

**THE PRACTICAL ASPECTS
OF TERMINATING AND UNWINDING
HOTEL MANAGEMENT AND BRANDING RELATIONSHIPS**

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Cliff Risman chairs the Gardere Hospitality Industry Team and serves on Gardere's Board of Directors. He has a comprehensive business and real estate practice representing private, public and institutional developers, purchasers, equity investors, tenants, operators and lenders in the development, acquisition, financing, leasing, operation, branding and sale of all forms of commercial, industrial and residential real estate with particular emphasis on the hospitality industry. He is a trusted business advisor to domestic and foreign clients in the development, acquisition, financing and operation of hotel, resort and mixed-use properties globally, with significant experience throughout the United States, Canada, Mexico, Europe, Asia, the Middle East and the Caribbean; the structuring of domestic and foreign equity investments and the formation of equity investment entities such as partnerships, joint ventures and limited liability companies; the negotiation, documentation and restructure of senior, mezzanine and portfolio financings; the negotiation of management, franchise, affiliation, development, construction and design agreements; the structuring, development and marketing of various whole and fractional residential ownership products and related rental program arrangements; the structuring of management, license, use and access agreements for golf, spa and residential project components; all forms of hotel operational matters and disputes; major lease and other corporate facilities transactions; and real estate matters involving foreign investors, as well as offshore investments by domestic clients

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J.D., Syracuse University College of Law, *magna cum laude* (1984)

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- Member, International Society of Hospitality Consultants (ISHC)
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- Member, The Real Estate Council

Gardere Wynne Sewell LLP

Gardere has approximately 300 lawyers located in the U.S. and Mexico, organized in 30 practice groups serving clients worldwide. Gardere represents owners, developers, investors, lenders, operators and franchisors in all aspects of the hospitality industry including acquisitions, financing, design and development, operations, labor and employment, intellectual property, technology, food and beverage and other matters unique to the hospitality industry. As lead counsel, Gardere has added value to billions of dollars in domestic and foreign hospitality industry mergers, acquisitions and financings.



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Presently, Jeff oversees the Americas Lodging and Global Services Group of the Marriott law department which provides general legal services to Marriott's more than 3000 hotels throughout the Americas. His team also is responsible for providing legal support to various global departments that serve the Company's lodging businesses, including Asset Management, Intellectual Property, Owner Services, Communications, Sales & Marketing, Food & Beverage, Engineering, and Information Technology.

Prior to joining Marriott, Jeff was in private practice with the law firm of Latham & Watkins in Washington DC. Jeff also served as a judicial law clerk for the Honorable James L. Buckley on the United States Court of Appeals, DC Circuit.

Jeff graduated magna cum laude with a B.S. degree in business finance from Brigham Young University. He earned his J.D. from Columbia School of Law and graduated as a Harlan Fiske Stone Scholar. He is admitted to practice in the District of Columbia.

For the past seven years, Jeff has served as chairman of the AH&LA General Counsel's Committee. In 2012, Mr. Holdaway was awarded the Anthony G. Marshall Hospitality Award, in recognition of pioneering and lasting contributions to the field of hospitality law. Jeff is an avid runner who has competed in more than 80 ultra-marathons, including 34 100-mile races. In 2011, the extended Holdaway family set a Guinness World Record for the most family members to complete an ultramarathon.

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Phil Gosch is a Shareholder in Brownstein Hyatt Farber Schreck's Denver office where he is Chair of the firm's Hospitality Practice Group. His practice focuses on real estate and finance matters with a particular emphasis on the hospitality industry. He counsels clients with respect to the acquisition, disposition, finance, management, franchise and development of hotels and resorts throughout the United States, Mexico and the Caribbean. Mr. Gosch has represented owners, buyers, sellers, borrowers, lenders, developers and branded hotel operating companies.

Mr. Gosch's representative clients include Fairmont Hotels & Resorts, Hilton Worldwide, Grand Heritage Hotels, DLJ Real Estate Capital Partners, KSL Capital Partners, Cap Juluca Resort, Hard Rock Las Vegas, Stout Street Partners, Quintess, Sage Hospitality, RockResorts International, Starwood Capital, Providence Hospitality Partners, Pandey Hotel Corporation, White Lodging, CIM Group, Concord Hospitality Enterprises Company, DiamondRock Hospitality, Aimbridge Hospitality, Majestic Hospitality, Muss Development, CSM Corporation, Continuum Partners, Paramount Lodging Advisors Inc. and Evolution Hospitality.

Prior to joining the firm, Mr. Gosch held several hospitality-related positions, including executive positions at Wyndham International, Inc. As senior vice president, chief counsel, real estate and finance for Wyndham International, Mr. Gosch was the in-house counsel with primary responsibility for the real estate, finance and project development aspects of a publicly-owned, branded hotel operating company with approximately 190 owned, leased, managed and franchised properties and approximately \$2.7 billion in aggregate indebtedness. Mr. Gosch also served as senior vice president, acquisitions and development for Wyndham International, in which capacity he was responsible for investments in and development of Wyndham International's owned assets, including hotel acquisitions, individual and portfolio hotel dispositions, joint venture development projects and timeshare, condominium hotel, parking garage and golf course developments.

Prior to his time at Wyndham International, Gosch was a senior associate with the law firm of Cahill Gordon & Reindel in New York, New York.

Phil currently serves as a guest lecturer at Denver University School of Hotel, Restaurant and Tourism Management and the Metropolitan State College of Denver School of Hospitality, Tourism and Events Management.

Mr. Gosch is also chair of the Board of Directors of Creative Adoptions, Inc., a not-for-profit open adoption agency. He also serves on the Board of Directors of Urban Peak, a non-profit organization that provides a full convergence of services for youth ages 15 through 24 experiencing homelessness or at imminent risk of becoming homeless.

Mr. Gosch received his B.A. from the University of Nebraska and his law degree from New York University. He is admitted in New York and Colorado.

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The Practical Aspects of Terminating and Unwinding Hotel Management and Branding Relationships

1. Initiation of Conversion to Franchise or Complete Termination

- a. Assess the situation (who is doing what to whom and why):
 - i Is termination by contractual right, mutual agreement, court order or other?
 - ii Conversion to franchise or de-flag?
 - iii Continued operation or shut down after termination?
- b. What is the nature of relationship:
 - i Is this a friendly or hostile transaction?
 - ii Who is driving the decision?
 - iii Will third parties such as a lender, asset manager or receiver be involved in the process?
 - iv Always strive for professional resolution.
- c. Review management agreement to fully understand each party's rights.
- d. Determine whether to enter into termination agreement or rely on existing provisions of management agreement.
 - i What obligations will/should survive?
 - ii Focus on indemnification provisions.

2. Conversion/De-Flag Working Team

- a. Determine business lead and other parties' players (who is decision maker for each party).
- b. Discipline contacts – above property (legal, HR, sales, operations and finance) and on-property (executive team).
- c. Develop “critical-path” checklist for each discipline.

3. Employees of the Hotel

- a. Notification timeline (why do the employees “always seem to know”).
- b. Sharing of employee information with new manager/employer; be careful of personal information.
- c. Coordination of employee communications.
- d. Hire, termination, transition, severance issues.
- e. Allocation, if any, of relocation costs.
- f. Non-solicitation issues.
- g. Collective bargaining agreements -- notice requirements, pension liabilities.
- h. WARN Act notices and state equivalent notice requirements.
- i. Escrows, reserves, indemnities.

4. Guests of the Hotel

- a. Existing business:
 - i Notification to groups/transients – timing and content.

- ii Obligation of new operator to accept reservations on books.
- iii Right of groups/transients to relocate – dealing with relocation costs.
- iv Development of approved talking points and form letters.
- v Dealing with imperfect information – flag/operator may be in flux.
- vi Liability to disgruntled groups.
- b. Pipeline and future business:
 - i Notification of change of operator/flag.
 - ii Obligation of current operator to book future business.
 - iii Elimination of special rates, e.g., employee discount rates.
 - iv Rights of groups to cancel or relocate business.
 - v Development of approved talking points.
 - vi Coordination of sales/marketing activity between current and future operators.
- c. Loyalty program issues.
 - i Earning points on previously booked business occurring post-termination.
 - ii Redeeming points on previously booked business occurring post-termination.
- d. Reservation data:
 - i What information/data is provided to new operator as to:
 - 1. Future business.
 - 2. Prior business.
- e. Guests at the hotel on night of change-over:
 - i Development of communication:
 - 1. Front desk.
 - 2. “Under the door.”

5. Third Party Contracts

- a. Schedule of contracts:
 - i Many arrangements may be oral or pursuant to purchase orders.
 - ii Notification of vendors, suppliers and service providers.
 - iii Termination v. assignment.
 - iv Treatment of termination costs.
- b. Shared service arrangements with other properties:
 - i Determine whether hotel will continue participation.
 - ii Timing for discontinuing arrangement.
 - iii Dealing with transition costs.
- c. Third-party contracts and leases:
 - i Termination v. assignment.
- d. Master contracts:
 - i Determine ability/desire to continue under master arrangements.
 - ii Maintaining delivery schedule during transition period.

6. Licenses and Permits

- a. Schedule of licenses and permits:
 - i Licenses and permits normally handled at hotel level with possible exception of liquor licenses.
 - ii Determine process for assigning licenses and permits to the extent allowed.

- iii Liquor license:
 - 1. Governed by state law.
 - 2. Who “holds” the license?
 - 3. Is license assignable?
 - 4. Determine if interim liquor license arrangement will be created and appropriate structure for that jurisdiction.

7. Bank Accounts and Escrows

- a. Bank accounts:
 - i Assignments and change of signature authority.
 - ii Transfer of funds.
- b. Creation of escrows established by terms of management agreement or by separate arrangements.
- c. Duration of escrows.
- d. Process for final accounting, including dealing with surpluses and deficits.
- e. Types of escrows:
 - i Sales, use, occupancy tax.
 - ii Insured/uninsured claims.
 - iii Employee costs.
 - iv Accounts payable.

8. Finance and Accounting

- a. Establish termination date:
 - i End of accounting period.
 - ii End of payroll period.
- b. Determine date for final accounting.
- c. Determine responsibility for collection of accounts receivable and payment of accounts payable.
- d. Address access to accounting and property management systems and software, system transition and any licensed software.

9. Due Diligence Requests / Books and Records

- a. Determine who will coordinate responses to due diligence requests; best for requests to be in writing.
- b. Determine what is part of hotels books and records:
 - i Issues may arise regarding above-property information or data that is used beyond the hotel’s operations.
- c. Determine information that is propriety or confidential, including employee personal information.
- d. Release of some information may require confidentiality agreement.
- e. Maintain log of released information.

10. Inventories

- a. Will they be required for OSE, FF&E, F&B, liquor, etc.?
- b. Who will perform?

11. Records Retention

- a. Ensure hotel will retain all documents in compliance with legal record retention requirements.
- b. Determine whether documents will be accessible for future needs or whether copies need to be made.

12. Manager's Intellectual Property

- a. Review management agreement to determine rights/obligations and associated costs of logos, signage, trademarks.
- b. Note that intellectual property may include software, systems, manuals, policies, customer information, manager trademarks and trade secrets.
- c. Determine timing for removal of signage and materials bearing brand or brand trademarks (such as uniforms, phone face plates, forms, letterhead and silver); best done prior to the de-flag date.
- d. Reach agreement with incoming manager regarding treatment of any intellectual property not removed by deflag date.
- e. Address third party "licensed" systems.

13. Third Party Consents and Disclosures

- a. Determine necessary consents:
 - i. If manager termination, does owner's lender and/or franchisor need to consent?
 - ii. If franchise termination, does owner's lender and/or manager need to consent?
 - iii. If bankruptcy, receivership or other litigation pending, are consents and/or filings required?
- b. In any case, do any parties have any disclosure or reporting obligations under the securities laws, or otherwise?

14. Insurance

- a. Need for continuity of coverage.
- b. Issues relating to master or multi-property insurance programs.

15. Other Transition Issues

- a. Incoming/outgoing manager coordination; particularly as to employee communications.
- b. Shadow management; particularly as to employee communications.

16. Media and Public Relations

- a. Coordinate with PR/communication specialists messaging for media, including preparation of FAQs.
- b. Make effort to coordinate messaging among owner/outgoing operator/future operator representatives.
- c. Review draft press releases before issuance, and anticipate news stories by local media.

17. Practice Tip

- a. Expect the worst and hope for the best.
- b. Play nice, it's a small world.