



## **GUIDANCE FOR LICENSEES SEEKING CHANGES IN OWNERSHIP OR CONTROL**

Title 4 of the Delaware Code contemplates several types of administrative changes that licensees may undertake, including transfers of a license, changes in ownership or control, and updates to financial interests. The guidance below distinguishes among these categories, explains how they differ, and identifies the forms and supporting documentation required for review and approval.

Because licensed marijuana businesses operate in a highly regulated environment that implicates public health and safety, it is essential that the Office of the Marijuana Commissioner (OMC) is promptly informed of, reviews, and approves any proposed change in ownership, control, or financial interest before it takes effect. OMC oversight ensures that all individuals and entities with an ownership or controlling stake remain vetted, qualified, and compliant with state law, thereby promoting accountability, preventing diversion or unlawful influence, and maintaining the integrity and safety of Delaware's regulated marijuana market.

When reviewing this guidance and the corresponding forms, it is important to consider the following:

- No transfer is effective without Commissioner approval.
- Operating prior to approval constitutes a violation.
- Local zoning and municipal approval may also be required.

Before undertaking any change in ownership, control, or transfer of a license, licensees are strongly encouraged to consult with qualified legal counsel. It is critical that these transactions are structured and reported correctly, as failure to follow required procedures or obtain prior approval from the Office of the Marijuana Commissioner may result in administrative action, including fines, suspension, or revocation of a license. While OMC is available to provide technical assistance and guidance regarding filing requirements and regulatory processes, it cannot provide legal advice, and licensees remain responsible for ensuring full compliance with applicable law and regulations.

## **I. REPORTING LICENSEE DEATH**

The “Reporting a Licensee Death” form must be submitted when an individual licensee dies, or when a principal individual associated with a licensed entity dies, and the death impacts the status or control of the license. Any impacted licensee must notify the Commissioner by email [OMC@delaware.gov](mailto:OMC@delaware.gov) as soon as possible.

### ***Important Considerations***

- The license does not automatically transfer to heirs or beneficiaries.
- The estate may be permitted to continue operations temporarily pending transfer approval, subject to Commissioner authorization.
- Failure to timely report may result in administrative action.

### ***Additional Required Documentation***

- Certified copy of Official Death Certificate
- Testamentary Letters (if a will exists)
- Letters of Administration (if no will)
- Court appointment of personal representative
- Security Plan for Deceased’s inventory

## **II. LICENSE TRANSFER (NO COMPENSATION)**

The “License Transfer (No Compensation)” form is used to request approval from the Office of the Marijuana Commissioner for the transfer of a marijuana license not involving a sale or compensation. It applies to transfers occurring as part of an entity restructuring or by operation of law. In the event of a licensee’s death, any proposed transferee will be subject to investigation to determine their eligibility to hold the license. This process requires completion and submission of the appropriate Entity or Individual Disclosure forms, as well as a criminal background check.

\*\*\*\*The completed form should be submitted to OMC prior to the completion of a proposed new owner’s fingerprinting for a criminal background check.

### ***Important Consideration:***

- A transfer that occurs by operation of law—such as upon death—or as part of a bona fide internal restructuring without consideration is distinct from a transfer involving a sale, merger, or consolidation in which ownership or control is exchanged for money or other compensation. For the latter, see the next section, “Change in Ownership Request (With Compensation)”.

### ***Required Documentation:***

- Designation of Representative (if applicable)
- Transfer Agreement or Assignment Document

- Transferee’s completed civil, criminal, and financial background
- Explanation of restructuring and all new organizational documents

### **III. CHANGE IN OWNERSHIP REQUEST (WITH COMPENSATION)**

Licenseses must file a “Change in Ownership Request (With Compensation)” form whenever there is a change in the ownership structure, including: adjustments to percentage interests among existing members, shareholders, or partners; the admission of a new individual or entity acquiring a financial or controlling interest; or any merger, consolidation, sale, or other restructuring that affects ownership, pursuant to § 1372. Any change resulting in a ten percent (10%) or greater shift in ownership interest triggers additional reporting requirements, regulatory review, and applicable fees.

\*\*The completed form should be submitted to OMC prior to the completion of a proposed new owner’s fingerprinting for a criminal background check.

#### ***Important Consideration:***

- This application form is required for ALL changes in ownership regardless of percentage being modified.
- Changes in ownership greater than 10% are subject to a fee of \$5,000 or 15% of the value of the transaction, whichever is greater. 4 *Del. C.* § 1375.

#### ***Required Documentation:***

- New Owner Application, including Entity & Individual Disclosure and Criminal Background
- Financial statement of the new owner(s)
- Personal financial statements of all individuals, partners, or stockholders holding 10% or more interest
- Copy of the agreement outlining terms of sale or exchange
- Any Management Consulting, or Intellectual Property agreement with the licensee.  
NOTE – The Commissioner reserves the right to deny any transfer where an external agreement results in “Effective Control” by an unlicensed entity.
- Documentation detailing interest and profit/loss distribution
- Updated Capitalization Table
- Updated Organizational Documents
- Provide a summary of all restrictive covenants in the financing agreement. Does the lender have veto power over daily operations, hiring/firing, or equipment purchases?
- List and explanation of any past or present civil litigation the new owner may have been involved in.

- **For Social Equity Licensees:** Any transfer of interest resulting from a loan default must be flagged. The Commissioner may require an independent audit to ensure the 'Value of Transaction' (for the 15% fee) reflects fair market value and not a forced-liquidation price.

#### **IV. CHANGE IN OFFICERS AND DIRECTORS**

The “Change in Officers and Directors” form must be submitted whenever there is a change in the corporate officers, directors, managers, or other controlling persons of a licensed entity. Pursuant to 4 *Del. C.* § 1373, Licensees must notify the Commissioner within seven (7) days of the election, appointment, resignation, or removal, and such notification must include all information required by the Office.

A “Change in Officers and Directors” form is required when a new officer or director is appointed, when an existing officer or director resigns or is removed, or when there is a change in a managing member, manager, or general partner.

#### ***Important Considerations***

- Officers and directors must undergo a criminal background check.
- Failure to report may be considered concealment of material information.
- Changes that also alter ownership percentages may require additional filings.

#### ***Required Documents:***

- Meeting Minutes or other official documentation noting the election or appointment.
- Updated list of all directors, officers, and managers.