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The Serving of Alcohol at Open Houses

The issue of serving alcoholic beverages at open houses raises numerous concerns for real estate agents and homeowners. While this may seem like a good idea to entice members of the public and real estate agents to attend an open house, there are numerous factors to consider in this regard. One must weigh the potential liability issues in determining whether to allow alcoholic beverages to be served during either a public or broker open house.

If there should be a claim made for personal injury or damage to property based upon the serving of alcohol beverages at an open house, it is possible that there may not be insurance coverage to protect either the homeowner or the real estate agent holding the open house. Since the serving of alcohol is not necessarily considered a professional service for a real estate agent, it is possible that a broker's E & O Insurance may not provide coverage for any claim related to this. In addition, there may well be an exclusion for any claim based upon someone leaving an open house and getting into an accident that might be based upon that person's consumption of alcohol. There is also no guarantee that a broker's general liability policy will cover such a claim. It is possible that the seller's homeowner's policy might cover such a claim but this should be checked out before serving alcohol at an open house, not after a claim is filed.

A license to serve alcoholic beverages is required at an open house which is open to the public, whether it is public open house or a brokers' open house for real estate agents. And a real estate license is not the license required for this. It is strongly suggested that if a real estate agent decides to serve alcoholic beverages at an open house that this only be done by hiring a caterer who possesses an on-sale license from the California Department of Alcoholic Beverage and Control (the "ABC") and has a type 58 catering permit also issued by the ABC. In addition, the caterer/server should have liability insurance and should provide the agent and brokerage with a hold harmless and indemnification agreement with regard to anything related to the serving of alcohol at the open house.

It is critical that no minors be served alcohol and the catering service should be instructed to require identification from guests. There should be a drink limit imposed for all guests. And the catering service should be instructed not to serve anyone who is obviously intoxicated. In addition, there should be a variety of alternate, non alcoholic beverages served.

There is a private party exception to the requirement of an ABC license to serve alcoholic beverages but this exception would NOT apply to either a broker open house or a public open house. It would only

apply to an event that is not open to the general public with a specific guest list. Even with a private party, it is suggested that a caterer be hired for the event as stated above.

The general rule in California is that there is no Civil Liability to a person who sells, furnishes, or provides, any alcoholic beverage unless the alcohol is served to a minor or someone who is obviously intoxicated.

But whether there turns out ultimately to be Civil liability or not, real estate agents must weigh the risk of having a legal action filed against them and their real estate brokerage should someone get into an accident after consuming alcohol at the open house. It may very well be a risk that does not outweigh the benefits of serving alcoholic beverages at public or broker open houses.

Attached to this article is a CAR power point presentation entitled "Serving Alcohol at an Open House".

Real estate agents should not serve alcoholic beverages at open houses without first discussing this with their broker or office manager and obtaining their approval. Before granting such approval, brokers and office managers are advised to check directly with their various insurance brokers and with their own real estate attorney.

Jeffrey Kahn
Law Offices of Spile, Leff and Goor

SERVING ALCOHOL AT AN OPEN HOUSE





Broker Approval

- Brokers have the right to approve or disapprove the serving of alcohol at an open house
- Brokers are required by law to exercise reasonable supervision over licensed activities (including open houses)
- Brokers need to evaluate risks, including whether such activities are covered by the broker's E&O insurance



Serving Alcohol with a License

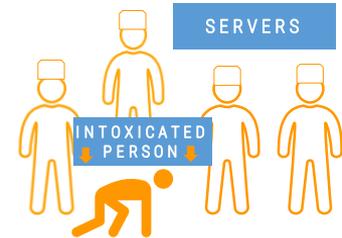
- A license is required when an open house is **open** to the public
- A caterer must have **both**:
 - An On-Sale license from the California Department of Alcoholic Beverage and Control (the “ABC”), and
 - A Type 58 Catering Permit also issued by the ABC



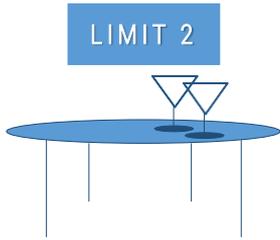
Limiting Risk When Alcohol is Served



- Make sure no minors are present
- Employ a catering service with proper alcohol licenses and professional servers.
- Instruct servers to require identification from guests
- Instruct servers to identify if guests are intoxicated



Limiting Risk When Alcohol is Served



- Instruct servers to not serve alcohol to minors or obviously intoxicated guests
- Impose a drink limit for all guests (e.g., each guest is provide with two tickets redeemable for an alcoholic beverage).
- Include a variety of alternative, non-alcoholic beverages



Serving Alcohol Without a License

- Open house is **NOT** open to the public; and
- These 3 requirements are met:
 - 1 There is no sale of alcohol
 - 2 The event is not open to the general public at the time alcoholic beverages are served or consumed (the “private party” exception), and
 - 3 The premises are not maintained for the purpose of keeping, serving, consuming, or disposing alcoholic beverages

Private Party Exception Requirements

- The host must have prepared the names of the invited guests prior to the event
- If any person not on the list is admitted to the event, it may be considered “open to the public,” and then a license would be required
- Uninvited guests who are not on the guest list must be turned away



What's the Risk?

- With some **important exceptions**, the general rule is: **No Civil Liability**
 - “No person who sells, furnishes, gives, [etc...] any alcoholic beverageshall be civilly liable to any injured person”
 - “No social host who furnishes alcoholic beverages to any person may be held legally accountable....”



Important Exceptions

- Potential civil liability if alcohol is served to someone under 21 years of age especially if “obviously intoxicated”
- Potential criminal liability if alcohol is furnished to an “obviously intoxicated person” or “habitual drunkard”



ADDITIONAL RESOURCES

**Civil Code § 1714 and Business & Professions Code §§
25602 and 25602.1**

Quick Guide – Serving Alcohol at an Open house

C.A.R.'s Q&A [Serving Alcohol at an Open House](#)