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CONFERENCE

FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

FEBRUARY 10th - 12th, 2014

MECHANICS OF UNWINDING THE OWNER-MANAGEMENT RELATIONSHIPS

PRESENTERS



Cliff Risman - Partner ,Gardere Wynne

- chairs the Gardere Hospitality Industry Team and serves on Gardere's Board of Directors
- business advisor to domestic and foreign clients in the development, acquisition, financing and operation of hotel, resort and mixed-use properties globally



Jeff Holdaway - Senior Vice President, Marriott International

- oversees the Americas Lodging and Global Services Group of the Marriott law department
- Experienced in several diverse disciplines, including real estate development, hotel operations, and chief legal counsel for Marriott's luxury division, The Ritz-Carlton Hotel Company LLC



Phil Gosch - Shareholder, Brownstein Hyatt

- Chair of the firm's Hospitality Practice Group
- practice focuses on real estate and finance matters with a particular emphasis on the hospitality industry
- counsels clients with respect to the acquisition, disposition, finance, management, franchise and development of hotels and resorts

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MECHANICS OF UNWINDING THE OWNER-MANAGEMENT RELATIONSHIPS

INITIATION OF CONVERSION TO FRANCHISE OR COMPLETE TERMINATION

- **Assess the situation (who is doing what to whom and why):**
 - Is termination by contractual right, mutual agreement, court order or other?
 - Conversion to franchise or de-flag?
 - Continued operation or shut down after termination?

INITIATION OF CONVERSION TO FRANCHISE OR COMPLETE TERMINATION

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- **What is the nature of relationship:**
 - Is this a friendly or hostile transaction?
 - Who is driving the decision?
 - Will third parties such as a lender, asset manager or receiver be involved in the process?
 - Always strive for professional resolution.

INITIATION OF CONVERSION TO FRANCHISE OR COMPLETE TERMINATION

- Review management agreement to fully understand each party's rights.
- Determine whether to enter into termination agreement or rely on existing provisions of management agreement.
 - What obligations will/should survive?
 - Focus on indemnification provisions.

CONVERSION/DE-FLAG WORKING TEAM

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

EMPLOYEES OF THE HOTEL

- Notification timeline (why do the employees “always seem to know”).
- Sharing of employee information with new manager/employer; be careful of personal information.
- Coordination of employee communications.

EMPLOYEES OF THE HOTEL

- **Hire, termination, transition, severance issues.**
- **Allocation, if any, of relocation costs.**
- **Non-solicitation issues.**

EMPLOYEES OF THE HOTEL

- **Collective bargaining agreements -- notice requirements, pension liabilities.**
- **WARN Act notices and state equivalent notice requirements.**
- **Escrows, reserves, indemnities.**

GUESTS OF THE HOTEL

- **Existing business:**
 - Notification to groups/transients – timing and content.
 - Obligation of new operator to accept reservations on books.
 - Right of groups/transients to relocate – dealing with relocation costs.

GUESTS OF THE HOTEL

- **Development of approved talking points and form letters.**
- **Dealing with imperfect information – flag/operator may be in flux.**
- **Liability to disgruntled groups.**

GUESTS OF THE HOTEL

- **Pipeline and future business:**
 - Notification of change of operator/flag.
 - Obligation of current operator to book future business.
 - Elimination of special rates, e.g., employee discount rates.

GUESTS OF THE HOTEL

- **Rights of groups to cancel or relocate business.**
- **Development of approved talking points.**
- **Coordination of sales/marketing activity between current and future operators.**

- **Loyalty program issues.**
 - Earning points on previously booked business occurring post-termination.
 - Redeeming points on previously booked business occurring post-termination.

GUESTS OF THE HOTEL

- **Reservation data:**
 - **What information/data is provided to new operator as to:**
 - **Future business.**
 - **Prior business.**

GUESTS OF THE HOTEL

- **Guests at the hotel on night of change-over:**
 - **Development of communication:**
 - Front desk.
 - “Under the door.”

THIRD PARTY CONTRACTS

- **Schedule of contracts:**
 - Many arrangements may be oral or pursuant to purchase orders.
 - Notification of vendors, suppliers and service providers.
 - Termination v. assignment.
 - Treatment of termination costs.

THIRD PARTY CONTRACTS

- **Shared service arrangements with other properties:**
 - Determine whether hotel will continue participation.
 - Timing for discontinuing arrangement.
 - Dealing with transition costs.

THIRD PARTY CONTRACTS

- **Third-party contracts and leases:**
 - Termination v. assignment.
- **Master contracts:**
 - Determine ability/desire to continue under master arrangements.
 - Maintaining delivery schedule during transition period.

LICENSES AND PERMITS

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

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

BANK ACCOUNTS AND ESCROWS

- **Bank accounts:**
 - Assignments and change of signature authority.
 - Transfer of funds.
- **Creation of escrows established by terms of management agreement or by separate arrangements.**

BANK ACCOUNTS AND ESCROWS

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- **Duration of escrows.**
- **Process for final accounting, including dealing with surpluses and deficits.**
- **Types of escrows:**
 - Sales, use, occupancy tax.
 - Insured/uninsured claims.
 - Employee costs.
 - Accounts payable.

FINANCE AND ACCOUNTING

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

DUE DILIGENCE REQUESTS / BOOKS AND RECORDS

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- **Determine who will coordinate responses to due diligence requests; best for requests to be in writing.**
- **Determine what is part of hotels books and records:**
 - **Issues may arise regarding above-property information or data that is used beyond the hotel's operations.**

DUE DILIGENCE REQUESTS / BOOKS AND RECORDS

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- **Determine information that is propriety or confidential, including employee personal information.**
- **Release of some information may require confidentiality agreement.**
- **Maintain log of released information.**

INVENTORIES

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

RECORDS RETENTION

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

MANAGER'S INTELLECTUAL PROPERTY

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- **Review management agreement to determine rights/obligations and associated costs of logos, signage, trademarks.**
- **Note that intellectual property may include software, systems, manuals, policies, customer information, manager trademarks and trade secrets.**

MANAGER'S INTELLECTUAL PROPERTY

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- **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.**
- **Reach agreement with incoming manager regarding treatment of any intellectual property not removed by deflag date.**
- **Address third party “licensed” systems.**

THIRD PARTY CONSENTS AND DISCLOSURES

- **Determine necessary consents:**
 - If manager termination, does owner's lender and/or franchisor need to consent?
 - If franchise termination, does owner's lender and/or manager need to consent?
 - If bankruptcy, receivership or other litigation pending, are consents and/or filings required?

THIRD PARTY CONSENTS AND DISCLOSURES

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- **In any case, do any parties have any disclosure or reporting obligations under the securities laws, or otherwise?**

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

OTHER TRANSITION ISSUES

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

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

PRACTICE TIP

- **Expect the worst and hope for the best.**

- **Play nice, it's a small world.**