



State of Arizona
Department of Liquor Licenses and Control

Title 4 Homeowner's Association Handbook
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Index

HOA Liquor Law

Introduction	3 - 4
Liquor License Basics	5
Selecting the Right Liquor License	6
Temporary Special Event Permits	7 - 10
Applying for an Exemption as an Unlicensed Location	11 - 12
Definitions	13 - 14
Arizona State Senate Issue Brief on Homeowners' Associations	15 - 16

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

Below are the results of searching for the word "association" in Arizona liquor law (Title 4 and A.A.C. Title 19) as it relates to a homeowner's association.

Two references to associations found in Arizona liquor law which are not included below are neighborhood associations (regarding license protests) and National Rifle Association (NRA) (regarding firearms in licensed establishments).

Included are other definitions which may help clarify Title 4 provisions for homeowner's associations.

A.R.S. §4-101. Definitions

In this title, 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.

8. "**Company**" or "**association**", when used in reference to a corporation, includes successors or assigns.

25. "**Person**" includes a partnership, limited liability company, association, company or corporation, as well as a natural person.

R19-1-201. Definitions

In this Article, unless the context otherwise requires:

1. "**Business establishment or premises**" means the real property and improvements from which an enterprise or organized undertaking is conducted regularly for profit.
2. "**Entertainment**", for purposes of A.R.S. § 4-244.05 only, means any form of amusement including, but not limited to, a performance of theater, dance or opera, musical concerts, motion pictures, videotapes, audiotapes, radio, television, carnivals, games of chance or skill, shows, lectures, or sports events.
3. "**Food**" means any edible substance for the nourishment of the body and consists of hot fare commonly ordered at lunch or dinner prepared at the premises.
4. "**Membership fee**" or "**cover charge**" means any consideration, direct or indirect, paid to the business establishment by patrons to gain entry.
5. "**Minimum purchase**" or "**rental requirement**" means an amount of money or other consideration required to be paid by patrons of the business establishment as a condition to enter or remain on the premises.
6. "**Goods or services**" includes all types of commodities, stock, or wares, and any method of providing the use of something needed or desired.
7. "**Incidental convenience**" means the goodwill the business receives from permitting patrons to possess and consume a minimal amount of spirituous liquor

while they are present to obtain the goods or services regularly offered to all patrons.

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.