

DEPARTMENT OF CONSUMER AFFAIRS

Notice of Adoption of Rule

Notice of adoption of a new Rule regarding the transfer of a general vending license upon the vendor's death or disability.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer Affairs by Section 2203 of the New York City Charter and Sections 20-104 and 20-471 of Title 20 of the Administrative Code of the City of New York, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department promulgates and adopts Section 2-317 of Subchapter AA of Chapter 2 of Title 6 of the Rules of the City of New York, setting forth the standards for the general transfer of a general vending license to the spouse, children or guardian of minor children of the general vendor upon the vendor's death or disability.

The rule was proposed and published on October 2, 2015. The required public hearing was held on November 3, 2015.

Statement of Basis and Purpose of Rule

Section 20-464(d) of Subchapter 27 of Chapter 2 of Title 20 of the New York City Administrative Code prohibits a general vendor from selling, lending, leasing or transferring his or her general vendor license or interest in the license unless authorized by the Commissioner of the Department of Consumer Affairs. Currently, the laws and rules applicable to general vendors do not specify the circumstances under which the Commissioner may authorize the transfer of a vending license. Section 35-a of Article 4 of Chapter 20 of the New York State General Business Law requires the transfer of a specialized vending license held by a disabled veteran to the spouse, children or guardian of surviving minor children of the vendor in certain circumstances upon the death or disability of the licensee. The new rule, to be codified under a new section 2-317 of subchapter AA of chapter 2 of title 6 of the Rules of the City of New York, provides that the transfer of general vending licenses is subject to the same set of standards as the transfer of specialized vending licenses, which currently apply only to disabled veterans.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this Department, unless otherwise specified or unless the context clearly indicates otherwise.

Rule

Subchapter AA of chapter 2 of title 6 of the Rules of the City of New York is amended by adding a new section 2-317 to read as follows:

§2-317 Transfer of General Vending Licenses.

(a) Upon the death of a licensed general vendor, the Department shall transfer the license to the surviving spouse, if any, of the general vendor if the spouse informs the Department he or she desires to use the license. If there is no surviving spouse or if the surviving spouse elects not to use the license, the Department shall transfer the license to the guardian of a surviving minor child or children of the general vendor, provided the guardian intends to use the license for the support of the minor child or children. The Department shall issue a general vending license to the applicable party in his or her name upon submission to the Department of proof of the conditions upon which the transfer is based. The license shall revert to the Department for reassignment upon the death of the surviving spouse to whom the license has been transferred, or when:

(1) the surviving spouse to whom the license has been transferred remarries;

(2) the youngest minor child of the deceased licensed general vendor reaches the age of eighteen;
or

(3) the surviving spouse to whom the license has been transferred, or the guardian of the minor child or children to whom the license has been transferred, elects not to use the license to vend in the city of New York or abandons the use of the license.

Temporary periods when the surviving spouse or guardian do not vend shall not cause the license to revert to the Department in the absence of other evidence of an intent to abandon the use of the license; however, a period of six months or more in which the holder of the license does not vend shall create a rebuttable presumption that the spouse or guardian has abandoned the use of the license.

In the event that the surviving spouse to whom the license has been transferred, or the guardian of a surviving minor child or children to whom the license has been transferred, dies before the youngest minor child reaches the age of eighteen, any new guardian must submit a request to the Department for transfer of the license. Any license so transferred shall revert to the Department by operation of law when the youngest minor child reaches the age of eighteen.

(b) If a licensed general vendor becomes totally and permanently disabled, he or she may transfer the license to his or her spouse or, if the licensee has no spouse, to an adult child if the child assumes the duty to support the licensee. The Department shall issue a general vending license to the applicable party in his or her name upon submission to the Department of proof of the conditions upon which such transfer is based. The license shall revert to Department when:

(1) the general vendor who held the license immediately before the transfer dies;

(2) the spouse to whom the license has been transferred dies or divorces the general vendor who held the license immediately before the transfer; or

(3) the child to whom the license has been transferred dies or renounces the obligation to support the general vendor who held the license immediately before the transfer.

(c) For purposes of this section, "spouse" includes a domestic partner.

(d) Except as provided for in this section, no general vending license, and no interest in any general vending license, may be sold, lent, leased or transferred.