

CHAPTER 1059. APPLICATIONS AND SALE OF RIGHTS

- Sec.
- 1059.1. Purpose.
 - 1059.2. Applications for limousine rights.
 - 1059.3. Authority approval of sale of rights.
 - 1059.4. Agreement of sale.
 - 1059.5. Application for sale of transferable rights.
 - 1059.6. Required application information.
 - 1059.7. Additional application requirements.
 - 1059.8. Financial fitness generally.
 - 1059.9. Regulatory compliance review.
 - 1059.10. Authority review.
 - 1059.11. Approval process and closing on sale.
 - 1059.12. Settlement sheet.
 - 1059.13. Commencement of service.

Cross References

This chapter cited in 52 Pa. Code § 1051.5 (relating to ineligibility due to conviction or arrest); 52 Pa. Code § 1051.14 (relating to death or incapacitation of a certificate holder or certain persons with controlling interest); 52 Pa. Code § 1053.42 (relating to remote carriers); and 52 Pa. Code § 1055.1 (relating to definitions).

§ 1059.1. Purpose.

This chapter establishes and prescribes Authority regulations and procedures for applications for limousine certificates and sale of certain rights issued by the Authority.

§ 1059.2. Applications for limousine rights.

(a) To obtain a certificate to operate a class of limousine service as provided in Chapter 1053 (relating to standard classifications of limousine service), a person shall complete and file with the Director Form SA-1 “Sale Application,” along with the application fee as provided in §§ 1001.42 and 1001.43 (relating to mode of payment to the Authority; and Authority fee schedule). The SA-1 may be obtained on the Authority’s web site at www.philapark.org/tld.

(b) The filing requirements and standards of review applicable to SA-1 applications will be the same as those applicable to a proposed buyer of rights as provided in this chapter.

Authority

The provisions of this § 1059.2 temporarily amended under 53 Pa.C.S. § 57B02.

Source

The provisions of this § 1059.2 temporarily amended May 5, 2017, effective February 25, 2017, expire upon promulgation of final-form regulations or on November 5, 2018, whichever is later, as set forth in 53 Pa.C.S. § 57B02(b), 47 Pa.B. 2558. Immediately preceding text appears at serial page (373581).

Cross References

This section cited in 52 Pa. Code § 1059.11 (relating to approval process and closing on sale).

§ 1059.3. Authority approval of sale of rights.

(a) *Sale of transferable rights.* The sale of transferable rights without advance approval of the Authority is void by operation of law.

(b) *Sale of securities in transferable rights.* The sale of securities in an entity that owns transferable rights will be considered a sale under this chapter in either of the following circumstances:

(1) The securities to be transferred equal or exceed 5% of the issued securities in the entity that holds an ownership interest in a transferrable right.

(2) Upon completion of the transfer the buyer will own 5% or more of the issued securities in the entity that holds an ownership interest in a transferrable right.

Authority

The provisions of this § 1059.3 temporarily amended under 53 Pa.C.S. § 57B02.

Source

The provisions of this § 1059.3 temporarily amended May 5, 2017, effective February 25, 2017, expire upon promulgation of final-form regulations or on November 5, 2018, whichever is later, as set forth in 53 Pa.C.S. § 57B02(b), 47 Pa.B. 2558. Immediately preceding text appears at serial pages (373581) to (373582).

§ 1059.4. Agreement of sale.

(a) The parties to a proposed sale of transferable rights shall complete an agreement of sale detailing the terms of the transaction, including provisions required by this chapter, and file the agreement with the Director.

(b) An agreement of sale for transferable rights is void by operation of law if not executed by all parties in the presence of the Director or a designee.

(c) The term of an agreement of sale for transferable rights may not exceed 15 business days from the date of execution, except when executed on the date the application for sale of transferable rights is filed as provided in § 1059.5 (relating to application for sale of transferable rights).

Source

The provisions of this § 1059.4 amended September 12, 2014, effective September 13, 2014, 44 Pa.B. 5867. Immediately preceding text appears at serial page (360514).

§ 1059.5. Application for sale of transferable rights.

(a) *Application documents.*

(1) To initiate a sale, the owner and proposed buyer shall file an original and one copy of Form No. SA-1 "Sale Application," the agreement of sale or transfer and other documents required by this chapter. The proposed buyer will be considered the applicant. The SA-1 is available at www.philapark.org/tld.

(2) The SA-1 shall be filed in person with the Director.

(3) The Director will refuse to accept an application which is incomplete for any reason.

(4) Upon acceptance, the Director will submit a copy of the application documents to the Clerk and an application docket number will be assigned.

(b) *Application signatures.*

(1) Both parties to the sale shall execute the SA-1 in the presence of the Director or a designee.

(2) Except for individuals, an original executed and notarized resolution from the buyer and seller authorizing the execution of the sale documents must be included with the filing of the SA-1.

(3) The Authority may permit an SA-1 to be executed by an attorney-in-fact if the owner or proposed buyer are unable to appear and as provided in § 1001.28 (relating to power of attorney), in which case the owner will be required to attend the closing on the sale.

(c) *Verification and payment.* The SA-1 must be verified under § 1001.36 (relating to verification and affidavit) and be accompanied by payment of the transfer fee as provided in §§ 1001.42 and 1001.43 (relating to mode of payment to the Authority; and Authority fee schedule).

(d) *Multiple rights.* The SA-1 may be used to sell an unlimited number of transferable rights from one owner to one proposed buyer.

(e) *Broker.* Documents intended for submission to the Director as part of the sale process must be prepared by a broker registered with the Authority as provided in Chapter 1061 (relating to brokers) or an attorney admitted to practice law by the Supreme Court of Pennsylvania.

Cross References

This section cited in 52 Pa. Code § 1001.71 (relating to notice and filing of copies of pleadings before other tribunals); 52 Pa. Code § 1051.7 (relating to facility inspections); and 52 Pa. Code § 1059.4 (relating to agreement of sale).

§ 1059.6. Required application information.

(a) *SA-1 form.* The SA-1 is a multipurpose form intended for use in the sale of different transferable rights and shall be completed by the broker or attorneys, or both, in a manner consistent with the intentions of the sale.

(b) *Required information.* The completed SA-1 must include all of the information required by the Authority:

(1) The certificate numbers.

(2) The name of the proposed buyer and contact information, including a telephone number, an email address and a facsimile number.

(3) If the proposed buyer is a nonindividual person and is not already a certificate holder:

(i) The articles of incorporation, operating agreement, formation documents or other applicable organizing documents for the applicant.

(ii) A certificate of good standing for the applicant from the Bureau of Corporations and Charitable Organizations.

(iii) A copy of the Department of State's entity page for the applicant.

(4) The name of any holding company as defined in § 1051.2 (relating to definitions) having an interest in the proposed buyer and a contemporaneous certificate of good standing for the holding company from the Bureau of Cor-

porations and Charitable Organizations, or similarly authorized entity in another jurisdiction in the United States.

(5) The trade name, if any, of the proposed buyer and a copy of the trade name registration certificate, if applicable.

(6) The mailing address and physical address of the proposed buyer.

(7) A copy of the proposed buyer's business plan.

(8) A list of current corporate officers, directors, stockholders, key employees and persons with controlling interests as defined in § 1051.2, if applicable with an indication of each individual's title.

(9) A list of all Authority, PUC and Federal common carrier rights held by the proposed buyer and any of the persons listed in response to paragraph (8), including taxicab medallions.

(10) The name, address, telephone number, facsimile number and email address of any attorney assisting the proposed buyer with the application process, together with an acknowledgement that § 1061.1(b) (relating to broker registration) has been reviewed by the proposed buyer.

(11) A criminal history report, issued within 30 days of the filing of the application, from any jurisdiction in which the following persons have lived in the preceding 5 years through the date of application:

(i) An individual proposed buyer.

(ii) Any individual with a controlling interest in the proposed buyer.

(iii) Any individual with a controlling interest in the holding company of a proposed buyer.

(iv) A key employee.

(12) A verified statement indicating that the persons identified in paragraph (11) have not been subject to a conviction as defined in § 1001.10 (relating to definitions) and that the proposed buyer has read and understands the prohibitions of ownership as provided in § 1051.5 (relating to ineligibility due to conviction or arrest).

(13) Verified statements from the owner and proposed buyer confirming that each are in compliance with § 1051.6 (relating to payment of outstanding fines, fees and penalties).

(14) The Federal Tax Identification number for the owner and proposed buyer.

Authority

The provisions of this § 1059.6 temporarily amended under 53 Pa.C.S. § 57B02.

Source

The provisions of this § 1059.6 temporarily amended May 5, 2017, effective February 25, 2017, expire upon promulgation of final-form regulations or on November 5, 2018, whichever is later, as set forth in 53 Pa.C.S. § 57B02(b), 47 Pa.B. 2558. Immediately preceding text appears at serial pages (373583) to (373584).

Cross References

This section cited in 52 Pa. Code § 1059.8 (relating to financial fitness generally).

§ 1059.7. Additional application requirements.

(a) *Agreement of sale.* The agreement of sale required under this chapter must include the information required by the Authority, including the following:

- (1) All parties to the transaction.
- (2) A description of the transaction.
- (3) The identification number of each right subject to sale.
- (4) The total consideration for the sale and for each right transferred if the sale involves multiple rights in United States dollars, and any payment terms required by the Authority, including the following:
 - (i) The assumption of any loan or debt.
 - (ii) Contingencies and nonmonetary consideration.
 - (iii) Monetary consideration.
- (5) An acknowledgement initialed by all parties that the agreement is subject to the laws and jurisdiction of the Commonwealth, the act, this part and orders of the Authority.

(b) *Execution of agreement of sale.*

- (1) The proposed agreement of sale must be signed by all parties before the Director or a designee on or before the date the SA-1 is filed.
- (2) The Authority may permit an agreement of sale to be executed by an attorney-in-fact if the owner or proposed buyer are unable to appear and as provided in § 1001.28 (relating to power of attorney).

(c) *Loan documents.*

- (1) Any consideration identified in subsection (a)(4) that is provided to a proposed buyer must be evidenced in the form of written agreements. For example, the loaning of cash money to a proposed buyer by a bank must be confirmed through loan documents executed by the borrowing party.
- (2) Documents required by paragraph (1) shall be submitted to the Director at the time the SA-1 is filed, except that specific financial information that cannot be known until on or about the closing date for the sale may be left blank. The final loan documents must be executed at the closing on the sale.

(d) *Continuing service.* The owner of the rights subject to sale shall confirm that the rights will remain in active service pending review of the application, unless prohibited or authorized for suspension by a provision of this part or an order of the Authority.

(e) *Notice.*

- (1) Notice of applications will be published in the *Pennsylvania Bulletin* as provided in § 1003.53 (relating to applications requiring notice).
- (2) The parties to the sale will receive notices related to the SA-1 as provided in § 1001.51 (relating to service by the Authority).

§ 1059.8. Financial fitness generally.

The Authority will review the financial fitness of the proposed buyer, including a review of the following:

- (1) Bank statements of the proposed buyer evidencing ownership of a bank account holding not less than the greater of \$5,000 or 2% of the sale price of the transferable rights in unencumbered and available funds. The funds under review must have been in the bank account for at least 3 months.
- (2) If the sale does not include financing by a lender authorized to make commercial loans in this Commonwealth, the proposed buyer shall submit documentation for the Authority's review to insure the following requirements are met:
 - (i) The credit report of each persons identified in § 1059.6(b)(8) (relating to required application information) evidencing a credit score of at least 600 for each person.
 - (ii) The absence of any outstanding and unappealed civil judgments against each of the parties required to submit a criminal history report under § 1059.6(b)(8).
- (3) The Authority may require the submission of additional financial information necessary to determine the financial fitness of a proposed buyer.

Authority

The provisions of this § 1059.8 temporarily amended under 53 Pa.C.S. § 57B02.

Source

The provisions of this § 1059.8 temporarily amended May 5, 2017, effective February 25, 2017, expire upon promulgation of final-form regulations or on November 5, 2018, whichever is later, as set forth in 53 Pa.C.S. § 57B02(b), 47 Pa.B. 2558. Immediately preceding text appears at serial page (360517).

§ 1059.9. Regulatory compliance review.

- (a) An SA-1 will be denied if the proposed buyer has a record of regulatory violations with the Authority or the PUC which evidences a disregard for the public interest.
- (b) A proposed buyer that has been subject to the suspension, revocation or cancellation of common carrier rights by the Authority or the PUC during the 1-year period immediately preceding the date the SA-1 was filed with the Authority will be ineligible to purchase rights.

§ 1059.10. Authority review.

- (a) Notice of the granting of an application for a limousine certificate or approval of a sale will be published in the *Pennsylvania Bulletin*.
- (b) The SA-1 will be reviewed as provided in § 1003.51 (relating to applications generally).

(c) The SA-1 will be denied if the proposed buyer or any person with a controlling interest in the proposed buyer or a key employee of the proposed buyer is in violation of any provision of this part or if the Authority determines that the sale is not in the public interest. The SA-1 may be denied if the owner is in violation of any provision of this part.

§ 1059.11. Approval process and closing on sale.

(a) If the Director determines that an applicant for a limousine certificate or a proposed buyer of rights is qualified as provided in the act, this part or an order of the Authority, a recommendation to approve the application or sale will be presented to the Authority for approval at its next regularly scheduled meeting. The Authority may require that proposals from the Director as provided in this section first be presented to a committee of the Board at a public meeting.

(b) Upon approval of the sale by the Authority, the Director will schedule the parties to meet at a time and location where an Authority staff member will witness the closing of the transaction except for an applicant that is obtaining a new limousine certificate under § 1059.2 (relating to applications for limousine rights).

(c) An Authority staff member will witness the execution of each document by the owner and proposed buyer, or their designated agents. Any closing not witnessed by Authority staff is void.

Authority

The provisions of this § 1059.11 temporarily amended under 53 Pa.C.S. § 57B02.

Source

The provisions of this § 1059.11 temporarily amended May 5, 2017, effective February 25, 2017, expire upon promulgation of final-form regulations or on November 5, 2018, whichever is later, as set forth in 53 Pa.C.S. § 57B02(b), 47 Pa.B. 2558. Immediately preceding text appears at serial page (360518).

Cross References

This section cited in 52 Pa. Code § 1059.13 (relating to commencement of service).

§ 1059.12. Settlement sheet.

(a) The owner and proposed buyer shall use the Form SA-2 “Standard Settlement Sheet” at any closing on the sale of rights. The SA-2 is available on the Authority’s web site at www.philapark.org/tld.

(b) The SA-2 must include the information required by the Authority, including the following:

- (1) The names and addresses of the owner and proposed buyer.
- (2) The names and address of the brokers or attorneys used in the transaction.

- (3) The name and address of the lender and a designated contact person employed by the lender, if any.
- (4) A copy of all certificates or other documents authorizing the lender to make commercial loans in this Commonwealth.
- (5) The amount, term and interest rate of any loan used to purchase the rights.
- (6) The certificate numbers.
- (7) The total consideration for the rights to be sold and any payment terms, including loan contingencies and nonmonetary consideration.
- (8) An allocation of funds expended in the transaction.
- (9) Fees and costs associated with the sale, including those payable to any broker or attorney, or both.
- (10) Signatures of the owner and proposed buyer, or their designated agents, and the brokers.

§ 1059.13. Commencement of service.

A regulated party shall, within 30 days from the date of receipt of a certificate or from the date of settlement under § 1059.11(b) (relating to approval process and closing on sale), whichever is applicable, begin operating and furnishing service. If it has not commenced operating and furnishing the authorized service within 30 days, appropriate proceedings shall be initiated to terminate the certificate unless, upon specific permission as provided in § 1051.13 (relating to voluntary suspension of certificate), the time for commencement of service is extended.

Authority

The provisions of this § 1059.13 temporarily amended under 53 Pa.C.S. § 57B02.

Source

The provisions of this § 1059.13 temporarily amended May 5, 2017, effective February 25, 2017, expire upon promulgation of final-form regulations or on November 5, 2018, whichever is later, as set forth in 53 Pa.C.S. § 57B02(b), 47 Pa.B. 2558. Immediately preceding text appears at serial page (360519).

[Next page is 1061-1.]