

Service and Consumption of Alcohol at Association-Sponsored Events

There are several legal issues surrounding the service and consumption of alcohol at an Association-sponsored event, whether the alcohol is provided by the Association or is self-provided by owners attending the event.

Service of Alcohol by the Association

Service of alcohol by the Association raises both licensing and liability issues. With regard to licensing, the Texas Alcoholic Beverage Commission will require the Association to acquire a liquor license if the Association charges money to attend the event or charges a fee for drinks. Unfortunately, the Association would not qualify for a temporary alcohol license (which is cheaper and quicker to procure), since it does not have 501(c)(3) tax status. This means that the Association would have to apply for and receive a full-blown liquor license, which is not realistic. As such, if the Association wants to provide alcohol, it has only two alternatives when it comes to licensing. If the Association wants to charge a fee to attend or for drinks, it needs to have the event catered and have the caterer supply the alcohol under his license. Alternately, the Association needs to make attendance free and likewise provide drinks at no cost.

With regard to the Association's potential liability related to providing alcohol at an event, there is no dram shop law or other statute in Texas that makes persons who serve alcohol for free at private events liable for damages that may result from that service (e.g., an attendee drives drunk and injures someone). Rather, any suit for damages would be made as a common law torts claim. Without going into all of the legal details as to what a plaintiff would have to prove to recover in such a suit, suffice it to say that the Association's best means of protecting itself from such a claim is to take reasonable steps to ensure that nobody gets intoxicated at the event. This would include, by way of example, limiting the amount of alcohol served, distributing alcohol from a central area, assigning certain individual(s) the task of monitoring consumption both to ensure no under-aged consumption and to look for signs that an attendee is intoxicated, arranging for taxis or designated drivers if confronted with an intoxicated attendee, and the like.

Self-Service of Alcohol by Owners

With regard to situations in which individual owners bring their own alcohol to an Association event, there obviously is no licensing issue if the Association is not serving alcohol or is serving alcohol but no license is required because no fees are being charged. However, if the Association has elected to provide alcohol for a fee through a caterer, I would check with the caterer to see whether their license permits individuals to bring their own alcohol to the event.

On the liability side, again the only exposure the Association would have would be from a tort claim that the Association acted in a way that caused someone harm and that the harm was a reasonably foreseeable result of the Association's actions. Given that the Association is not the primary actor in this scenario (i.e., is not serving the alcohol), and the fact that the Association has no statutory duty to monitor and control an owner's consumption of his own alcohol, I think the chances the Association would be held liable for harm that resulted from that consumption are slim. However, that is no guarantee that the

Association would not be sued by a plaintiff looking for someone to recover against. As such, I again suggest that it is in the best interest of the Association to take reasonable steps to ensure nobody gets intoxicated at the event or, if they do, that they get home safely. In this case, since the Association would not have physical control over the alcohol, “reasonable steps” may simply entail advising board members and staff to keep an eye out for signs of intoxication or under-aged drinking and to respond appropriately.

Firm information

Niemann & Heyer LLP has been representing POAs and specializing in POA law for more than 20 years. Our lawyers have been instrumental in drafting virtually all POA law in Texas, including the Texas Uniform Condominium Act (Property Code Chapter 82) and the Texas Residential Property Owners Protection Act (Property Code Chapter 209). Connie Niemann Heyer is a past president and current board member of the Austin chapter of the Community Associations Institute, and is a lobbyist for the Texas Community Associations Institute Legislative Action Committee.

This article represents the opinion of our attorneys. Other attorneys may have different opinions.