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§ 51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?

Assignments or encumbrances completed without the prior written approval of the Director will be considered as null and void and a material breach of the applicable concession contract which may result in termination of the contract for cause. No person will obtain any valid or enforceable rights in a concessioner, in a concession contract, or to operate or manage under a concession contract as a subconcessioner or otherwise, or to leasehold surrender interest or possessory interest, if acquired in violation of the requirements in this subpart.

§ 51.89 What happens if there is a default on an encumbrance approved by the Director?

In the event of default on an encumbrance approved by the Director in accordance with this part, the creditor, or an assignee of the creditor, may succeed to the interests of the concessioner only to the extent provided by the approved encumbrance, this part and the terms and conditions of the applicable concession contract.

§ 51.90 How does the concessioner get the Director's approval before making an assignment or encumbrance?

Before completing any assignment or encumbrance which may be considered to be the type of transaction described in this part, including, but not limited to, the assignment or encumbrance of what may be a controlling interest in a concessioner or a concession contract, the concessioner must apply in writing for approval of the transaction by the Director.

§ 51.91 What information may the Director require in the application?

An application for the Director's approval of an assignment or encumbrance will include, to the extent required by the Director in the circumstances of the transaction, the following information in such detail as the Director may specify in order to make the determinations required by this subpart:

(a) All instruments proposed to implement the transaction;

(b) An opinion of counsel to the effect that the proposed transaction is lawful under all applicable federal and state laws;

(c) A narrative description of the proposed transaction;

(d) A statement as to the existence and nature of any litigation relating to the proposed transaction;

(e) A description of the management qualifications, financial background, and financing and operational plans of any proposed transferee;

(f) A detailed description of all financial aspects of the proposed transaction;

(g) Prospective financial statements (proformas);

(h) A schedule that allocates in detail the purchase price (or, in the case of a transaction other than an asset purchase, the valuation) of all assets assigned or encumbered. In addition, the applicant must provide a description of the basis for all allocations and ownership of all assets; and

(i) Such other information as the Director may require to make the determinations required by this subpart.

§ 51.92 What are standard proformas?

Concessioners are encouraged to submit standard prospective financial statements (proformas) pursuant to this part. A ''standard proforma'' is one that:

(a) Provides projections, including revenues and expenses that are consistent with the concessioner's past operating history unless the proforma is accompanied by a narrative that describes why differing expectations are achievable and realistic;

(b) Assumes that any loan related to an assignment or encumbrance will be paid in full by the expiration of the concession contract unless the proforma contains a narrative description as to why an extended loan period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract. The narrative description must include, but is not limited to, identification of the loan's collateral after expiration of the concession contract; and