



*Steering Clear of the Most
Common Legal Hazards in
Hotel, Convention Center and
Meeting Contracts*



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Washington, DC
April 16, 2009

Connecting Great Ideas and Great People

Overview

Hotel Contracts

- Damages & the Problem of “Double Dipping”
- Force Majeure
- Money-Saving Tools
- Indemnification/Insurance
- Negotiation Strategy

Convention Center Contracts

- The Letter of Intent
- Key Provisions
- Insurance

Changing Negotiation Climate

“Hotels willing to deal to
keep conference business”

March 26, 2009

Business Week

Four Corners Rule

- Clear & Unambiguous - Contract Speaks for Itself
- Most Litigation Arises Because Contracts Are Unclear
- Otherwise, Most Disputes Are Settled

Room Block Reservation

What are the organization's obligations for room nights?

- Clearly indicate that rooms are "...made available for reservation and payment by Group meeting attendees."
- Clearly state the room block size.
- Clearly state room rate.
- If room blocks can be adjusted, state deadlines and have the reduced block flow down to attrition/cancellation penalties.

Lowest Room Rate Available

- Guarantee **Lowest Published Rate**
- By Hotel or **Third Party**
- Include **Internet Sales**
- If Lower Rate, **Must Match for Entire Group**

Attrition/Cancellation

- Consider Negotiating Without Penalties
- If Damage Provision Required, Follow These Steps

Damages

Goal of Contract Damages

Benefit of the Bargain - Make "Whole"

- If one side breaches a contract, the other side is entitled to damages but not penalties

Types of Damages

- Actual - Amount of loss caused as a direct result of the breach.
- Liquidated Damages - Amounts agreed to by the parties at the time of the contract, and before any breach occurs, to approximate damages

Attrition and Cancellation

What this Means for Hotel Agreements

- Hotel has an obligation, as a matter of law, to resell unused rooms
- Hotel may not, as a matter of law, end up in a better financial position because you cancelled/under performed than it would have if the contract was fully performed.

Five Steps

Prevent the “Double Dip”

Double Dipping: Occurs when the hotel gets the liquidated damages, yet retains the ability to resell the canceled rooms.

1. **Mitigation Clause:** Hotel shall undertake all reasonable efforts to **resell** canceled rooms, and will **credit** those revenues against the liquidated damages in an amount not to exceed the full amount of such damages.
2. **Timing of Payment:** Damages, if any, shall be due and payable **X days after [original meeting date]** provided the Hotel provides proof of its efforts to mitigate damages and proof that rooms being held for Group's attendees were unsold.

Prevent the “Double Dip,” Continued

3. Exclude Fees/Commissions/Taxes: Fees, penalties, or liquidated damages, if any, shall exclude service charges, surcharges, commissions, and rebates as well as state and local sales taxes, unless required by law .

4. Deduct Overhead/Profit Margin: If Association is required to pay an attrition fee, the fee shall be **calculated by multiplying X% of the Single Room Rate** by the difference between the number of actually used rooms and the **Room Block Target** with credits from guaranteed no-shows, cancellations, and early departure charges, if applicable.
 - ▶ Guest Rooms 70 - 80%
 - ▶ F & B - 30-40%

Prevent the “Double Dip,” Continued

5. Average Occupancy Rate - Not Last Sell: Association shall not owe any fees, penalties, or liquidated damages if Hotel meets or exceeds its average occupancy level for that particular period of the year.

Example: Hotel has 100 rooms, but only sells 50 on an average night.

Room Block: 40 Rooms - Cancelled

Rooms Sold: 45

Last Sell: 0 Credit (55 Rooms Remain Unsold)

Average Occupancy: Pay for 5 Rooms

Attrition/Cancellation Special Issues

- Negotiate Attrition Based on Cumulative Room Nights Rather Than Each Night.
- Consider Clause Giving Credit For Rescheduled Meetings
- How do You Establish “Average Occupancy”?
 - Hotel ledgers

Attrition/Cancellation Special Issues

- What About Food & Beverage?
 - Yes! Attrition/Re-Sell Can Apply Here, as well
- Reverse Attrition/ Cancellation
 - Hotel must pay damages, equal to room rate, for relocation
 - Specify at point, such as 25% of room block, which triggers cancellation/cancellation damages.
 - In the event of forced cancellation, must pay costs of relocation

Additional Money-Saving Tools

- Room Block Release
 - Specify a date
 - Reduce the room block for attrition/cancellation purposes
- Occupancy Reports
 - Total number and types of rooms in Association's room block picked up during each day .
 - If Association desires an individualized breakdown including guest names, arrival and departure dates, etc., be sure to specify.
- Right to Audit
 - Include confidentiality language

Force Majeure

- Common law concept
- Contract provisions go beyond common law

Five Key Components - Force Majeure

1. Delineated Risks (terrorism, threats of terrorism, government travel advisory, etc.) - tailor to meeting location.
2. Preventing or delaying at least 25% of Attendees and guests from appearing at the event,
3. Or other similar cause beyond the control of the parties

Five Key Components - Force Majeure

4. Making it illegal, impossible, or commercially impractical to hold the event or perform the services.
5. This contract may be terminated or performance excused by either party without penalty for any one or more of such reasons by written notice from one party to the other

Warranty of Services

Hotel represents and warrants that the Hotel and Hotel's facilities, including services to be provided by Hotel to Association and its attendees pursuant to this Agreement **at the dates herein set forth shall be of substantially the same condition** and quality as currently exists as of the date of this Agreement

Indemnification Key Provisions

YES

- **Reciprocal** - A reciprocal clause is desirable where each party indemnifies the other for (is responsible for) its own negligence (mutual indemnification).
- **Limited to Control** - What each party is being asked to be responsible for is within its control.
- **Includes Defense Costs**
- **Limit Scope to Insurance Coverage** (employees? volunteers? third parties?)

Indemnification

NO

- **“Sole,” “Gross,” or “As determined by a court”**
 - This restriction would limit liability and make it harder for indemnification to kick in. Only one party would have be at fault, whereas removing “sole” distributes liability among the parties according to percentage of fault.
- **Coverage of third party negligence**
 - Meeting attendees (expect perhaps board members, etc.)

“Inside” Tips

Negotiation Strategy

- Consider **Multi-Year** Contracts
 - Cost Benefits
 - Service Benefits
- Use a **Standard Addendum**
- Use a **Request for Proposals**, including standard contact terms
- Include a **no fault cancellation date**

Convention Center Agreements

- Letters of Intent
- Basic Provisions of the Agreements

Letters of Intent

Key Issues and Pitfalls

- Generally, letters of Intent **ARE Binding** – treat as a contract
- Every letter of intent should provide that the eventual contract is “subject to”:
 - Successful negotiation of the terms and conditions in the final Convention Center Agreement.
 - Successful negotiation of hotel contracts for attendee guest rooms.

Convention Center Agreements

Is this just a waste of time?

- Convention center authorities are notorious for being intractable on key terms.
- Still, persistence and attention to detail usually pays off.
- Consider RFP as first step toward getting more favorable terms.

Convention Center Agreements

What about situations when the convention center is limited by state or municipal restrictions on matters related to indemnification and liability?

- Don't take their word for it; review the code.
- Consider a catch-all statement obligating the center to indemnify "to the fullest extent permitted by applicable law.
- Disclaim for defects in premises or equipment furnished by the facility.
- In Center is privately owned, push for mutual indemnification

Convention Center Agreements

How much attention should I pay to strictly “business” terms?

- Need to work closely with meeting and event planners
- Convention center agreements frequently include confusing cross-references and schedules on items that are key to a meeting’s success (such as, move in and move out times, specific room reservations, etc.).

Convention Center Agreements

What should I do about terms related to the organization's insurance coverage?

- Waiver of subrogation, duties to provide certificates of insurance and to name the center as additional insureds have significant consequences
- **Consult with broker** if necessary and determine additional premiums or other costs that may need to be paid in order to comply.

Convention Center Agreements

What can I do to manage risks related to strikes and labor disputes?

- Include a provision that your organization can terminate without liability if a strike/threat of a strike occurs within 6 months of the event.
- Require prompt advance notice, disclosure of contract renewal dates.
- Have the center warrant that it will provide replacement workers if a strike occurs.

General Provisions

- Notice of Requirements Prior to Default/Opportunity to Cure
 - One-Sided Cancellation - (nonpayment, failure to abide by License terms, etc).
 - Notice of all requirements.

- No Reassignment without Notice
 - No changes shall be made to the agreed premises assignment without the prior written approval of Lessee.

- Condition of Facilities
 - In substantially the same condition as the time of contract

- Use of Outside Contractors
 - Only if prices/reputation for service is comparable or better



General Provisions, Cont...

- Condition and Inspection of Returned Premises
 - Agree to joint inspection, so that all deficiencies are identified in the presence of your representative.
- Other Facility Events
 - Obligation to notify of other events.
- Contract Interpretation Clauses
 - Don't agree to interpretation by the Convention Center's attorney

Questions?



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