

CALIFORNIA GAMBLING CONTROL COMMISSION
SPECIFIC LANGUAGE OF PROPOSED REGULATIONS
APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

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TITLE 4. BUSINESS REGULATIONS.

DIVISION 18. CALIFORNIA GAMBLING CONTROL COMMISSION.

CHAPTER 5. ACCOUNTING AND TRANSACTION PROVISIONS.

ARTICLE 2. APPROVAL OF TRANSACTIONS.

§ 12320. Definitions.

For purposes of this article:

(a) “Consulting agreement” means a contract or agreement to receive the advice or the benefit of the expertise of another for compensation.

(b) “Formal approval” means the completion of the formal approval process specified in Sections 12323 and 12324.

(c)(1) “Interested transaction” means any transaction that may include or otherwise entitle a party to any portion of the following with respect to the gambling enterprise, third-party provider of proposition player services, or gambling business:

(A) An equity or ownership interest;

(B) Interest in the revenue, earning, profits or receipts derived from gambling operations;

(C) Repayment calculated by or based on a percentage of the revenues, earnings, profits, or receipts derived from gambling operations;

(D) The ability to exercise a significant influence over gambling operations.

(2) Interested transactions do not include security interests in personal property, real property, or other assets that do not create an ownership interest held as collateral.

(d) “Licensee” means “owner licensee” as defined in Business and Professions Code section 19805(ad) and, for the purposes of this article, third-party provider of proposition player services or gambling business license or registration.

(e) “Licensing agreement” means a contract or agreement for the rights to use another party’s products, including, but not limited to, software and controlled games.

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1 (f) “Proprietary agreement” means a contract or agreement for the rights to use the concepts
2 or ideas of another. This may include, but is not limited to, game concepts, trade secrets, or
3 software concepts.

4 Note: Authority cited: Sections 19811, 19823, 19824, 19840, 19841, 19901 and 19984, Business and Professions
5 Code. Reference: Sections 19824, 19901 and 19984, Business and Professions Code.

6 7 **§ 12321. General Transaction Provisions.**

8 Business and Professions Code section 19901 provides that many transactions performed by
9 a licensee are unlawful unless performed in accordance with Commission regulations. For
10 transactions that are not security interests or do not require formal approval, the following
11 provisions apply:

12 (a) All agreements, including but not limited to consulting, licensing and proprietary
13 agreements, over \$2000 shall be in writing.

14 (b) All transactions identified in Business and Professions Code section 19901 shall require
15 notification to the Bureau.

16 (1) Any transaction that meets the definition of an interested transaction as defined in Section
17 12320 shall follow the procedures set forth in Section 12322.

18 (2) Except as required in subsection (c), the submission of annual financial statements to the
19 Bureau, pursuant to Section 12314, shall satisfy the notice requirement when profit and loss
20 statements and income sheets or federal tax filings, are included.

21 (3) The following transactions require notice to the Bureau within 30 days of execution.
22 Notice shall consist of a summary of the transaction or related transactions and a copy of all
23 transaction documents, and may be made by mail, facsimile, or email.

24 (A) Any lease for real or personal property of more than seven days in duration.

25 (B) Any proprietary agreement as defined in Section 12320.

26 (C) Any licensing or consulting agreement as defined in Section 12320, or any series of
27 collateral licensing or consulting agreements totaling \$10,000 or more in any consecutive 12-
28 month period.

29 (D) Any transaction or series of related transactions totaling \$30,000 or more for Group 1
30 licensees, \$20,000 or more for Group 2 licensees, or \$10,000 or more for Group 3 and Group 4
31 licensees, in any consecutive 12-month period, except as follows:

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1 1. Transactions with institutional investors, as defined in Business and Professions Code
2 section 19805, and payments or licensing fees paid to tax agencies, government entities,
3 insurance agencies, as these recipients are otherwise regulated.

4 2. Contracts for third-party proposition player services, which are approved in accordance
5 with Business and Professions Code section 19984.

6 (c) The Bureau shall review the documents required under this section for compliance with
7 the Act and any specific conditions for the licensee. If the Bureau determines that formal
8 approval by the Commission is necessary, the Bureau shall advise the licensee within 30 days of
9 the determination to follow the formal approval process.

10 (d) Transactions may proceed while being reviewed, unless performance is specifically
11 required to cease by the Bureau or the Commission.

12 Note: Authority cited: Sections 19811, 19823, 19824, 19826, 19840, 19841, 19901 and 19984, Business and
13 Professions Code. Reference: Sections 19823, 19824, 19841, 19866, 19870, 19901 and 19984, Business and
14 Professions Code.

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16 **§ 12322. Interested Transaction Provisions.**

17 (a) A licensee shall not close, complete, consummate or settle an interested transaction
18 without prior formal approval from the Commission pursuant to this article.

19 (b) No request for an interested transaction approval shall be accepted unless the transferor
20 has a valid license issued by the Commission. The license of the transferor must remain active
21 for the duration of the transaction approval period. However, nothing in this subsection requires
22 the gambling enterprise, third-party proposition player services provider, or gambling business to
23 remain in operation for the duration of the transaction approval period.

24 Note: Authority cited: Sections 19811, 19823, 19824, 19826, 19840, 19841, 19901, 19902, 19904 and 19984,
25 Business and Professions Code. Reference: Sections 19823, 19824, 19841, 19866, 19870, 19901, 19902, 19904
26 and 19984, Business and Professions Code.

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28 **§ 12323. Requirements for Formal Approval of Transactions.**

29 (a) Submissions of requests for formal transaction approval shall include the following:

30 (1) A non-refundable \$500 processing fee, payable to the Bureau of Gambling Control.

31 (2) A cover sheet with a summary of the transaction, a copy of all final transaction
32 documents, and a copy of any supporting documentation.

33 (3) For those persons involved in the transaction that do not have a current license or

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1 registration, the appropriate application, as follows:

2 (A) For gambling enterprise transactions, a completed application for a state gambling
3 license and all required fees and deposits, as provided in Sections 12341, 12342 and Title 11,
4 CCR, Section 2037, for each successor in ownership interest.

5 (B) For third-party provider of proposition player services transactions, a completed
6 application for registration and all required fees and deposits, as provided in Section 12202 and
7 Title 11, CCR, Section 2037, for each successor in ownership interest.

8 (C) For gambling business transactions, a completed application for registration and all
9 required fees and deposits, as provided in Section 12222 and Title 11, CCR, Section 2037, for
10 each successor in ownership interest.

11 (D) Entities whose participation in transactions generally does not require licensure or
12 registration include, but are not limited to:

13 1. Banks, savings and loan associations, or other lending institutions that are subject to state
14 or federal regulation.

15 2. Insurance companies subject to supervision by the Insurance Commissioner of California
16 or a similar official or agency of another state or federal government.

17 3. Investment companies registered under the Federal Investment Company Act of 1940.

18 4. Any retirement plan regulated by a state or federal agency, for the benefit of its employees.

19 5. An employment benefit plan within the meaning of Title I of the federal Employee
20 Retirement Income Security Act of 1974.

21 6. A securities dealer registered under the federal Securities Exchange Act of 1934.

22 (b) The transaction documents must include all of the following disclosure statements with
23 an affirmative acknowledgement of each disclosure by the parties to the transaction:

24 (1) "The approval of a transaction by the California Gambling Control Commission
25 (Commission) does not constitute a certification by the Commission that the document is
26 enforceable in accordance with the law or its terms, and under no circumstance shall the terms,
27 conditions or provisions of an approved document be binding on the Commission. No liability is
28 attributable to or assumed by the Commission for approving, failing to approve or delaying
29 approval, or for any other direct or incidental consequences of the approval process, whether
30 foreseeable or otherwise."

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1 (2) “The approval of a license is not conferred upon any party to a transaction as a
2 consequence of the approval of a transaction by the Commission.”

3 (3) “Neither the secured lender nor any person acting on its behalf, or anyone whose interest
4 is derived from a secured credit transaction shall have any right to enforce a security interest
5 relating to a secured credit transaction, nor shall any security interest be enforced against a
6 licensee without the prior approval of the Commission.”

7 (4) “Any assignment of a security interest or other rights under an approved transaction, or
8 any amendment of any approved transaction document shall require the prior approval of the
9 Commission, unless expressly exempted by the Commission.”

10 (5) A clause stating that the closing of the transaction is contingent upon the approval of any
11 necessary licensure by the Commission.

12 (6) Specification that the closing date of the transaction cannot be prior to the date of the
13 transaction’s approval by the Commission.

14 (c) Agreements for an interest in or the sale or lease of any property, real or personal, that
15 requires the purchaser or lessee to be licensed shall include a provision for the responsibility of
16 any delinquency payments due before the closing date of the transaction in accordance with
17 Business and Professions Code section 19903.

18 (d) During the sale of a gambling enterprise, third-party provider of proposition player
19 service, or gambling business, any proceeds derived from the continuation of the licensed
20 activity that would otherwise be payable to a new owner shall be held in an escrow account and
21 not dispersed until the new owners have been approved by the Commission for a license
22 pursuant to subsection (a)(3). This subsection shall not prevent the payment of any taxes,
23 operating expenses, preexisting obligations, preexisting dependent support, or any other
24 distribution of proceeds that is approved by the Commission.

25 (e) Agreements for the sale of a gambling enterprise must also state whether the purchaser
26 will honor outstanding gaming chips, and if not, what provisions have been made for the
27 redemption of outstanding chips in accordance with Business and Professions Code section
28 19906.

29 Note: Authority cited: Sections 19811, 19823, 19824, 19826, 19840, 19841, 19900, 19902, 19903, 19904, 19905,
30 19906 and 19984, Business and Professions Code. Reference: Sections 19823, 19824, 19841, 19866, 19901,
31 19902, 19903, 19904, 19905, 19906 and 19984, Business and Professions Code.

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§ 12324. Transaction Formal Approval Processing Times.

(a) A written request for formal approval shall be submitted to the Bureau at least 120 days prior to the proposed closing date of the transaction.

(b) A request shall be processed within the following timeframes:

(1) After receipt of the documents and fees required by Section 12323, the Bureau shall have 30 days to notify the licensee of any deficiency in the request.

(2) If the licensee does not respond within 30 days to any request by the Bureau to cure deficiencies, the request to approve the transaction will be deemed abandoned and no further action will be taken on the application by the Bureau or the Commission. If a request is deemed abandoned, the licensee may submit or resubmit a request, which shall be treated as a new request for approval under this section.

(3) The Bureau shall forward the request to the Commission within 90 days, and may include a recommendation pursuant to Business and Professions Code section 19826, subdivision (a).

(c) The Commission shall review and approve or deny the transaction and any licensure applications once the Bureau's background investigation reports have been received for each person involved in the transaction that is required to apply for a license.

Note: Authority cited: Sections 19811, 19823, 19824, 19826, 19840, 19841, 19901, 19902, 19903, 19904, 19905, 19906 and 19984, Business and Professions Code. Reference: Sections 19823, 19824, 19841, 19901, 19902, 19903, 19904 and 19984, Business and Professions Code.

§ 12325. Transaction Amendments or Subsequent Assignments.

Any amendment to an approved transaction document or any subsequent assignment, pledge, sale, or transfer of an approved interest or transaction document or any portion thereof shall comply with the provisions of this article and shall require notification to the Bureau or prior formal approval by the Commission, as applicable, as if it were a new transaction.

Note: Authority cited: Sections 19811, 19823, 19824, 19826, 19840, 19841, 19901, 19902, 19904 and 19984, Business and Professions Code. Reference: Sections 19823, 19824, 19841, 19866, 19901, 19902, 19904 and 19984, Business and Professions Code.

§ 12326. Shelf Approval.

(a) Shelf approval is a preliminary approval by the Commission of a term sheet or memorandum of understanding between a licensee and another party. In the case of a transaction involving a proposed contract for the sale, in whole or in part, of a gambling enterprise, third-

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1 party provider of proposition player service, or gambling business, shelf approval may be
2 requested. A shelf approval shall not constitute an action by the Commission within the meaning
3 of subdivision (b) of section 19906 of the Business and Professions Code.

4 (b) Submissions of a request for transaction shelf approval shall include a term sheet or
5 memorandum of understanding. The following matters shall be addressed in the submission, as
6 appropriate:

7 (1) The names and contact information of all parties to the transaction, and a statement
8 indicating for each if the party is a licensee.

9 (2) The material terms and conditions of the transaction.

10 (3) The default conditions related to the transaction, specifically any securitization or
11 collateralization used in the transaction.

12 (4) Any metrics used in assessing covenants.

13 (5) Any conversion aspects.

14 (6) Organizational documents that define the rights to control and distribute profits.

15 (c) After review, the Bureau shall forward the request to the Commission for approval, and
16 may include a recommendation pursuant to Business and Professions Code section 19826,
17 subdivision (a).

18 (d) A shelf approval shall be valid for a period of 12 months, but may be extended upon
19 approval by the Commission. After a shelf approval expires, a new request for approval must be
20 submitted.

21 (e) Shelf approval may be rescinded by the Commission. The rescission shall be in writing
22 and shall set forth the reasons for the rescission, which shall be determined on a case by case
23 basis.

24 (f) Once the shelf approval has been formalized, the transaction documents shall be
25 submitted, as appropriate, under the provisions in this chapter, or as directed by the Commission.

26 Note: Authority cited: Sections 19811, 19823, 19824, 19826, 19840, 19841, 19900, 19901 and 19984, Business
27 and Professions Code. Reference: Sections 19823, 19824, 19841, 19866, 19870, 19900, 19901 and 19984,
28 Business and Professions Code.

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ARTICLE 3. SECURITY INTERESTS IN GAMING COLLATERAL.

§ 12330. Definitions.

(a) “Enforcement of a security interest” means the transfer of possession, ownership or title pursuant to a security interest.

(b) “Event of default” means any failure to comply with the security agreement that would result in the contractual right for the secured party to enforce a security interest.

(c) “Licensee” means “owner licensee” as defined in Business and Professions Code section 19805(ad) and, for the purposes of this article, third-party provider of proposition player services or gambling business license or registration.

(d)(1) “Gaming collateral” means property subject to a security interest that consists of:

(A) A security issued by a corporation, partnership, limited partnership, or limited liability company that is a licensee;

(B) A security issued by a holding company that is not a publicly traded corporation;

(C) An equity or ownership interest in a gambling enterprise, third-party provider of proposition player services or a gambling business;

(D) Interest in the revenue, earning, profits or receipts derived from gambling operations;

(E) Repayment calculated by or based on a percentage of the revenues, earnings, profits, or receipts derived from gambling operations;

(F) The ability to exercise a significant influence over gambling operations;

(e) “Secured party” means a person who is a lender, seller, or other person in whose favor there is a security interest or judgment.

(f) “Security” means any stock; membership in an incorporated association; bond; debenture or other evidence of indebtedness; investment contract; voting trust certificate; certificate of deposit for a security; any interest or instrument commonly known as a “security;” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing. All of the foregoing are securities whether or not evidenced by a written document.

(g) “Security agreement” means an agreement that creates or provides for a security interest.

(h) “Security interest” means an interest in real or personal property held as collateral for the payment or performance of an obligation or judgment.

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1 Note: Authority cited: Sections 19811, 19823, 19824, 19840, 19841, 19900, 19901 and 19984, Business and
2 Professions Code. Reference: Sections 19824, 19900, 19901 and 19984, Business and Professions Code.

3 4 § 12331. Approval of a Security Agreement for Gaming Collateral.

5 (a) The granting of an approval pursuant to this regulation does not constitute a determination
6 by the Commission as to the validity or enforceability of the security interest.

7 (b) Submissions for the approval of a security agreement for gaming collateral must include
8 the following:

9 (1) A cover sheet with a summary of the transaction, a copy of all final transaction
10 documents, and a copy of any supporting documentation. This shall include, but not be limited
11 to, a complete schedule and description of the gaming collateral that is the subject of the security
12 interest, copies of the security agreements and the documents evidencing the obligation secured,
13 and documentation of the licensee's financial information, including three years of tax returns
14 and a current balance sheet and income statement.

15 (2) For those persons involved in the transaction that do not have a current license or
16 registration, the submission of a Live Scan is required for the individual that would be required
17 to obtain an owner license prior to enforcement of the security interest.

18 (c) The transaction documents must include all of the following disclosure statements with an
19 affirmative acknowledgement of each disclosure by the parties to the transaction:

20 (1) "The approval of a transaction by the California Gambling Control Commission
21 (Commission) does not constitute a certification by the Commission that the document is
22 enforceable in accordance with the law or its terms, and under no circumstance shall the terms,
23 conditions or provisions of an approved document be binding on the Commission. No liability is
24 attributable to or assumed by the Commission for approving, failing to approve or delaying
25 approval, or for any other direct or incidental consequences of the approval process, whether
26 foreseeable or otherwise."

27 (2) "Neither the secured lender nor any person acting on its behalf, or anyone whose interest
28 is derived from a secured credit transaction shall have any right to enforce a security interest
29 relating to a secured credit transaction, nor shall any security interest be enforced against a
30 licensee without the prior approval of the Commission."

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1 (3) “Any assignment of a security interest or other rights under an approved transaction, or
2 any amendment of any approved transaction document shall require the prior approval of the
3 Commission, unless expressly exempted by the Commission.”

4 (4) A clause stating that the enforcement of the security interest is contingent upon the
5 approval of any necessary licensure by the Commission.

6 (5) Specification that the closing date of the transaction cannot be prior to the date of the
7 transaction’s approval by the Commission.

8 (6) A clause requiring all parties to submit notice to the Bureau when an event of default
9 occurs, and the secured party is to submit a statement to the Bureau identifying the act of default
10 by the debtor that is the basis for seeking to enforce the security interest, including a copy of any
11 notice of default sent to the debtor and any other information requested by the Bureau.

12 Note: Authority cited: Sections 19811, 19823, 19824, 19840, 19841, 19900, 19901 and 19984, Business and
13 Professions Code. Reference: Sections 19824, 19900, 19901 and 19984, Business and Professions Code.

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15 **§ 12332. Processing and Review of a Security Agreement for Gaming Collateral.**

16 (a) A written request for approval of a security agreement for gaming collateral shall be
17 submitted to the Bureau at least 120 days prior to the proposed closing date of the transaction.

18 (b) A request shall be processed within the following timeframes:

19 (1) After receipt of the documents and the fee required by Section 12331, the Bureau shall
20 have 30 days to notify the licensee of any deficiency in the request.

21 (2) If the licensee does not respond within 30 days to any request by the Bureau to cure
22 deficiencies, the request to approve the transaction will be deemed abandoned and no further
23 action will be taken on the request by the Bureau or the Commission. If a request is deemed
24 abandoned, the licensee may resubmit a request, which shall be treated as a new request for
25 approval under this section.

26 (3) The Bureau shall review the documents and may provide a recommendation to the
27 Commission, including an opinion of the potential for default, within 90 days of the receipt of
28 the security agreement.

29 (c) The Bureau shall review the security agreement each time the licensee submits a license
30 renewal application during the duration of the security agreement.

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1 (d) Any amendment to an approved security agreement or any subsequent assignment,
2 pledge, sale, or transfer of the security interest or any portion thereof shall require approval by
3 the Commission in accordance with these procedures as if it were a new security agreement.

4 Note: Authority cited: Sections 19811, 19823, 19824, 19840, 19841, 19900, 19901 and 19984, Business and
5 Professions Code. Reference: Sections 19824, 19900, 19901 and 19984, Business and Professions Code.

6 7 **§ 12333. Enforcement of a Security Agreement for Gaming Collateral.**

8 (a) A person may not enforce a security interest in gaming collateral except as provided by
9 this article. The purported enforcement of a security interest without the secured party having
10 complied with the requirements of this article is void.

11 (b) Prior to enforcement of a security interest in gaming collateral that generates an interested
12 transaction, the secured party must possess a temporary or regular license in accordance with
13 Business and Professions Code sections 19853 and 19858.

14 (c) All parties shall immediately notify the Bureau once an event of default occurs. The
15 secured party must submit a statement to the Bureau identifying the act of default by the debtor
16 that is the basis for seeking to enforce the security interest, including a copy of any notice of
17 default sent to the debtor and any other information requested by the Bureau. This statement and
18 any supporting documentation may be sent by mail, email, or facsimile.

19 (d) The Bureau shall contact the licensee or otherwise investigate the event of default to
20 determine if the event of default is being resolved. The Bureau may request documentation of
21 the licensee's ability to continue to perform under the security agreement.

22 (1) If the investigation determines the event of default is resolved and the secured party does
23 not wish to pursue enforcement of the security interest, no further steps by the Bureau are
24 required. The Bureau shall notify the Commission of the event of default and the resolution.

25 (2) If the Bureau determines the event of default is not being resolved, the secured party
26 wishes to proceed with enforcement of the security interest, or any concern exists that the Bureau
27 determines needs Commission review, the Bureau shall advise the Commission.

28 (d) Approval of a security interest that does not generate an interested transaction shall
29 constitute approval of the enforcement terms, as these do not require licensure. Upon an event of
30 default, notice shall be sent by both parties to the Bureau.

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1 (e) The Commission may, at any time, require an unlicensed secured party to apply for
2 licensure.

3 Note: Authority cited: Sections 19811, 19823, 19824, 19840, 19841, 19853, 19858, 19900, 19901 and 19984,
4 Business and Professions Code. Reference: Sections 19824, 19900, 19901 and 19984, Business and Professions
5 Code.

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