



State of Arizona
Department of Liquor Licenses and Control

Title 4 Homeowner's Association Handbook
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HOA Liquor Law

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Introduction

HOA Liquor Law

This booklet has been created to provide Arizona Homeowners Associations (“HOAs”) with information relevant to identifying circumstances and events that require a liquor license.

The Department of Liquor Licenses and Control is not authorized to offer business advice, so determining the licensing requirements that apply to your circumstances will be the responsibility of the HOA. For easy reference, definitions, Arizona liquor law and Arizona Administrative Code are provided.

This booklet applies to activities occurring on HOA property only, which are defined in the Arizona State Senate Issue Brief dated August 24, 2010 as follows:

A homeowners’ association (HOA) is a common interest organization to which all the owners of lots in a planned community or owners of units in a condominium must belong. The four defining characteristics of all HOAs are:

- all owners are automatically members.
- governing documents create mutual obligations.
- mandatory fees or assessments are generally levied against owners and used for the operation of the association.
- owners share a property interest in the community.

In a condominium, each unit owner has an undivided percentage interest in the common elements, which are defined as all portions of a condominium other than the units and frequently include the land, exterior walls, walkway areas and recreational areas.

In a planned community, the common areas, which statute defines as improved or unimproved property that is intended for the use of owners of a residential subdivision or development and their invited guests, are owned by the HOA. These common areas often include land and buildings used as common areas, including an airport, but do not include golf courses.

For your convenience, the Arizona State Senate Issue Brief dated August 24, 2010 is included at the end of this handbook.

Liquor Licensing Basics

HOA Liquor Law

Some likely liquor licensing scenarios for HOAs are:

- 1) The HOA chooses to provide liquor. Then, they **shall**:
 - apply for a permanent liquor license, or
 - determine if they meet qualifications to apply for temporary special event liquor license, or find an organization that does qualify.
- 2) The HOA chooses to allow HOA members and their guests to provide and consume liquor on the HOA property. Then, they **may**:
 - elect to apply for an exemption as an unlicensed location,
- 3) The HOA chooses to allow non-HOA members and their guests to provide and consume liquor on the HOA property. Then, they **may**:
 - elect to apply for an exemption as an unlicensed location,
- 4) The HOA chooses to provide liquor in some areas and not in others. Then, they **may**:
 - choose to use a combination of the options 1, 2, and 3.

When the HOA chooses to produce, sell, store, furnish, or offer liquor, the HOA will be required to own a liquor license. The Arizona laws which authorize this are:

A.R.S. §4-244. Unlawful acts

It is unlawful:

1. For a person to buy for resale, sell or deal in spirituous liquors in this state without first having procured a license duly issued by the board.
2. For a person to sell or deal in alcohol for beverage purposes without first complying with this title.

A.R.S. §4-244.05 Unlicensed business establishment or premises; unlawful consumption of spirituous liquor; civil penalty; seizure and forfeiture of property

A. A person owning, operating, leasing, managing or controlling a business establishment or business premises which are not properly licensed pursuant to this title and in which any of the following occur shall not allow the consumption of spirituous liquor in the establishment or on the premises:

1. Food or beverages are sold.
2. Entertainment is provided.
3. A membership fee or a cover charge for admission is charged.
4. A minimum purchase or rental requirement for goods or services is charged.

Selecting the Right Liquor License

HOA Liquor Law

Arizona has 17 different types of liquor licenses. To simplify this topic for HOAs, several license types been excluded in the list below.

With each license come different privileges for the types of liquor you can sell and to whom you may sell the liquor.

Permanent Liquor Licenses With On-sale Retail Privileges

(consumption of liquor on the licensed premises only, no carry-out)

Private Club (series 14) all spirituous liquor – bona fide members & their guests only

Permanent Liquor Licenses With On- and Off-sale Retail Privileges

(sale of liquor for consumption off and on the premises, some carry-out allowed)

Bar (series 6) all spirituous liquor, off-sale may not exceed 30% of on-sale receipts and must remain in original packaging *A.R.S. §4-206.1(F)*

Beer & Wine Bar (series 7) beer and wine only, off-sale may not exceed 30% of on-sale receipts and must remain in original packaging *A.R.S. §4-206.1(F)*

Temporary Liquor Licenses With On- and Off-sale Retail Privileges

(sale of liquor for consumption off and on the premises, some carry-out allowed)

Special Event (series 15) all spirituous liquor, temporary, only a liquor auction in closed, original container may be allowed for off-sale consumption

Wine Fair/Wine Festival (series 16) wine only, temporary, unlimited on- and off-sale, off-sale must be in closed, original container for off-sale consumption

To see a complete list of liquor licenses, please visit www.azliquor.gov. Review the tab titled "application kits and forms" which can be found in the first tab in the top navigation bar (across the top of the website). The "application kits" page has a description of all license types, what they allow you to do, the fees, application forms, timeframes for processing an application, and application instructions.

On that same website page, you'll find links to documents for:

- Multiple licenses at one location,
- Privileges by license type, and
- License processing timeframes

The Special Event Liquor License – a temporary license

HOA Liquor Law

There may be occasions when an HOA wishes to host an event where liquor will be served. This is the purpose for a temporary special event liquor license. Some HOAs may qualify as special event applicant. A qualifying entity may make application for the special event taking place on HOA property.

Who may apply for a temporary special event liquor license?

A.R. S. §4-203.02. Special event license; rules

B. The director may only issue the special event license to a political party or campaign committee supporting a candidate for public office or a ballot measure, an organization formed for a specific charitable or civic purpose, a fraternal organization in existence for over five years with a regular membership or a religious organization.

What qualifies as a special event?

Below, in **yellow highlight**, the two different types of special events are described;

- 1) **on-sale** (where liquor is sold and consumed on the licensed premises diagrammed in the special event application); and
- 2) **off- sale** (where liquor is auctioned in the original container for later consumption, not at the event).

There is more information about these types of events below.

Below, in **blue highlight**, on-sale special event licensees have two options;

- 1) to purchase liquor from an Arizona licensed liquor retail store, or;
- 2) receive liquor donated by an Arizona licensed liquor wholesaler.

On-sale special event licensees must receive at least twenty-five percent of the gross revenues from the special event. All expenses shall be supported by written contracts, invoices or receipts, which shall be supported by a contract between the parties to be supplied at the time of application.

Below, in **green highlight**, off-sale special event licensees have one option; to receive liquor from a donor who receives no remuneration other than tax benefits.

Off-sale special event licensees must receive at least seventy-five percent of the gross revenues from the special event. All expenses shall be supported by

written contracts, invoices or receipts, which shall be made available to the director on request.

A.R. S. § 4-203.02. Special event license; rules

A. The director may, subject to the approval of the board of supervisors of a county for events to be held in an unincorporated area or the governing body of a city or town for events to be held in a city or town, issue on a temporary basis:

1. A daily on-sale special event license authorizing the sale of spirituous liquor for consumption on the premises where sold. The fee for the license is twenty-five dollars per day. The director shall transfer the monies collected to the department of health services for the purpose prescribed in title 36, chapter 18, article 2.

2. A daily off-sale special event license authorizing a charitable auction for the sale of spirituous liquor for consumption off premises.

C. An organization selling spirituous liquor under a special event license pursuant to subsection A, paragraph 1 of this section shall purchase such spirituous liquor from the holder of a license authorized to sell off-sale, or, in the case of a nonprofit organization which has obtained a special event license for the purpose of charitable fund raising activities, the nonprofit organization may receive the spirituous liquor from a wholesaler as a donation, except that a licensee licensed pursuant to subsection A, paragraph 2 of this section may receive spirituous liquor from a donor when the donor receives no remuneration or payment of any kind, directly or indirectly, other than any tax benefits that might result.

D. An organization that is issued a license pursuant to subsection A, paragraph 2 of this section shall receive at least seventy-five per cent of the gross receipts of the auction. Up to twenty-five per cent of the gross receipts of a special event auction conducted pursuant to subsection A, paragraph 2 of this section may be used to pay reasonable and necessary expenses incurred in connection with the auction. All expenses shall be supported by written contracts, invoices or receipts, which shall be made available to the director on request.

E. The director may adopt those rules the director determines are necessary to implement and administer this section including a limitation on the number of times during a calendar year a qualified organization may apply for and be issued a license under this section. The qualified organization issued a license pursuant to subsection A, paragraph 1 of this section must receive at least twenty-five per cent of the gross revenues of the special events, which shall be supported by a contract between the parties to be supplied at the time of application.

F. An organization that is issued a license pursuant to subsection A, paragraph 2 of this section shall not sell more than twenty cases of spirituous liquor annually under a special event license.

G. Section 4-201 does not apply to the licenses provided for under this section.

Who must approve your special event liquor license?

A special event application must have a recommendation from the town, city, or municipality before the license can be issued by the state (see question number 20 on the application).

A.R. S. §4-203.02. Special event license; rules

A. The director may, subject to the approval of the board of supervisors of a county for events to be held in an unincorporated area or the governing body of a city or town for events to be held in a city or town, issue on a temporary basis.

Where can I find an application for a special event liquor license?

To locate the "Special Event Permit (series 15)", please visit the Department of Liquor website (<http://www.azliquor.gov/>) and review the tab titled "application kits and forms" which can be found in the first tab in the top navigation bar (across the top of the website). The "application kits" page has a description of all license types, what they allow you to do, the fees, application forms and instructions.

How long does it take for approval of a special event license?

Allow 30-days to process the application from the time the Department of Liquor Licenses and Control (DLLC) receives the complete application and associated fees.

How do I check on the approval of my special event application?

Permits that have been issued can be found on the DLLC website at www.azliquor.gov. On the left-hand navigation bar, first tab titled "License Search" will offer a "special events" link that shows all permits being issued including the organization holding the event, license number, date and location of the event, and contact name.

The Wine Festival Liquor License – a temporary license

HOA Liquor Law

There may be occasions when an HOA wishes to host an event on the HOA property where wine will be served and sold. This is the purpose for a temporary wine festival liquor license. Only a domestic farm winery will qualify as wine festival applicant. The Arizona liquor laws that authorize a wine festival are:

A.R.S. §4-203.03. Wine festival license; wine fair license; fee

- A. The director, subject to the approval of the board of supervisors for events to be held in an unincorporated area or the governing body of a city or town for events to be held in a city or town, may issue up to twenty-five wine festival licenses for each calendar year for each licensed domestic farm winery, for up to a total of seventy-five calendar days per winery, authorizing sampling of domestic farm winery products on the wine festival premises, the sale of such products for consumption on the wine festival premises and the sale of such products in original containers for consumption off the wine festival premises. The fee for a domestic farm winery wine festival license is fifteen dollars for each event.
- B. Any domestic farm winery may apply for a wine festival license pursuant to this section.
- C. ~~With the permission of the fair organizers, any domestic farm winery is authorized to allow sampling of domestic farm winery products on the fair premises, the sale of such products for consumption on the fair premises and the sale of such products in original containers for consumption off of the fair premises at any sanctioned county or state fair.~~ The fee for a domestic farm winery fair license is fifteen dollars for each event.

Applying for an Exemption as an Unlicensed Location

HOA Liquor Law

If the HOA chooses to allow

- a) HOA members and their guests to provide and consume liquor on the HOA property ("*Bring Your Own Bottle*" or BYOB), or
- b) Non-HOA members and their guests to provide and consume liquor on the HOA property ("*Bring Your Own Bottle*" or BYOB),

the HOA may want to consider applying for an exemption.

The Arizona rule which authorizes this is:

R19-1-315. Exemptions to A.R.S. § 4-244.05

Small restaurants, catering establishments, associations, and business establishments hosting private social functions are exempt from A.R.S. § 4-244.05 if the business establishment meets all of the following conditions:

1. The possession or consumption of spirituous liquor on the premises is limited to wine and beer and is permitted as an incidental convenience to patrons of the business establishment.
2. The business establishment limits possession or consumption of wine or beer on the premises to the hours between noon and 10 p.m.
3. The business establishment or premises allows a patron to possess no more than 24 ounces of beer per person, or 6 ounces of wine per person to be consumed on the premises.
4. The business establishment notifies the Department on a form prescribed by the Department that it permits patrons to consume or possess beer or wine on the premises. (link to form: <http://www.azliquor.gov/formsindex.html>)
5. The business establishment and/or its proprietor, manager, comptroller, controlling person, or employee shall comply with A.R.S. Title 4, Chapters 1, 2, and 3, and 19 A.A.C. 1. (link to Arizona liquor laws: <http://www.azliquor.gov/law.html>)
6. The business establishment and/or its proprietor, manager, comptroller, controlling person, or employee shall not permit the number of patrons within the business establishment to exceed the maximum occupancy limitations. The maximum occupancy limitations are:
 - a. Small restaurant: shall not exceed 40 patrons.
 - b. Catering establishment: shall not exceed 300 patrons.

- c. Associations: shall not exceed 300 patrons.
 - d. Business establishments hosting private social functions: shall not exceed 300 patrons.
7. If any clause, sentence, subsection, Section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subsection, Section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

If the HOA determines that it meets the criteria as an "unlicensed location", approval is required the Department of Liquor Licenses and Control (DLLC). Approval may be given after you have submitted an "unlicensed establishment application" and a site inspection has been completed by the Department. To maintain approval, you will need to re submit an application to the Department annually.

The "unlicensed establishment application" can be found on the Department of Liquor website (www.azliquor.gov) on first tab on the top navigation titled "alphabetical forms index".

Once received, DLLC will forward your application to the investigations division for an inspection to determine if the application will be to approved or not approved. This process takes between 30 to 45 days.

Within 45 days, you will receive a copy of your original application with the recommendation for approval or disapproval.

Cindy Bejar, the Licensing Manager, (602)542-9032, cynthia.bejar@azliquor.gov will be happy to help you if you have questions during the process.

Definitions

HOA Liquor Law

A.R.S. §4-101. Definitions

In this Article, unless the context otherwise requires:

7. "**Club**" includes any of the following organizations where the sale of spirituous liquor for consumption on the premises is made to members only:
 - (c) A hall or building association of a local unit mentioned in subdivisions (a) and (b) of this paragraph, all of the capital stock of which is owned by the local unit or the members, and which operates the clubroom facilities of the local unit.
 - (d) A golf club which has more than fifty bona fide members and which owns, maintains or operates a bona fide golf links together with a clubhouse.
 - (e) A social club with more than one hundred bona fide members who are actual residents of the county in which it is located, that owns, maintains or operates club quarters, is authorized and incorporated to operate as a nonprofit club under the laws of this state, and has been continuously incorporated and operating for a period of not less than one year. The club shall have had, during this one year period, a bona fide membership with regular meetings conducted at least once each month, and the membership shall be and shall have been actively engaged in carrying out the objects of the club. The club's membership shall consist of bona fide dues paying members paying at least six dollars per year, payable monthly, quarterly or annually, which have been recorded by the secretary of the club, and the members at the time of application for a club license shall be in good standing having for at least one full year paid dues. At least fifty-one per cent of the members shall have signified their intention to secure a social club license by personally signing a petition, on a form prescribed by the board, which shall also include the correct mailing address of each signer. The petition shall not have been signed by a member at a date earlier than thirty days prior to the filing of the petition. The club shall qualify for exemption from the payment of state income taxes under title 43. It is the intent of this paragraph that a license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide club, where the sale of liquor is incidental to the main purposes of the club.

26. "**Premises**" or "**licensed premises**" means the area from which the licensee is authorized to sell, dispense or serve spirituous liquors under the provision of the license. Premises or licensed premises includes a patio that is not contiguous to the remainder of the premises or licensed premises if the patio is separated from the remainder of the premises or licensed premises by a public or private

walkway or driveway not to exceed thirty feet, subject to rules the director may adopt to establish criteria for noncontiguous premises.

R19-1-201. Definitions

In this Article, unless the context otherwise requires:

10. "**Association**" means an organization of persons having common interests and purposes, established as a nonprofit corporation or fraternal and/or benevolent society, which owns, leases or occupies a premises used exclusively for the organization's purposes, which operates for recreational, social, patriotic, political, benevolent, or athletic purposes, and which has accommodations for less than 300 persons.
11. "**Private social function**" means any occasional communal affair, gathering, or party occurring at a business establishment is limited to selected, invited guests.

R19-1-101. Definitions

In this Article, unless the context otherwise requires:

2. "**Business establishment or business premises**" means the real property and improvements licensed under A.R.S. Title 4.
5. "**Licensed**" means having a license or interim permit issued pursuant to this Title, including a license or interim permit on non-use status.



Arizona State Senate *Issue Brief*

August 24, 2010

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

HOMEOWNERS' ASSOCIATIONS

INTRODUCTION

A homeowners' association (HOA) is a common interest organization to which all the owners of lots in a planned community or owners of units in a condominium must belong. The four defining characteristics of all HOAs are:

- all owners are automatically members.
- governing documents create mutual obligations.
- mandatory fees or assessments are generally levied against owners and used for the operation of the association.
- owners share a property interest in the community.

PLANNED COMMUNITY VS. CONDOMINIUM

A planned community is a real estate development that includes property owned and operated by a nonprofit corporation or unincorporated association of owners that is created pursuant to a recorded declaration for the purpose of managing, maintaining or improving the property.

A condominium refers to a real estate development in which certain portions are designated for separate ownership (units) and the remainder is designated for common ownership by the unit owners. A condominium may be created by recording a declaration in the county in which the condominium is located. Statute requires the organization of a profit, nonprofit or unincorporated unit owners' association no later than the date the first unit is conveyed.

The principal distinction between condominium and planned community HOAs involves the ownership of the common areas or elements. In a condominium, each unit owner has an undivided percentage interest in the common elements, which are defined as all portions of a condominium other than the units and frequently include the land, exterior walls, walkway areas and recreational areas. In a planned community, the common areas, which statute defines as improved or unimproved property that is intended for the use of owners of a residential subdivision or development and their invited guests, are owned by the HOA. These common areas often include land and buildings used as common areas, including an airport, but do not include golf courses.

THE HOA'S AUTHORITY

An HOA derives its power and authority from a variety of legal documents, including the HOA's governing documents and federal and state statutes and regulations.

Governing Documents

The governing documents create the legal foundation and organizational framework of an HOA. They consist of the Declaration of Covenants, Conditions and Restrictions (CC&Rs), the articles of incorporation, the bylaws, and the rules and regulations.

The CC&Rs constitute the enabling document, which is recorded with the county recorder and empowers the HOA to control certain aspects of property use within the development, often including oversight and approval authority over the construction and alteration of homes. When a person buys a home in such a development, the person receives a copy of the CC&Rs and agrees to be bound by their terms. Thus, the CC&Rs form an enforceable contract between the HOA and the individual homeowner.

The articles of incorporation are required of incorporated HOAs and establish the HOA as a legal entity. They constitute the corporate charter and are filed with the Arizona Corporation Commission. The majority of HOAs formed since the mid-1980s are incorporated as nonprofit corporations and therefore have articles of incorporation. Incorporation as a nonprofit provides greater statutory protection to the HOA board members, as well as to the unit or property owners, than remaining unincorporated.

The bylaws set out the procedures for the internal governance and operation of the association.

The rules and regulations often address specific matters related to the use of the property that are not specifically covered by the CC&Rs. If the rules conflict with the CC&Rs, they are generally unenforceable.

Federal Regulation

Federal law defines "HOA" primarily for tax collection purposes. The definition requires not only that the association be organized and operated for the acquisition, construction, management, maintenance and care of association property as under Arizona state law, but also that a certain percentage of gross income be derived from membership dues, fees or assessments, and that a specific percentage of expenditures cover care and maintenance of the property.

Various federal laws may affect the operation of HOAs. Examples include the Federal Bankruptcy Act and the Federal Communications Act.

State Regulation

Many aspects of HOAs are directly governed by Arizona statutes, such as the Planned Communities statutes, the Arizona Condominium Act and the Nonprofit Corporations Act.

The Planned Communities statutes took effect in 1994 and constitute the first regulations pertaining specifically to the formation and operation of master planned community HOAs. Currently, these statutes address assessment increases, penalties, open meetings, disclosure of association records, resale disclosure, penalty and assessment liens, foreclosures, flag and political sign display, vehicle parking and certain affairs of the boards of directors.

Condominiums are regulated by the Arizona Condominium Act, which is more extensive in scope and detail than the Planned Community statutes. It deals with, among other things, the creation, alteration, management and termination of condominiums, the imposition of monetary penalties, open meetings, resale disclosure, flag display, penalty and assessment liens and foreclosures. Several exceptions allow the establishment of differing regulations within the condominium documents.

The Nonprofit Corporations Act contains extensive provisions governing the formation and operation of nonprofit corporations, including any HOA that is incorporated as a nonprofit corporation.

Several other sections of statute, such as those pertaining to fair housing, solar energy and HOA dwelling actions, also may limit the policies that an HOA may adopt and enforce.

Enforcement of Community Rules

An HOA may place a lien on a home or unit for regular assessments charged to the owner for HOA expenses and for late fees for those assessments from the time the assessment becomes due, or for fees, charges, late charges, monetary penalties or interest after the entry of a judgment in a civil suit. Statute authorizes the foreclosure of an HOA's lien for regular assessments if the owner has been delinquent in the payment of the assessment for one year or in the amount of \$1,200, excluding late fees, whichever occurs first.

An HOA must provide a member with notice of violation of the governing documents before imposing monetary penalties. A member who receives a written notice may respond by certified mail within ten business days and may expect within ten business days a written explanation that includes certain information, such as the process to contest the notice, unless this information was provided with the original notice. Unless the process was provided previously, the HOA may not proceed with any action to enforce the documents until the allotted time passes.

Limitations on HOA Power

Statute limits HOA power in the following ways:

- An HOA cannot prohibit the outdoor display of the American flag, any U.S. military flag, the Arizona flag, an Arizona Indian nation flag or a POW/MIA flag on a member's property, unless the display violates federal flag code. The HOA must adopt reasonable

rules and regulations regarding the display of the flag.

- An HOA may reasonably regulate but not prohibit the circulation of political petitions on public property.
- An HOA may not prohibit the display of a political sign within a given time period before or after an election. It may regulate the size and number of signs placed on a property within specified parameters.
- An HOA may not prohibit the display of a temporary open house, for sale, for sale by owner sign or a sign rider on a person's property. However, a sign and rider must conform to industry standards.
- An HOA may not limit open house hours except that the HOA may prohibit an open house being held before 8:00 A.M. or after 6:00 P.M. An HOA may prohibit open house signs on the common elements of a condominium.
- An HOA may not revoke or modify prior approval of a commercial sign located on land zoned for commercial use.
- An HOA may not restrict the installation or use of a solar energy device; however, it may adopt reasonable rules regarding the placement of a solar energy device as long as those rules do not negatively impact the function, cost or efficiency of the device.
- An HOA may not prohibit the temporary display of a cautionary sign pertaining to children playing or prevent resident children from engaging in recreational activities on a residential road with a posted speed limit of 25 miles per hour or less and is under the jurisdiction of the HOA. A cautionary sign must be professionally manufactured, no taller than three feet and removed within one hour of children ceasing to play.
- An HOA must allow a resident employed by a public service corporation or public safety agency to park on a street or driveway a vehicle necessary for emergency services or

maintenance of electrical, water or telecommunications infrastructure.

ADDITIONAL RESOURCES

- Planned Community Statutes: Arizona Revised Statutes, Title 33, Chapter 16
- Condominiums Statutes: Arizona Revised Statutes, Title 33, Chapter 9
- Nonprofit Corporations Statutes: Arizona Revised Statutes, Title 10, Chapter 24 through Chapter 40
- Common Areas Statutes: Arizona Revised Statutes, Title 42, Chapter 13, Article 9