



August 2013: Are We Liable? Managing the Risks of Liquor

Every nonprofit organization struggles with the gamut of risks and liabilities of serving alcoholic beverages at its events. What happens if someone attends your event and then causes harm to another or themselves? The person while under the influence of alcohol could get into a fight or automobile accident, trash a hotel room or other facility, cause a fire, or drive a vehicle into a building. The organization's potential liability arises from the serving or furnishing liquor that (1) causes or contributes to the intoxication of a person;

(2) furnishes liquor to a minor or person under the influence of alcohol; or (3) violates alcoholic beverage laws, statutes, or regulations. However, your liquor liability exposure varies by state and depends upon the state's legislation, court precedents and common law interpretations.

The potential liquor liability by state is a continuum with strict liability of any server of alcoholic beverage for the harm caused by the person served (Alabama and Vermont) at one end. At the other end, states uphold the common law theory that there is no cause of action against anyone who supplies, furnishes, or sells liquor to another since consumption of liquor is the proximate cause of harm, not the sale or furnishing of alcoholic beverages. As of April 2013, six (6) states — Delaware, Kansas, Maryland, Nevada, South Dakota, and Virginia — and Puerto Rico follow the common law doctrine of consumption. In between are states with either dram shop or alcoholic beverage control laws that assign various levels of responsibility to the server. A few states will even hold the landlord of an establishment that serves liquor liable for the actions of the tenant. However almost universally, states will hold organizations liable for serving liquor to a minor.

Your insurance agent can help you identify the various state laws but your potential liability may arise from the state where the incident took place, the state where the association is located, and perhaps even where the various parties involved in the loss live or are located. The claimant may be able to select the state with the most favorable laws.

So now what do you do about your liquor liability exposure? Risk financing (insurance) provides a funding source in the event of a loss. Your general liability policy is the first place to look.

Insurance Implications

Every general liability policy has a liquor liability exclusion. The question is what does your policy exclude? The most common general liability exclusion for liquor liability applies only if you are *in the business of* manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

The trick is to determine if your organization falls under “in the business of.” Most associations are not in the liquor business unless operating a bar as a regular part of their operations (social clubs, veterans’ organizations, etc.). Therefore in the majority of cases, an association has liquor liability coverage under its general liability policy, which is often referred to as “host liquor liability.”

However, there are variations to the basic exclusion that may be attached to your general liability policy and eliminate coverage for your event(s). One amendatory endorsement, ISO’s Amendment of Liquor Liability Exclusion CG 21 50, changes to whom the exclusion applies. The amendatory endorsement deletes the phrase “in the business of” so the exclusion only applies if you:

1. manufacture, sell or distribute alcoholic beverages;
2. serve or furnish alcoholic beverages for a charge whether or not such activity:
 - o requires a license;
 - o is for the purpose of financial gain or livelihood; or
3. serve or furnish alcoholic beverages without a charge, if a license is required for such activity.

If your policy has this endorsement, you have no liquor liability coverage if you charge for the liquor event, either as a cash bar or as a part of the admission cost. You also lose coverage if the event requires a liquor license or permit, which is common for associations in some states. In either of these cases, your organization will need to purchase a liquor liability policy. Your insurance agent can help you interpret your policy’s coverages and exclusions.

Risk Management Techniques

Having the proper insurance coverage is important but using good risk management techniques is even better — it is preferable to prevent a loss even if you have the financial resources (insurance) to pay for it. Here are some strategies to manage the liquor liability risk.

Avoidance is an option. Some organizations have decided to forego alcoholic beverages as being contrary to their mission (birth defects, substance abuse, youth programs). If you decide to permit alcohol at your events take the following steps to manage your risk.

- Research the liquor laws in the state where the event will be held and in your home state to evaluate your exposure. Then meet any requirements for licenses or

- permits.
- Transfer the risk to the hotel, restaurant, caterer or professional bartenders by having them provide and serve the alcoholic beverages. Conduct your due diligence to ensure that the other entity:
 - Trains their servers (i.e., [TIPS — Training for Interventions Procedures](#))
 - Has the proper insurance (general liability, liquor liability and workers' compensation) with adequate limits; then
 - Request a certificate of insurance; and
 - Request that the entity add your organization as an additional insured under its general liability and liquor liability policies. They may not agree to this, but you should ask.

If your organization is providing and serving the liquor, here are additional precautions to take:

- Have the servers attend bartending training such as TIPS;
- Consider the type of alcoholic beverages to be served (alcohol content);
- Avoid open bars as a means to limit consumption;
- Control the serving size of drinks — don't serve beer in 32 oz cups;
- Control the number of drinks a person can have at one time (drink tickets);
- Close the bar at least 1 hour before the end of the event (Major League Baseball stops selling liquor after the 7th inning);
- Serve food, preferably more than just hors d'oeuvres;
- Establish controls to prevent serving minors (wrist bracelets, hand stamps, restricted areas); and
- Arrange with a local transportation company to provide rides for impaired guests

Alcohol is a part of American society but increasing attention is focused on its responsible use. If your organization provides alcoholic beverages at any of its events you need to manage that risk. First learn the liquor laws and regulations applicable to the appropriate state(s), then make sure you have the appropriate insurance coverage. Last and perhaps most important is to serve alcoholic beverages in a responsible manner to strive to minimize the risk of a guest harming another or themselves. No organization needs the trauma of someone getting hurt following an event.

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