HOSPITALITYLAWYER.COM PRESENTS: POCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS FEBRUARY 10th - 12th, 2014

MECHANICS OF UNWINDING THE OWNER-MANAGEMENT RELATIONSHIPS



PRESENTERS





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- chairs the Gardere Hospitality Industry Team and serves on Gardere's Board of Directors
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 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

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MECHANICS OF UNWINDING THE OWNER-MANAGEMENT RELATIONSHIPS







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



•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.

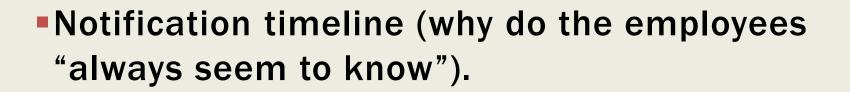


CONVERSION/DE-FLAG WORKING TEAM

- 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



Sharing of employee information with new manager/employer; be careful of personal information.

Coordination of employee communications.







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.





• 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.





Development of approved talking points and form letters.

Dealing with imperfect information – flag/operator may be in flux.

Liability to disgruntled groups.







- 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.





- Rights of groups to cancel or relocate business.
- Development of approved talking points.

Coordination of sales/marketing activity between current and future operators.



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Loyalty program issues.

- Earning points on previously booked business occurring post-termination.
- Redeeming points on previously booked business occurring post-termination.





Reservation data:

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





Guests at the hotel on night of changeover:

- 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



- Determine whether hotel will continue participation.
- Timing for discontinuing arrangement.
- Dealing with transition costs.



THIRD PARTY CONTRACTS



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



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.



LICENSES AND PERMITS

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



 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

- 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



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





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



 Note that intellectual property may include software, systems, manuals, policies, customer information, manager trademarks and trade secrets.



MANAGER'S INTELLECTUAL PROPERTY

- 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

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



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Shadow management; particularly as to employee communications.



MEDIA AND PUBLIC RELATIONS

- 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.

