

# NOVEMBER 2004

## Winter Holiday Parties Some Sobering Thoughts

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As we turn back the clocks and the leaves fall from the trees, its time to start thinking about holidays which are but a few weeks away.

Many of our association clients will host parties, gatherings and other celebrations during the holiday season. As these events are planned, we often get questions about the sale and service of alcoholic beverages by both the association and by members who are hosting private events in community facilities. These questions generally relate to licensing and insurance.

Associations in Virginia generally need to obtain a banquet license from the Virginia Department of Alcohol Beverage Control ("ABC"). The type and the cost of license will depend on the type of beverages that will be served or sold at the event. Enclosed for your convenience is a copy of the Virginia ABC Banquet License Application. Additional information about the licensing process may be obtained on-line at [www.abc.va.us](http://www.abc.va.us) or by contacting a local ABC office. Virginia law also requires that the members sponsoring private events

in association owned facilities obtain a Banquet license if alcoholic beverages are going to be served and sold at the event.

Associations in Maryland regulate the sale and service of alcoholic beverage through their local county government. Accordingly, we suggest that our clients contact their city of county government for additional information prior to hosting an event.

The insurance questions related to sale and service of alcoholic beverage are usually about liability. We suggest that our association clients check with their insurance agents to ensure that the association has sufficient liability coverage in the event that someone is injured at both association sponsored events and private events held in association owned facilities. We also recommend that association clients specifically ask whether the coverage includes host liability coverage for alcohol-related incidents and what exclusions exist under the policy.

Regulations and exclusions for alcohol related incidents vary among insurance

carriers. For example, many policies includes exclusions relating to the sale and distribution of alcoholic beverages. In the event that an association purchases alcohol (beer and wine) for some of its membership events and then “makes it available” to the adults, this may be viewed as alcohol distribution by the association’s insurance carrier. While this form of “distribution” of alcohol is about as informal as any other form of “distribution” of alcohol, it is arguably a form of “distribution.” However, the term “distribution,” has been interpreted by many insurance carriers to mean “sale” of alcohol. For this reason, we generally recommend that our association clients do not contemplate charging members for their consumption of the alcohol.

For private events hosted by members, we recommend that the Board of Director take the following steps to protect the association. The Board needs to determine whether it has the authority to allow a member to use a community facility for a private event and whether it will allow members to serve alcoholic beverages at these events. Thereafter, the Board must determine what, if any, safeguards the members must take if it allows alcoholic beverages to be served at the function. As a general rule, we recommend that the Board prohibit members from selling alcohol or charging an admission fee if alcohol will be served at the event. We also recommend that the member be required to obtain a license for the event. In addition, the Board may want to require that the sponsoring member enter into a written agreement to pay any deductible or uninsured expenses on the association's host liability policy if

someone files a legal claim arising out of the members private party. The agreement should also address whether the owner will indemnify the association against claims brought against the association. Any indemnification should include payment of the attorney’s fees incurred to defend the claim. Finally, the agreement should address the issues of clean-up responsibility, security deposits, and responsibility for guest's conduct, underage.

In conclusion, a Board can take steps to reduce liability exposure with a moderate amount of pre-planning and advance research on license requirements and insurance coverage. Likewise, a written agreement between the association and members can reduce the potential of a conflict in the event of a mishap. If you have any questions or if your association needs assistance preparing an agreement between the association and a member-host, please feel free to call any of our community association attorneys.