



Serving Alcohol at an Open House

Member Legal Services

Tel (213) 739-8282

Fax (213) 480-7724

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Highlighted Questions

1. Do I need a license to serve alcohol at an open house that is open to the public? See Question #2.
2. What precautions should I take when serving alcohol at an open house? See Question #3.
3. Do I need a license to serve alcohol at an open house that is NOT open to the public? See Question #4.

Q 1. Do I need my broker's approval to serve alcohol in a setting like an open house?

A Yes. The broker certainly has discretion to either approve or disapprove the serving of alcohol at an open house. Further, the broker should have the opportunity to evaluate the risks of this activity such as whether it would be covered by the broker's E&O insurance.

A. Serving alcohol with a license

Q 2. Do I need a license to serve alcohol at an open house that is open to the public?

A Yes. This is one reason hosts often hire professional caterers for these events. The caterer must have both: (1) an On-Sale license from the California Department of Alcoholic Beverage Control ("the ABC"); and (2) a Type 58 Catering Permit also issued by the ABC (which allows them to exercise On-Sale privileges at a location other than their businesses).



Bus. & Prof. Code § 23320 Types of licenses and fees; § 23320.1

Q 3. *What precautions should I take when serving alcohol at an open house?*

A

The following tips are conservative precautions intended to limit liability:

1. Make sure no minors are present.
2. Employ a catering service with proper alcohol licenses and professional servers. The servers should require identification from guests and should be able to properly identify how intoxicated guests are and to avoid serving alcohol to minors or intoxicated guests.
3. Impose a drink limit for all guests. For example, each guest may be provided with two (2) tickets redeemable for an alcoholic beverage.
4. Include a variety of alternative, non-alcoholic beverages.

B. Serving alcohol without a license

Q 4. *Do I need a license to serve alcohol at an open house that is NOT open to the public?*

A Not necessarily. But to do so, you must meet the three requirements:

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.

Beverage Control Act § 23399.1

Q5. *What qualifies as “not open to the public” under Beverage Control Act § 23399.1?*



A To bypass the license requirement, the law requires the event to not be “open to the public.” Some call this the “private party” exception. To be considered a “private party,” the host must have the names of the invited guests beforehand. If any person not on the list is admitted to the event, the event is considered “open to the public”, and the host must have the appropriate licenses for serving alcohol.

Beverage Control Act § 23399.1

Q 6. Can I charge guests for alcohol at an open house?

A If you charge for alcohol at an open house, the event will no longer be considered a “private party” and will fail the “private party” exception under Beverage Control Act § 23399.1. As a result, you will be required to have a license to serve alcohol at the open house. Note that requiring guests to purchase admission tickets or make mandatory tips or donations constitute a “sale” for purposes of Beverage Control Act § 23399.1.

Cal. Bus. & Prof. Codes § 23300 Necessity for license; § 23301 Penalty for operation without license

Q 7. Do I need a list of invited guests?

A Yes. To satisfy the second requirement of Beverage Control Act § 23399.1 and the “private party” exception, the event must not be open to the public and requires a closed list of invited guests. Uninvited individuals who are not on the guest list should not be admitted.

Q 8. Can you serve alcohol at an open house without meeting the three conditions of §23399.1?

A No. The three conditions provided in § 23399.1 of the Alcoholic Beverage and Control Act must be satisfied in order to serve alcoholic beverages without a license.

C. Liability

Q 9. Can a social host be held liable for damages related to serving alcohol at their residence?



A A social host may be held liable for damages if alcohol was furnished to an underage drinker who injures a third party as a result of the intoxication. (Cal. Bus. & Prof. Code § 25602(b), Cal. Civ. Code §1714(d), Cal. Bus. & Prod. Code § 25602). But aside from that, California law immunizes a social host from liability suffered by the drinker or to a third party which results from consumption of alcohol.

Q 10. Can a furnisher of alcoholic beverages at a open house be held liable for damages related to the intoxication of minors at an open house?

A Yes. A host must take precautions to ensure that alcohol is not being served to individuals under the age of 21. For example, the host should ensure that all guests at the event are over the age of 21 and should provide servers who are trained to require identification before serving alcohol. The servers should also be able to identify false or fake identification. California law technically creates liability only if the furnisher provides alcohol to an obviously intoxicated minor. However, since this will never be clear, a more conservative risk management approach is to not serve alcohol to any minor. Cal. Bus. and Prof. Code § 25658.

Q 11. Can a furnisher of alcohol be held liable for providing alcohol to “obviously intoxicated” individuals?

A Yes, a host may be criminally punished with a misdemeanor if alcohol is served to an “obviously intoxicated person”. Therefore, the host of an open house should impose limits on the alcohol consumption of guests. For example, the host may distribute two (2) drink tickets per adult. The servers should also be able to accurately identify the level of alcohol intoxication of guests. Additionally, the host should provide for alternative forms of transportation for guests, such as taxis, free of charge. Cal. Bus. & Prof. Code § 25602. Notice that this law, while it creates criminal liability, it is specific in immunizing the furnisher of alcohol from civil liability.

Q 12. Where can I get additional legal information?

A This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit car.org/legal . Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at (213) 739-8282, Monday through Friday, 9 a.m. to 6 p.m. and Saturday, 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at (213) 739-8350 to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to <http://www.car.org/legal/legal-hotline-access/> . Written correspondence should be



addressed to:

CALIFORNIA ASSOCIATION OF REALTORS®

Member Legal Services

525 South Virgil Avenue

Los Angeles, CA 90020

The information contained herein is accurate as of July 7, 2017. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney. Written by Robert Bloom, Esq and Benjamin Bottehsazan (JD exp. 2018).

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