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Legal Disclaimer

Nothing in this presentation should be considered legal advice. If you have a specific legal situation, please consult a licensed attorney with the specific facts of your situation. Thank you!



What are we talking about today?

- **Why do either of these matter?**
- **Contract Brewing defined**
- **Alternating Proprietorship defined**
- **Key Differences**
- **Contracts**
 - What to know about a Contract Brewing Contract
 - What to Know about an Alternating Proprietorship Agreement
- **Licenses/Applications**
 - Licenses needed for Contract Brewing
 - Licenses needed for Alternating Proprietorships



Why do either of these matter?

Both of these arrangements offer a few different opportunities, especially now in light of the environment we are currently living in:

1. Gives new people wanting to enter the industry a way to get started without the high cost of equipment or a lease.
2. Gives existing breweries an opportunity to make more income if they have extra capacity and/or extra space.
3. With the impact of Covid-19 on small businesses, they may offer a way to stay in the industry by either:
 - ⇒ Allowing a brewery to divest itself of expensive overhead but still able to have product in the marketplace
 - ⇒ Or a brewery able to take in more income to help offset loss of taproom business



What is Contract Brewing?





Contract Brewing

A company (or person) pays a beer manufacturer to produce beer for it.



Contract Brewing

Key factors – the contract brewer is entirely responsible for:

1. Producing the beer
2. Keeping records
3. Labeling with its name and address*
4. Obtaining COLAs
5. Paying taxes

The contract brewer retains title until the beer is taxpaid or removed



What is an Alternating Proprietorship?





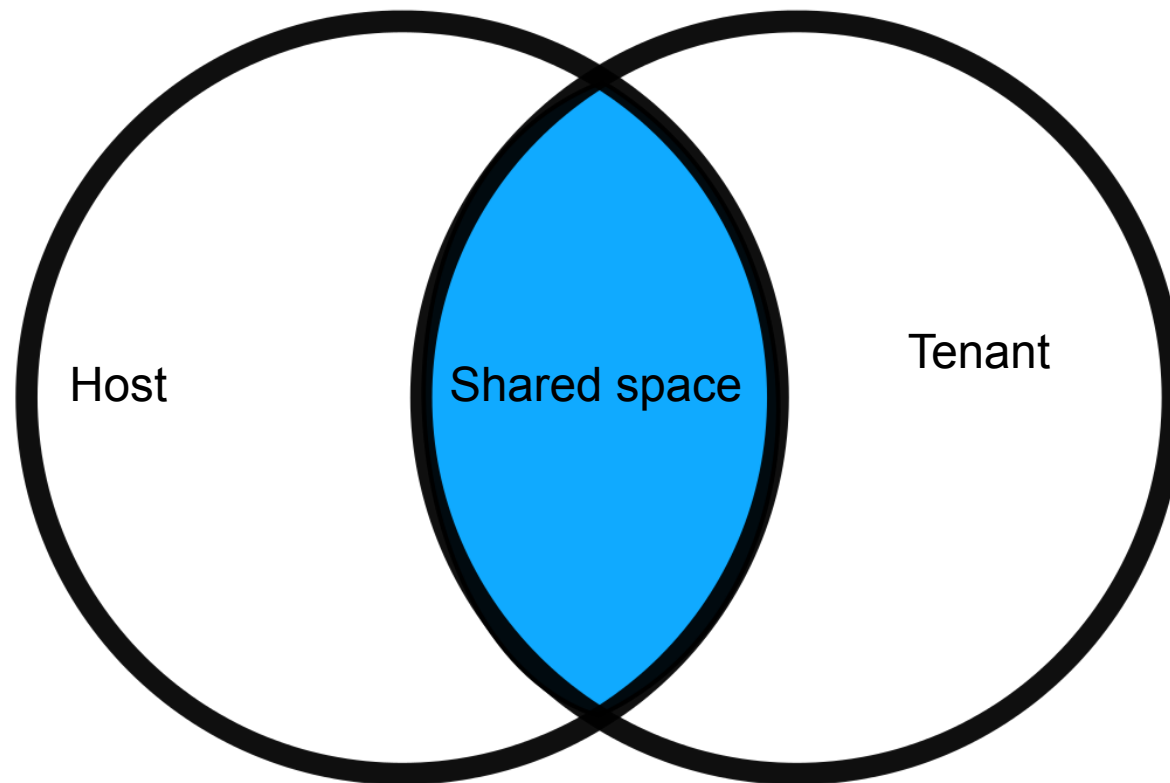
Alternating Proprietorship

An arrangement where 2 or more companies (or people) take turns using the physical premises of a brewery.

A “host brewer” will agree to rent space and equipment to a “tenant brewer” or multiple “tenant brewers”



Alternating Proprietorship



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Alternating Proprietorship

Key factors – the tenant brewer is entirely responsible for:

1. Obtaining its own TTB and state brewing licenses
2. Producing the beer
3. Keeping records
4. Labeling with its name and address
5. Obtaining COLAs
6. Paying taxes

The tenant brewer holds title at all stages of the brewing process



Key Differences

Who Holds Title

Contract Brewing

Title to ingredients and raw materials, including unfermented wort, and therefore the beer produced, belong to the Contract Brewer until after tax payment and removal. Title then passes to the purchaser

Alternating Proprietorship

Each brewery holds title to its own ingredients and beer that each produces



Key Differences

Records and Reporting

Contract Brewing

Contract Brewer has all the responsibility for records and reporting. The purchaser has none.

Alternating Proprietorship

Each brewery is responsible for keeping its own records and providing reports to TTB



Key Differences

Taxes

Contract Brewing

Contract Brewer has responsibility for paying all the taxes. The purchaser has no requirement but can compensate the Contract Brewer for taxes or other expenses.

Alternating Proprietorship

Each brewery is responsible for paying its own taxes.



Key Differences

Qualifications & Permits

Contract Brewing

Only one company (or person) has to qualify as a brewer. The purchaser may be a wholesaler, a retailer or another brewer. If the purchaser is a wholesaler, it will need a federal wholesaling license.

Alternating Proprietorship

Two brewers.



Contract Brewing Contract

Typical Terms:

- **Term – how long**
- **Price – how much, generally based on beer and quantity**
- **Production direction**
- **Confidentiality***
- **Intellectual Property***
- **Compliance with law**
- **Termination**
- **Disputes**
- **Standard contract clauses – insurance, indemnification, etc.**



Alternating Proprietorship Agreement

Typical Terms

- **Term – how long**
- **Price – this will be framed as rental price, generally**
- **Production direction – if the host brewery will provide some brewing**
- **Compliance with law**
- **Access to premises**
- **Segregation of ingredients and final product**
- **Termination**
- **Disputes**
- **Standard contract clauses – insurance, indemnification, etc.**



Alternating Proprietorship Agreement

A Tenant Brewer (TB) must qualify as a brewer, and the TTB expects the TB to actually produce beer. However, a TB can have the Host Brewer (HB) provide certain services related to TB's production of the beer.

- **TB can pay for HB's employees' services***
- **TB can purchase raw ingredients from HB**
- **However there should NOT be any pass-through payment for excise taxes**



Alternating Proprietorship Agreement

TB needs to be operating as a brewer, not as a party to a contract brewing arrangement*

- **Who holds title to the raw materials and ingredients?**
- **Does the TB have access to the premises?**
- **What is TB's business plan? Do they plan to produce in the future or are they just looking to market the product?**



Alternating Proprietorship Agreement

- **Separation and identification of beer**
 - All TB beer must be separate and identifiable from all other TB and HB product at ALL stages of production
- **Records and Reports**
 - TB must keep its own records and submit operational reports, claims, notices, etc. However, TB can contract with HB to prepare those records and reports.



Alternating Proprietorship Agreement

Taxpayment of beer

- **TB is responsible for taxpayment at the applicable rate. Liability for taxpayment CANNOT be delegated, although you can delegate the preparation of the reports.**
- **Any pass through of money for the payment of excise taxes will be seen as contract brewing by the TTB.**



Alternating Proprietorship Agreement

Tenant Brewer involvement and oversight of brewery operations. The TB must be materially involved and exercise oversight over the brewery operations, such as

- **Product development**
- **Records**
- **Quality Control**
- **Product liability**



Alternating Proprietorship Agreement

Independent Tenant Brewer Operation – TB needs to operate independently from HB, including brands, formulas, trademarks, marketing and sales

- **Production**
- **Marketing**
- **Restricting product relocation**
- **Assignments or sales**
- **Identical formulas**



Licensing and Applications – Host Brewer

Host Brewer needs to file:

1. Amended Brewers Notice

1. Portion of premises and equipment to be alternated
2. TB with whom will alternate
3. Diagram identifying areas TB will use

2. Update of security of brewery, unless unchanged

3. Consent of surety, if you have a bond

4. Letters of request for an alternative method of operations



Licensing and Applications – Tenant Brewer

Tenant Brewer needs to file:

- 1. Brewers Notice application**
- 2. Letters of request for alternate method of operations**
- 3. Power of Attorney if Host Brewer employees will prepare or store records of TB**
- 4. Copy of the Alternating Proprietor Agreement**



Best Practices

TTB's major concerns:

- **Tenant Brewer is actually producing beer and operating independently**
- **That Host Brewer isn't using the AP as a way to minimize their taxes – that the TB is merely contracting the production of the beer to the HB**

Questions?



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