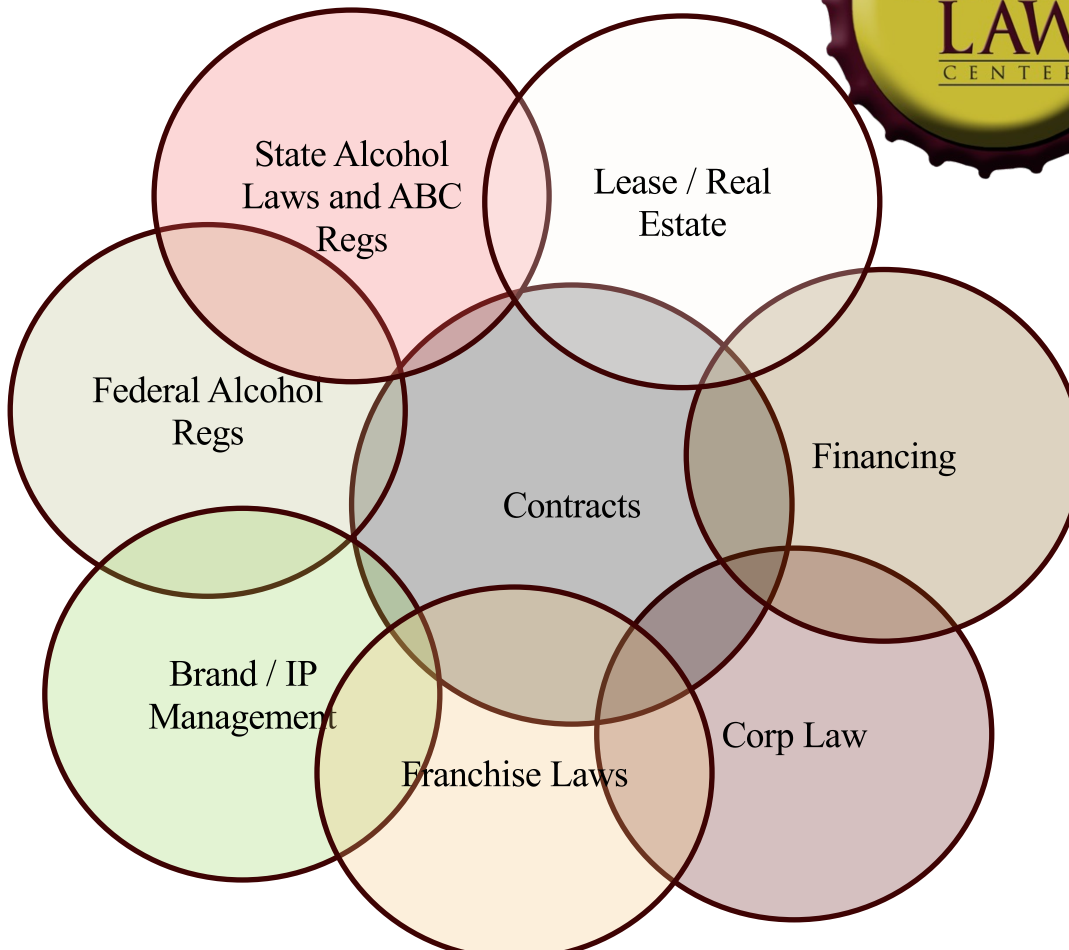
Closing

Post closing issues / operations

HCSO Library and Wikimedia Hungary contract 4.jpg Wikicommons 3.0

The Purchase Agreement

- Drives everything else
- Specifies what's being bought/sold and – often more importantly – what isn't
- Almost everything plays off everything else (Pitfall #6)



Mechanics

- Documents drive the transaction
  - Letter of Intent
  - Purchase Agreement
    - REMEMBER: The Purchase Agreement is NOT the purchase, it is a promise to purchase (Pitfall #7)
  - Closing Documents (Pitfall #8)
    - Bill of Sale
    - Title Transfer
    - Receipt
    - Evidence of Approval (if necessary)
    - Management Agreement (if necessary)
    - Release

- You're investing several hundred thousand dollars on this, you should expect to have a lot of documentation

Post Closing

- Staying in production (Pitfall #9)
  - General Rule: Licenses are non-transferable
  - TTB: Change of Ownership
  - State: TBD – local laws/rules
  - One option:
    - Purchase the assets
    - Leaseback
    - "Labor" Agreement
    - Profits as payment
    - Licensee still pays excise tax
    - Until buyer gets TTB/ABC licenses

- Referred to as a Leaseback/Operations Agreement or a Management Agreement

More Post Closing

- Closing – the keys change hands, but…
  - Utilities
  - Training/transition assistance
  - Website & social media
  - Supplier contracts
  - POS
  - Employees / payroll
  - Accounts Payable
  - Accounts Receivable
  - All these take time to change over and you need to account for who is due what
- Not having a post-closing plan (or burning a bridge with the buyer/seller) is Pitfall #10

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