



OREGON LIQUOR CONTROL COMMISSION

Guidance on Disclosing Interests in a Recreational Marijuana Business

This document was originally published to the Oregon Liquor Control Commission website on October 1, 2019 and was extensively rewritten on October 15, 2020 to reflect temporary rules adopted by the Commission.

The Commission adopted final rules effective April 13, 2021 to streamline and clarify the licensing process, including providing clarity on what constitutes a “change of ownership” requiring submission of a new license application. This document has now been updated to include guidance on changes of ownership.

What is this document?

This guidance provides direction to recreational marijuana applicants and licensees on:

- Disclosing interests in your business when applying for a recreational marijuana license;
- Submitting fingerprints and personal history information for individual interest holders in a recreational marijuana business; and
- Making changes to your business structure after receiving a recreational marijuana license.

This guidance is **not** a substitute for reading and understanding OLCC administrative rules regarding allowable licensed activities. Applicants and licensees are responsible for following all administrative rules and should contact OLCC with questions that are not answered in this guidance.

Referenced forms

The following supplemental forms are referenced throughout this Guidance. These forms, as well as others needed to complete the application process, can also be found on [OLCC's website](#).

- [Marijuana Applicant Questionnaire](#): This form is used to provide OLCC with a complete list of individuals and legal entities that meet the definition of an “applicant” for your marijuana license.
- [Marijuana Business Individual History form](#): This form is used to provide personal history information for individuals. This Guidance identifies which individuals must submit this form. Each individual must complete and sign their own form.

Who is an “applicant” for a license?

As described in OAR [845-025-1045](#), “applicant” includes any individual or legal entity who holds or controls a direct or indirect interest of 20% or more in a recreational marijuana business, as well as any individual or entity who has an “ownership Interest” in the business (see below). Both categories are considered the applicant(s) for a license, and will be considered licensee(s) once a license is issued.

This includes any individual or legal entity entitled to receive 20% or more in revenue or profits from the business, whether or not they are part of the proposed business itself (e.g. a landlord taking 20% or more in profits as part of a rental agreement is considered an applicant).

If an applicant is a legal entity, any individual or other legal entity who meets any of the following criteria is also considered an applicant:

- Managers of a manager-managed LLC
- Principal officers of a corporation (a director of a corporation is only an applicant if they have an “ownership Interest” as described below or hold a direct or indirect interest of 20% or more)
- General partners of a limited partnership

Parent companies and holding companies. When legal entities own interests in other legal entities at multiple layers, those nested legal entities may also be considered applicants depending on the percentage of ownership and role in the business. For example, an entity that holds 50% ownership of a holding company that in turn holds 50% ownership in the business is considered to hold an indirect ownership interest of 25% (50% of 50%) and would be an applicant for the license.

What is an “ownership interest?”

Any individual or legal entity who has an ownership interest in a recreational marijuana business must be disclosed as an applicant for the license. An ownership interest means that an individual or entity is entitled to take significant actions on behalf of the business, and is primarily determined by looking at the conduct, behavior, and scope of authority of the individual or entity, rather than financial ties.

Any and all individuals or entities that qualify as having an ownership interest must be identified as applicants for the license. There are several types of significant actions that qualify as an ownership interest:

- Exercising control over, or having the right to exercise control over, the business. This includes having the right to control access to the premises.
- Incurring debt or other similar obligations on behalf of the business.
- Entering into contracts or similar obligations on behalf of the business.
- Being named as a lessee of the proposed premises. If there is no lease, then the property owner is considered to have an ownership interest and be an applicant for the license.

An ownership interest does not typically include employees or independent contractors acting at the direction of the disclosed business owner. If, however, an owner intends to delegate most or all decision-making authority regarding the business and its operations to others, the individual(s) with that delegated authority likely have an ownership interest.

It is very important that an application includes full disclosure of all individuals and entities that have an ownership interest due to their role in operating the business. Failure to do so may result in an application being denied or a license cancelled if an undisclosed ownership interest is discovered.

What do applicants need to disclose?

As part of the license application, the business must submit a [Marijuana Applicant Questionnaire](#) containing a complete list of all individuals and legal entities that qualify as applicants for the license.

Each individual who qualifies as an applicant must also submit an [Individual History](#) form. If the individual has not previously submitted fingerprints for a recreational marijuana license application, they will need to be fingerprinted for a national criminal background check.

What financial interests in a business must be disclosed?

As described above, applicants for the license must always be disclosed in full.

OLCC may exercise its discretionary authority under OAR [845-025-1030](#) on a case-by-case basis to require disclosure, additional information, and background checks as needed for smaller interests or other forms of financial arrangements. At this time, OLCC will not typically require information about any non-applicant persons or entities having a financial interest in the business when evaluating a license application. Under OAR [845-025-1115](#)(3), the Commission may refuse to issue or renew a license to any applicant or licensee if any person having a financial interest in the business is found to be unlicensable.

What changes to a business structure must be preapproved?

Failure to receive preapproval before allowing certain levels of new interest into a licensed business, or transferring ownership without approval, could have serious consequences for all parties involved, including license cancellation and prohibitions against holding a license in the future. It is very important to know what changes must be preapproved before they occur:

- Any change in ownership or business structure that qualifies as a “change of ownership” as described in OAR [845-025-1160\(4\)](#) requires submission of a new application through the online licensing system. The current licensee must submit a [Change of Ownership Form](#) to notify OLCC that the new application is for a change of ownership. The application for a change of ownership must be approved by the Commission before the new owner may exercise license privileges. A “change of ownership” includes situations where:
 - A business proposes to add or replace a “licensee of record” (see below); or
 - A business proposes a change in its ownership structure that is 51 percent or greater. In this context, a change is considered to be 51 percent or greater if natural persons who did not hold a direct or indirect interest in the business at the start of the license year will collectively hold a direct or indirect interest of 51 percent or greater.
- Other changes do not require prior approval from OLCC, but may require giving notice to OLCC prior to making the change as described in OAR [845-025-1160\(4\)](#).

See the final page of this document for some example scenarios that illustrate the difference between a change requiring notice under OAR [845-025-1160\(4\)](#) and a “change of ownership” as described in OAR [845-025-1160\(5\)](#).

What does “licensee of record” mean?

Any person (legal entity or individual) who is explicitly named on the license certificate is a “licensee of record.” For businesses with a simple business structure, like an LLC or corporation held directly by a group of individuals, the licensee of record will be the LLC or corporation. For businesses with more complicated “nested” business structures, the licensee of record is the subsidiary entity that holds the license; a “parent” entity nested within the subsidiary entity may also be a licensee as described in OAR [845-025-1045](#), it is not a licensee of record.

Most licenses have only one licensee of record. There will only be more than one licensee of record for the same license if:

- The business is operated as a joint venture or other similar arrangement between two or more persons (legal entities or individuals); or
- A person who qualifies as an applicant for the license has no direct or indirect ownership or control of any other licensee of record on the same license. For example:
 - Two business are co-located so they need to be on each other’s licenses. In this case, both businesses are licensees of record on each license.
 - A management company is entitled to exercise control over the business (other than as an employee acting under the direction of a licensee) but has no ownership interest in the other licensee of record. In this case, the management company is also a licensee of record.
 - A landlord is entitled to receive 20% of the revenue of the business but otherwise has no ownership interest in the other licensee of record. In this case, the landlord is also a licensee of record.

What changes can I make without preapproval?

Changes below the “change of ownership” threshold (see above) do not require preapproval from OLCC, but depending on the nature of the change they may require giving prior notice:

- If a licensee wants to change its approved licensed business structure by removing any individuals or legal entities that qualify as an applicant, they must notify OLCC by submitting a [Change in Business Structure Form](#) prior to making the change but do not need OLCC approval to make the change.

- If a licensee wants to change its approved licensed business structure by adding any individuals or legal entities that qualify as an applicant where the new interest(s) comprise less than 51% of the business, they must notify OLCC by submitting a [Change in Business Structure Form](#) prior to making the change. OLCC may require any individual added this way to submit fingerprints for a criminal background check. If OLCC determines that an individual or legal entity added this way is unlicensable, the licensee may remove that individual or legal entity from the business. If the licensee does not remove that individual or legal entity from the business, the Commission will propose license suspension or revocation under [OAR 845-025-1115](#).
- If a licensee's business structure changes due to a shareholder of a publicly traded corporation acquiring or accumulating 20% or more of the voting stock, or a publicly traded corporation adding or removing principal officers, the licensee must notify OLCC within 60 calendar days of the change occurring by submitting a [Change in Business Structure Form](#) prior to making the change. OLCC may require any individual added this way to submit fingerprints for a criminal background check. If OLCC determines that an individual or legal entity added this way is unlicensable, the licensee may remove that individual or legal entity from the business. If the licensee does not remove that individual or legal entity from the business, the Commission will propose license suspension or revocation under OAR [845-025-1115](#).
- If the change is not adding or removing any interests that would qualify as an applicant, no notice or approval is required. However, OLCC may exercise its discretionary authority on a case-by-case basis to require disclosure, additional information, and background checks as needed for individuals or legal entities with a financial interest in the business. Under OAR [845-025-1115\(3\)](#), the Commission may refuse to issue or renew a license to any applicant or licensee if any person having a financial interest in the business is found to be unlicensable.

Licensees may not submit business structure information as part of their renewal in the online system.

How do I disclose all this information about my business structure?

Applicants can find the forms referenced in this guidance on OLCC's website [here](#), with additional instructions on each form for completing them.

Make sure your business structure forms are complete, and in order. It is the responsibility of the applicant or licensee to correctly identify all individuals and legal entities within their business structure who qualify as applicants for the license.

How do I submit my fingerprints?

Applicants should not submit fingerprints until directed by OLCC staff to do so. Applicants will be given instructions to schedule appointments to get their fingerprints done. Applicants should not take steps to perform their own fingerprinting or other type of background check, as OLCC will not accept them and it will only delay the processing of applications.

Once direction has been given to submit fingerprints, applicants should not delay in getting them completed. It can take several weeks for OLCC to receive background check results after applicants are fingerprinted. Failing to timely obtain all requested fingerprints may result in significant delays in receiving a license, and may result in inactivation of the application if the applicant fails to complete the licensing process within stated deadlines.

Can I see some examples that show how to identify applicants in a business structure?

Certainly! See the following page.

Example Business Structures

Example #1

Entity #1 LLC (Member-managed)

Person #1 (20% Member)

Business #2 LLC (80% Member)

Entity #2 LLC (Manager-managed)

Person #2 (LLC Manager)

Person #3 (20% Member)

Entity #3 Trust (80% Member)

Entity #3 Trust

Person #4 (Trustee)

In this example, the following persons and entities qualify as applicants:

- Entity #1 LLC: This is the business proposed to be licensed
- Entity #2 LLC: Holds 80% ownership in the business
- Entity #3 Trust: Holds 64% indirect ownership in the business (80% of 80%)
- Person #1: Holds 20% ownership in the business
- Person #2: LLC Manager of a manager-managed LLC that is an applicant for the license
- Person #4: As the trustee, Wilson controls Wilson Family Trust's 64% interest in the business.

In this example, Person #3 is not an applicant because she holds only 16% ownership in the business (20% of 80%).

Example #2

Entity #1 LLC (Member-managed)

Person #1 (50% Member)

Entity #2 (45% Member)

Entity #3 Inc. (5% Member)

Entity #2 Inc.

Person #1 (President)

Person #2 (Secretary, Treasurer)

Person #3 (Shareholder, 33⅓% of shares)

Person #4 (Shareholder, 33⅓% of shares)

Person #5 (Shareholder, 33⅓% of shares; named as the lessee on the lease for the premises)

In this example, the following persons and entities qualify as applicants:

- Entity #1 LLC: This is the business proposed to be licensed
- Entity #2 Inc.: Holds 45% ownership in the business
- Person #1: Holds 50% ownership in the business and is a principal officer of a corporation that is an applicant.
- Person #2: Principal officer of a corporation that is an applicant.
- Person #5: Being named as the lessee on the lease gives this person an "ownership interest."

In this example, Person #3 and Person #4 are not applicants because they each hold only 15% ownership in the business (33⅓% of 45%). Person #5 is an applicant despite holding only 15% ownership because being named as the lessee means they have an ownership interest in the business.

Example Change of Ownership Scenarios

Below are a few examples of business structure or ownership change scenarios that illustrate the difference between a change requiring notice under OAR [845-025-1160\(4\)](#) and a “change of ownership” as described in OAR [845-025-1160\(5\)](#).

Example #1

Licensed legal entity or sole proprietor sells to a completely new company or individual(s):

This is a change of ownership and requires submission of a new license application.

Example #2

Legal Entity is made up of several people, and one or more existing members leave the company so remaining individuals’ percentages all increase.

This is a change of business structure change that requires notice but does not require a new application, regardless of the percentage of interest held by the outgoing members.

- E.g.: Three member LLC, each with 33⅓%. Two members leave. Remaining member absorbs those percentages. This requires notification, but is not a change of ownership.
- E.g.: Three member LLC – one member holds 60% (licensee), one member holds 35% (licensee), and one member holds 5% (not currently a licensee). The 60% member leaves and the 5% member buys their interest. This is a change of business structure and the previously-5% member must submit fingerprints for OLCC to evaluate whether they are licensable, but this is not a change of ownership.

Example #3

Legal entity is made up of several people and new individuals are added to the business.

In this case, the type of change is determined by the percentage of interest that will be held by new natural persons. If new natural persons will hold 51% or greater interest, this is a change of ownership and requires submission of a new license application. If new natural persons will hold less than 51% interest, this is a change of business structure; if any of the added persons will be licensees, this requires notice to OLCC.

Example #4

Licensee of record is multiple legal entities and/or sole proprietors and one or more licensees of record want to be removed.

This is treated as a business structure change that requires notice to OLCC but does not require a new license application to be submitted as long as at least one licensee of record remains on the license.

- E.g.: Landlord was a licensee of record based on receiving twenty percent of the profits, but licensee then moves locations. This requires notification, but is not a change of ownership.
- E.g.: Two businesses are co-located so they need to be on each other’s licenses, and then one moves to a new location. This requires notification, but is not a change of ownership.

Example #5

Licensee is creating a holding company to own the entity that is the licensee of record.

As long as the licensee of record remains the same, the type of change is determined by the percentage of interest that will be held by new natural persons, as in Example #3.

- E.g.: The holding company is ultimately owned by the same persons who previously owned the licensee of record directly. This requires notification, but is not a change of ownership.
E.g.: The holding company is partly owned by new natural persons who didn’t previously hold a direct or indirect interest in the licensee of record. If new natural persons will hold 51% or greater interest, this is a change of ownership and requires submission of a new license application. If new natural persons will hold less than 51% interest, this is a change of business structure that requires notice to OLCC.