



Contract Brewing & Alternating Proprietorships

Part I: Definition and Differentiation

By Candace L Moon, The Craft Beer Attorney

Legal Disclaimer

Nothing in this article 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!

Why do either of these non-traditional business structures matter?

Contract Brewing and Alternating Proprietorships offer a few different opportunities, especially in light of today's unpredictable economy and overall business/living environment. One example of this could be a small brewery who only sells beer in their taproom to be able to partner with a brewery that has a canning machine/line so that they can do "to-go" beer.

1. They give new people wanting to enter the industry a way to get started without the high cost of equipment or a lease,
2. They give 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
 - a. Allowing a brewery to divest itself of expensive overhead but still be able to have a product in the marketplace (or)
 - b. Allow a brewery to take in more income to help offset loss of taproom business.

What is Contract Brewing?

Simply, Contract Brewing is when a company (or person) pays a beer manufacturer to produce beer for them.

Key factors with regard to Contract Brewing include the following, where the Contract Brewer is **entirely** responsible for:

1. Producing the beer,
2. Keeping records,

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3. Labeling with its name and address, except in the case that the Contract Brewer files a DBA as the purchaser,
4. Obtaining COLAs (Certificate of Label Approval), and
5. Paying taxes.

The Contract Brewer retains title until the beer is taxpaid or removed.

What is an Alternating Proprietorship?

An Alternating Proprietorship is an arrangement where two or more companies (or people) take turns using the physical premises of a brewery. This could be a wholesaler, a retailer, or another brewer.

A “host brewer” will agree to rent space and equipment to a “tenant brewer” or multiple “tenant brewers”. Note that not all states recognize Alternating Proprietorships.

Key factors with regard to Alternating Proprietorships include the following, where the Tenant Brewer is **entirely** responsible for:

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

The Tenant Brewer holds title at all stages of the brewing process.

The key differences between Contract Brewing and Alternating Proprietorships lie in the following areas:

- 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.

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- Records and Reporting
 - Contract Brewing: The Contract Brewer has all of 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.
- Taxes
 - Contract Brewing: The Contract Brewer has responsibility for paying all of the taxes. The purchaser has no requirement but can compensate the Contract Brewer for taxes and other expenses.
 - Alternating Proprietorship: Each brewery is responsible for paying its own taxes.
- 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, they will need a federal wholesaling license.
 - Alternating Proprietorship: All companies brewing must qualify as brewers.

Best Practices

The TTB's major concerns include:

- The Tenant Brewer is actually producing beer and operating independently, and
- That the Host Brewer isn't using the Alternating Proprietorship as a way to minimize their taxes – that the Tenant Brewer is merely contracting the production of the beer to the Host Brewer.

For additional information about Contract Brewing Contracts, Alternating Proprietorship Agreements and overall structure, continue reading with *Part II: Contracts & Requirements*.



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Candace L. Moon is a San Diego-based attorney who has spent the last eleven years dedicating her law practice to the craft beer industry. She has worked with over 450 craft breweries and craft breweries-in-planning nationwide, handling many different legal areas including alcoholic beverage law, contract review and trademark law.