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Duties of Care

Your Responsibility as a Hospitality Operator to Guests

Adapted from the Hospitality Law 3rd ed. By Stephen Barth

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I. SCOPE OF ARTICLE

Hospitality operators owe a **duty of care** to those individuals who enter their establishments. Some duties of care are rather straightforward. For example, a restaurateur has a duty of care to provide food that is safe and wholesome for guests. While hospitality operators are not required to be insurers of their guests' safety, and are generally not held liable for events they could not reasonably foresee, they are required to act prudently and use reasonable care to fulfill their duties of care.

Because of the wide variety of facilities they operate, hospitality managers can encounter a variety of duties of care. These include the duties to:

1. *Provide a reasonably safe premise*: This would include all public space, the interior of guestrooms, dining rooms, and the exterior space that makes up the operator's total physical facility.
2. *Serve food and beverages fit for consumption*: This duty of care is shared with those who supply products to a foodservice operator, and would also include the techniques used by an operator to prepare and serve food or beverages.
3. *Serve alcoholic beverages responsibly*: This duty must be satisfied to prevent dram shop liability issues.
4. *Hire qualified employees*: This duty must be satisfied to protect yourself against charges of negligent hiring and other potential liabilities.
5. *Properly train employees*: This duty must be satisfied to protect yourself against charges of negligent staff training.
6. *Terminate employees who pose a danger to other employees or guests*: This duty must be satisfied to protect yourself against charges of negligent employee retention.
7. *Warn of unsafe conditions*: When an operator is aware, (or, in some cases, should be aware) of conditions that pose a threat to safety (such as a wet floor or broken sidewalk), those conditions must be made obvious to the guest.
8. *Safeguard guest property, especially when voluntarily accepting possession of it*: In the hospitality industry, guests may retain control of their own property (such as when they take an item into their hotel room) or the operator may take possession of it (such as when a guest's car is valet-parked, a coat is checked, or valuables are deposited in a hotel's safety deposit box). In each case, the law will detail the duty of care you must exercise to protect guests' property.

II. ACCOMMODATING GUESTS

Guests are the lifeblood of any hospitality organization. Guests are so important that management's role could be defined simply as the ability to develop and retain a viable customer base. Without a sufficient number of guests, success and profitability in the hospitality industry is impossible. The reality, however, is that, with guests, come guest-related challenges, particularly when the legal implications are considered.

A. Definition of a Guest

Generally speaking, a guest of a place of public accommodations is a person that is there for a lawful purpose and to enjoy the amenities of the accommodation.

Certainly, duties of care apply to guests, and in most cases, to guests of guests. In the

restaurant area, a guest is not limited merely to the individual who pays the bill. In fact, all diners are considered to be guests of the facility.

In the lodging area, guests can be considered to be either a **transient guest** or a **tenant**, and the differences are significant. As can be seen by the definitions, the precise demarcation between transient guests and tenants is not easily established. It is important to do so, however, because the courts make a distinction between the two, even when hospitality managers do not. For example, a transient guest who checks into a hotel for a one-night stay but does not pay for the room by the posted check-out time the next morning may be “locked out.” That means, in a hotel with an electronic locking system, the front desk manager could deactivate the guest’s key, thus preventing his or her readmittance to the room until such time as the guest settles the account with the front desk. A tenant with a lease, however, could not be locked out so easily, and thus enjoys greater protection under the law.

Whether an individual is a transient guest or tenant is sometimes a matter for the courts to decide, but the following characteristics can help you determine which category an individual might fall into:

- *Billing format:* Transient guests tend to be charged a daily rate for their stay, while tenants are more likely to be billed on a weekly or monthly basis.
- *Tax payment:* Transient guests must pay local occupancy taxes, while tenants are ordinarily exempt from such payment.
- *Address use:* Tenants generally use the facility’s address as their permanent address for such things as mail, driver’s license, voter registration, and the like. Transient guests generally list another location as their permanent address.
- *Contract format:* Transient guests generally enter into a rooming agreement via a registration card, while tenants would normally have a lease agreement or specific contract separate from or in addition to their registration card.
- *Existence of deposit:* Tenants are almost always required to give their landlord a deposit. Often this deposit is equal to a specified number of months of rent. Transient guests, on the other hand, do not generally put up a deposit. This is true even if the hotel requires a transient guest to present a credit card upon checking into the hotel.
- *Length of stay:* While it is widely believed that any guest who occupies a room for more than 30 days becomes a tenant, the fact is, length of stay is usually not the sole criterion on which the transient guest/tenant determination is made. In fact, most guests who occupy the same hotel room for over 30 days may do so without affecting their transient status. It is true, however, that the length of stay for a tenant does tend to be longer than that of a transient guest.

Because the line between a transient guest and tenant is unclear, and because the states have addressed this situation differently, if you are a hotel manager and are unsure about the status of a guest/tenant, it is best to seek the advice of a qualified attorney before taking steps to remove the individual from his or her room.

B. Admitting Guests

As facilities of **public accommodation**, hotels and restaurants historically were required to admit everyone who sought to come in. More recently, as a result of evolving laws and the changing social environment in which hotels and restaurants operate, and as the protection of guests and employees becomes more complex, the right of the hospitality business to refuse to serve a guest has expanded. At the same time, laws have been enacted at the federal, state, and local levels that prohibit discrimination in public accommodations. Violations of these laws can result in either civil or criminal penalties. Beyond the legal expenses, negative publicity earned from this type of discrimination against guests can also cost a business significant amounts of lost revenue, and can damage a company's reputation for years to come. Consequently, it is important for you to know when you have to admit guests, as well as the circumstances in which you have the right to deny admission.

It is a violation of the Federal Civil Rights Act of 1964 to deny any person admission to a facility of public accommodation on the basis of race, color, religion, or national origin. In addition, it is a violation to admit such guests, but then **segregate** them to a specific section(s) of the facility or discriminate against them in the manner of service they receive or the types of products and services they are provided.

State or local civil rights laws are usually more inclusive in that they expand the "protected classes" to categories not covered under federal law, such as age, marital status, and sexual orientation, and may also have stricter penalties for violations.

Historically, it has been argued that "private" clubs were exempt from the Civil Rights Act and could discriminate in their admission policies because they were not in fact public facilities. Courts across the United States have slowly dismantled this argument by continuing to broaden the definition of public facilities, and, concomitantly, to narrow the definition of a private club. (For instance, if a country club is very selective about its membership, but nonmembers can rent its facilities for meetings, wedding receptions, and the like, is it really private?) In addition, many cities and towns have passed local ordinances that outlaw discrimination in private clubs, even if those clubs meet the "private" club definition under federal law. Accordingly, most clubs today have opted to comply with the Civil Rights Act and other antidiscriminatory laws.

It is legal, and in fact, in some cases, mandatory, for a facility of public accommodation to separate guests based on some stated or observed characteristic. Some communities, for example, require that restaurants provide distinctly separate spaces for their smoking and nonsmoking guests. It is important to note that such a practice is not illegal, because it does not discriminate against a protected class of individuals as defined by the Civil Rights Act.

C. Denying Admission to Guests

While it is illegal to unlawfully discriminate against a potential guest, you do have the right to refuse to admit or serve guests in some situations. In the following situations, a public accommodation can legally deny service to a potential guest:

1. The individual cannot show the ability to pay for the services provided.

In this situation, it is important that management be able to clearly show that all potential customers are subjected to the same “ability to pay” test. In a restaurant, for example, if only youths of a specific ethnic background are required to demonstrate ability to pay prior to ordering, the manager of that facility is discriminating on the basis of ethnicity and is in violation of the law.

2. The individual has a readily communicable disease.

An operator is not required to put the safety of other guests aside to accommodate a guest who could spread a disease to others.

3. The individual wishes to enter the facility with an item that is prohibited.

It is permissible to refuse service to individuals attempting to bring animals into the premises, (with the exception of guide animals for the physically impaired), as well as those carrying guns, knives, or other weapons. Some operators actually post a policy specifically referring to firearms.

4. The individual is intoxicated.

Not only is it legal to deny service to a guest who is visibly under the influence of drugs or alcohol, but admitting or serving such an individual could put you at great risk. It is clear that an individual whose reasoning is impaired by drugs or alcohol poses a significant threat to the safety of others and thus loses his or her right to be served. Reasonable Care must be taken in these circumstances to not put the guest or the general public at risk.

5. The individual presents a threat to employees or other guests.

Obviously, alcohol and drugs need not be present for a guest to pose a threat to other guests or employees. If the guest behaves in any manner that is threatening or intimidating to either employees or other guests, then that individual need not be served, as long as this policy is applied uniformly to all guests. Should such a situation arise, and service is indeed denied, it is best to document the situation. Some operators require guests to sign a “house rules” document that clearly states behaviors that the operator will not permit.

6. The individual does not seek to become a guest.

While hotels and restaurants are considered places of public accommodation, they are also businesses. For example, a guest could enter a coffee shop in a downtown city hotel, order a cup of

coffee, and occupy a seat for a reasonable amount of time. However, that same guest would not be permitted to enter the hotel's most exclusive dining room on a busy Friday night and order the same cup of coffee rather than a full meal. A reasonable person would assume that dining tables in a restaurant are reserved for those wishing to eat full meals, and thus denying service to a guest who does not want to do so is allowable.

7. The individual is too young.

Those businesses that serve alcoholic beverages may be required by law to prohibit individuals under a predetermined age from entering their facilities. It is important to note that laws in this regard tend to be state or local ordinances. In some communities, young people are allowed to eat in a bar as long as a person of legal age accompanies them. In others, that same young person may not be allowed to sit in a dining area that would permit them even to view the bar area. Because the line between a bar or lounge that serves alcohol as its primary product and a restaurant that serves alcohol as an accompaniment to its food can be very unclear, managers should always check with the local or state agency granting liquor permits to ensure that they are up to date on the regulations regarding minors.

In most states, a hotel may refuse to rent a room to those under a specific age; however, it is important that this not be used as a method for unfairly discriminating against a protected class. To do so would be a violation of federal and state law.

8. The facility is full.

Obviously, the hotel that is full can deny space to a potential guest. The same is true of a restaurant, bar, or club that has reached its capacity. A hotel or restaurant that is full, however, faces a somewhat different situation when it denies space to a guest with a confirmed reservation. This would be a breach of contract and could subject the hotel to possible litigation on the part of the injured party. That said, in the case of a guest who arrives unreasonably late for a dinner reservation, the restaurant is not obligated to seat the guest, because the late arrival would be considered a breach of contract by the guest.

III. GUEST PRIVACY

When a guest rents a hotel room, the courts have held that the guest should enjoy many of the same constitutional rights as he or she would in his or her own home. The hotel is, however, allowed to enter the room for routine maintenance, cleaning, and emergency services such as might be required in a fire or other disaster.

A. Guestroom Privacy

The guest's expectation of privacy should always be respected even when routine intrusions become necessary. In general, you and your staff must be sensitive to guests' needs and expectations at all times. But when the guest is no longer classified as a guest, that is, if a guest unlawfully possesses a room, the courts will allow a hotel manager to remove the guest and his or her belongings in order to make the room rentable to another guest. Additionally, a guest has the right to expect that no unauthorized third party will be allowed to enter his or her guestroom.

B. Privacy of Guest Records

Just as a guest's room is private, so too are the records created by the hotel that document the guest's stay. Consider the case of Russell Hernandez, the manager of a resort about 50 miles away from a major university. Mr. Russell receives a letter from representatives of the National Collegiate Athletic Association (NCAA) stating that they are undertaking an investigation of the local university's football recruiting efforts. They wish to know if a particular person was a registered guest on a date two years ago and, if so, who paid the bill for the room. If Mr. Hernandez provides that information, he does so at the resort's peril, because guests have an expectation of privacy with regard to such records. However, if a court order or subpoena is issued for the records, then the hotel must either provide the records in question or else seek legal counsel to inform the court why it is unable to comply or should not have to comply with the court order.

If a law-enforcement agent is requesting the information, the USA Patriot Act may now control the best practice. Guest privacy is a matter not to be taken lightly in the hospitality industry. Guests have a valid reason to expect that their rights will be protected by management. To ensure these rights is the morally and legally correct course of action for hospitality managers.

IV. FACILITY MAINTENANCE

Just as you have a responsibility to protect a guest's privacy, you also have a responsibility to operate your facility properly and safely. Failure to do so will place your operation at risk for a personal injury lawsuit.

A. Safe Environment

As a manager, you are responsible for providing a facility that meets the building codes of your local area. In most cases, this involves maintaining a facility in compliance with local, state, and federal laws, as well as the Americans with Disabilities Act. In addition, you are required to operate your facility in a manner that is reasonable and responsive to the safety concerns of guests. You can do this if you remember that a safe facility is a combination of:

- A well-maintained physical plant
- Effective operating policies and procedures

Each year, too many lawsuits are filed against hospitality operations, resulting from accidents that have occurred on the grounds, or inside, of an operation's physical facility. Consider the case of William Oliver from Wisconsin. One January night, Mr. Oliver arrived at a restaurant at 7:30 P.M., well after sundown. On his way from the restaurant parking lot to the front door, he slipped on some ice and hurt himself very badly. If Mr. Oliver decides to sue, the restaurant, in order to defend the lawsuit, will need to demonstrate that it had the proper procedures in place to maintain the safety of its parking lot during the winter. If the restaurant cannot demonstrate and provide documentation of such efforts, it will likely lose the case.

A large number of slip and fall accidents, both inside and outside hospitality facilities, are litigated annually. (Next to motor vehicle accidents, slips and falls are the second leading source of personal injury incidents. They are also a major cause of accidental death and injury in the United States.) The resulting judgments against hospitality companies can be costly. You can help protect your operation against slip and fall, and other accident claims, if you take the necessary steps to maintain your physical facility, implement effective operating policies and procedures, and document your efforts.

While it is not the goal of this book to detail all of the preventative maintenance techniques and operating policies used by competent hospitality operations, please note that the courts will measure a hospitality operation's negligence based on the standard of care applied by the operation and the level of reasonable care expected by guests and provided by other facilities.

Establishing the appropriate standard of care may not always be easy to determine. By way of example, let's examine the safety requirements and operating policies for one area of hotel operation that is potentially dangerous and can subject operators to significant liability: the maintenance of recreational facilities such as pools, spas, and workout areas.

Swimming Pools Swimming pools and spas can be the source of significant legal liability. The dangers of accidental drowning, diving injuries, or even slipping on a wet surface can pose a significant liability threat to the operators of hotels, amusement parks, and others. While this list is not exhaustive, following these 20 recommendations will go a long way toward reducing the liability related to pools.

1. Pass all local inspections.
2. Train the individual who is maintaining the pool.
3. Supply a trained lifeguard whenever the pool is open. If no lifeguard is supplied, post a sign stating so.
4. Mark the depths of pools accurately.
5. Do not allow guests to dive into the pool. Remove diving boards, post warning signs, and write on the floor area surrounding the pool.
6. Clearly identify the "deep" end of the pool. Use ropes, and keep them in place.
7. Fence off the pool area, even if it is inside the building. Install self-closing and self-latching and/or locking gate doors.
8. Make sure the pool area, and the pool itself, is well lighted and that all electrical components are regularly inspected and maintained to meet local electrical codes.
9. Provide a pool telephone, with emergency access.

10. Prohibit glass in the pool area.
11. If the pool is outdoors, monitor the weather, and close the pool during inclement weather.
12. Prohibit pool use by nonguests.
13. Strictly prohibit all roughhousing.
14. Restrict use of the pool by young children, by people who are intoxicated, and by those who would put the pool over its occupancy limits.
15. Have lifesaving equipment on hand and easily accessible.
16. Install slip-resistant material on the floor areas around the pool.
17. Post warning signs in the languages of your customers.
18. Do not allow the pool area to be opened unless at least one property employee who has been trained in first aid is on duty.
19. Document all of your pool-care efforts.
20. Make sure your insurance policy specifically includes coverage for your pool.

Spas Like pools, spa hot tubs are also potential sources of liability. As a manager, it is your job to see that your staff implements the type of signage, physical care, and policies required to safely maintain these areas. The following list can help you maintain your spa in a manner consistent with current best practices:

1. Pass all local inspections.
2. Train the individual who is maintaining the spa.
3. Install a thermometer and check the spa temperature frequently (102 degrees Fahrenheit is the maximum recommended temperature); record your efforts.
4. Mark the depth of the hot tub.
5. Do not allow children under 14 to use the spa at all, and post signs to that effect.
6. Do not allow older children to use the spa alone.
7. Display a sign recommending that the following individuals not use the spa:
 - Pregnant women
 - Elderly
 - Diabetics
 - Those with a heart condition, on medication, or under the influence of drugs or alcohol
 - Children under 14 years of age
8. Install a spa-area telephone, with emergency access.
9. Prohibit glass in the spa area.
10. Prohibit alcohol in the spa area.
11. Prohibit spa use by nonguests and solo use by guests.
12. Install nonslip flooring surfaces around the spa.
13. Display signage indicating maximum spa occupancy.
14. Make sure your insurance policy specifically includes coverage for your spa.
15. Have lifesaving equipment on hand and easily accessible.
16. Check the hot tub's water quality frequently, and document your efforts.
17. Post warning signs in the language of your customers.
18. Do not allow the spa area to be opened unless at least one property employee who has been trained in first aid is on duty.
19. Restrict guest access to spa chemicals and heating elements.
20. Document all of your spa-care efforts.

Workout Areas Workout rooms can also be a source of potential liability. Many operators of facilities with workout areas post a general “rules” notice, as well as signs governing the use of specific equipment in the workout area. As you can see, maintaining a pool, spa, or workout area requires great care and attention. Accidents can occur, so the effective manager must take special care to prevent potential liability.

As a hospitality manager, safety should be one of your major concerns. All of your policies, procedures, and maintenance programs should be geared toward providing an environment that maximizes guest safety and security. To stay current in this field and to locate other forms, checklists, and procedures, log on to www.HospitalityLawyer.com.

B. Americans with Disabilities Act (ADA), Title III

Not only must facilities be safe, they must also be accessible. Title III of the Americans with Disabilities Act addresses the requirements involved with removing barriers to access public accommodations. (Recall that Title I of the ADA addresses making employment accessible to Americans with disabilities.) Title III requirements for existing facilities and alterations became effective on January 26, 1992.

Title III affects businesses that are considered to be places of public accommodation, as defined by the Department of Justice, which is responsible for enforcement of the act. These businesses are private establishments (for-profit or nonprofit) that fit one of the 12 following categories:

1. Place of lodging: hotel, inn, motel (except if fewer than six rooms and the residence of the owner)
2. Establishment serving food or drink: restaurant, bar
3. Place of exhibition or entertainment: theater, cinema, concert hall, stadium
4. Place of public gathering: auditorium, convention center, lecture hall
5. Sales or rental establishment: bakery, grocery store, clothing store, shopping mall, video rental store
6. Service establishment: bank, lawyer’s office, gas station, funeral parlor, laundromat, dry cleaner, barber shop, beauty shop, insurance office, hospital, travel service, pharmacy, health-care office
7. Station used for public transportation: railroad depot, bus station, airport, terminal
8. Place for public display or collection: museum, library, gallery
9. Place of recreation: park, zoo, amusement park
10. Place of education: preschool, nursery, elementary, secondary, undergraduate, or postgraduate private school
11. Social service establishment: shelter, hospital, day-care center, independent living center, food bank, senior citizen center, adoption agency
12. Place of exercise and/or recreation: gymnasium, health club, bowling alley, golf course

Title III requires public accommodations to provide goods and services to people with disabilities on an equal basis with the rest of the general public. The goal is to give everyone the opportunity to benefit from our country's businesses and services, and to allow all businesses the opportunity to benefit from the patronage of all Americans. Under Title III of the ADA, any private entity that owns, leases, leases to, or operates an existing public accommodation has four specific requirements:

1. Getting guests and employees into the facility.

This involves removing barriers to make facilities available to and usable by people with mobility impairments, to the extent that it is readily achievable. Examples could include parking spaces for the disabled, wheelchair ramps or lifts, and accessible restroom facilities.

2. Providing auxiliary aids and services so that people with disabilities have access to effective means of communication.

This involves providing aids and services to individuals with vision or hearing impairments.

Auxiliary aids include such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDDs), videotext displays, readers, taped texts, Brailled materials, and large-print materials. The auxiliary aid requirement is flexible. For example, a Brailled menu is not required if waiters are instructed to read the menu to customers with sight impairments.

3. Modifying any policies, practices, or procedures that may be discriminatory or have a discriminatory effect.

Such as a front desk policy advising people with disabilities that there is "no room at the inn" rather than attempting to accommodate them, or additional charges for guide animals.

4. Ensuring that there are no unnecessary eligibility criteria that tend to screen out or segregate individuals with disabilities or limit their full and equal enjoyment of the place of public accommodation.

Such as requiring a driver's license from all guests. Many people with disabilities do not have a driver's license. So the best practice is to request photo identification rather than a driver's license specifically.

As you can see, Title III compliance involves the removal of physical barriers, as well as discriminatory policies. Physical barrier requirements are generally achievable if you consider the following four priorities recommended for Title III compliance:

Priority 1: Accessible approach and entrance

Priority 2: Access to goods and services

Priority 3: Access to restrooms

Priority 4: Any other measures necessary

To evaluate a facility for its compliance with these four priorities, you must carefully compare your property with the requirements of Title III. A thorough checklist dealing with Title III can be found on the World Wide Web at www.usdoj.gov/crt/ada/racheck.pdf.

It is important to note that changes in your facility must be made where it is "reasonable" to do so. Because reasonability is determined on a case-by-case basis, it is important to plan and document your compliance efforts. To do so, the steps given in the next Legally Managing at Work feature can be of great value.

Laws regarding ADA compliance are complex, so it is a good idea to familiarize yourself with Title III requirements, especially if you are a facility manager. Before building a new facility or renovating an existing one, it is important to select an architect or contractor who is familiar with Title III requirements. It is also important to have your construction and/or renovation contract specify who is responsible for ensuring ADA compliance.

V. RESPONSIBILITIES TO NONGUESTS

Guests are not the only individuals who may lawfully enter a hospitality property, of course. Owners, managers, employees, vendors, and a guest's own invited guests will all utilize a hospitality company's facilities or services. Because restaurants, clubs, and hotels are open to the public, people can come in for a variety of reasons, not all of which are for the purpose of becoming a guest. An individual could enter a hospitality facility to visit a friend, ask for directions, use the restroom, use the telephone, or commit a crime. As a manager, you have responsibilities for the safety and well-being of those who are not guests, although that level of responsibility will vary based on the type of nonguest in question. In this section, we will examine three distinct types of nonguests and your responsibilities to each.

A. Guests of Guests

Most hotels allow guests great freedom in permitting invited friends and family members to visit them in the hotel. Most guests expect, and most hotels allow, guests of guests to enjoy many of the privileges enjoyed by the guest. It is important to note that it is the hotel that allows this practice; it is not a guest's right that is inherent in renting a room. Obviously, it is unlawful for a hotel manager to refuse to allow guests of guests on a discriminatory basis. In addition, hoteliers may impose the same type of reasonable conduct standards on a guest's guest as they do on the guests themselves.

From a personal injury liability point of view, the guests of a guest, if they are on the premises in accordance with hotel policy, should be treated in the same manner as a guest. That is, they should be provided with a safe and secure facility. A question arises, however, as to a hotel's liability for the acts of those not associated with the hotel. Under many state laws, a hotel has no legal responsibility to protect others from the criminal acts of third parties. But a legal responsibility may come into existence if the danger or harm was foreseeable. For example, if dangerous incidents of a similar nature had occurred on or near the premises previously, a jury might find that the hotel could have anticipated such an occurrence again and should have taken reasonable steps to attempt to prevent it.

Because it is not possible to know whether someone is a guest, or a guest of a guest, reasonable precautions should be taken to protect everyone who uses your facility.

B. Invitees

A guest is an **invitee** of a hotel. By the same token, many individuals who are not guests can be considered invitees as well. An invitee enters a property because he or she has been expressly

invited by the owner, or because his or her intent is to utilize the property in some manner permitted by law and the property's ownership. In either case, the hotel is required to take reasonable care in maintaining its facility and to notify or warn the invitee of any potential danger.

Invitees include employees, managers, contractors, vendors, and individuals such as those entering to ask directions, use a telephone, or make a purchase. Because hotels and restaurants are open to the public, the number of situations in which an invitee enters the premises can be great indeed.

C. Trespassers

Legally, hospitality managers do not owe the same duty of care to an individual who is unauthorized to be on a property as they do to one who is authorized. For example, a restaurant that has its floors mopped nightly has a duty to place "wet floor" signs around any area that is wet and that is likely to have foot traffic passing through it. However, the operator does not have a duty of care to illuminate those signs when the restaurant is closed. So, assuming that access is restricted, a burglar who enters the restaurant after hours has no legal right to expect that the operator will warn him or her of slippery floor conditions.

VI. REMOVAL OF GUESTS

Just as guests must be admitted in accordance with the law, you must also treat those guests who are to be removed from your business in a way that is legally sound. Generally, guests can be removed from the premises for lack of payment, inappropriate conduct, or for certain conditions of health.

A. Lack of Payment

When guests check into a hotel or order food in a restaurant, it is reasonable to assume they will pay their bill. On occasion, a guest, for a variety of reasons, will not pay.

In a restaurant setting, the manager has few options for collecting. Clearly, the manager can refuse to serve the guest anymore during that visit and can rightfully refuse service in the future as long as the bill remains outstanding. However, if the guest leaves the premises, there is often little that can be done to recover losses.

It is legal for a hotel to require payment in advance for the use of a room, as long as that requirement is applied uniformly in a manner that does not unlawfully discriminate among guests. If a guest does not present himself or herself at the front desk for payment by the posted check-out time, or authorize a charge to an established credit card or account, that guest can be removed from the hotel for nonpayment. The hotel has a right, subject to local laws, to remove a transient guest from a room for nonpayment of charges due. A tenant with a lease, however, could not be removed or locked out of his or her apartment by a landlord without following state and local laws regarding eviction.

When a guest in a hotel does not pay, or cannot pay, the rightfully due bill, the term **eviction** is often used to denote the guest's removal. Legally, however, a hotel rarely will file a suit of unlawful detainer, which is required in an official tenant eviction. The term continues to be used, however, to refer to a guest who is removed by a variety of means from a hospitality property.

Whether it is in the best interest of the hotel to evict a guest is a judgment call made by the manager. Clearly, lost credit cards or travelers checks, and a variety of other circumstances, might cause a guest to be temporarily unable to pay his or her account. In this situation, it is up to you to protect the financial interest of the hotel while accommodating the guest to the greatest degree possible. When it is clear, however, that the guest either will not or cannot pay, and refuses to vacate the room, it is best to contact the local law enforcement agency to assist in the guest's removal. This protects the hotel in the event that the nonpaying guest claims the hotel used excessive force in the removal of the guest.

Often, the arrival of a law enforcement official at a restaurant or hotel is sufficient to encourage the guest to pay the bill. It is important to note, however, that the police will rarely, if ever, arrest a guest for failure to pay a bill that is owed. Efforts to collect on money owed to a hospitality operation should be pursued according to applicable state and local laws. This would entail filing a suit in **small claims court** or another appropriate court to get a judgment against the debtor (nonpaying guest). The cost of doing so is high in both time and money.

B. Inappropriate Conduct

Guests who pose a threat to the safety and comfort of other guests or employees may be removed from a hotel or restaurant. Indeed, you have a duty of care as a manager to provide a facility that is safe for all guests. Thus, a guest who is extraordinarily loud, abusive, or threatening to others should be removed. Also note that inappropriate conduct may be considered a violation of the hotel's or restaurant's house rules (as discussed earlier in the article). Thus, a guest's disruptive behavior could be considered a breach of contract, which would give the hospitality establishment the authority to evict. Again, this is a situation best handled jointly by management and local law enforcement officials.

The question of whether such a guest should be refunded any prepaid money or charged for any damages that may occur varies with the situation. In general, it may be said that a guest who has utilized a room and is removed for inappropriate behavior must still pay for the use of that room. Whether management in fact levies such a charge is subject to the principles of sound business judgment.

C. Overstays

Because a hotel rents rooms on a transient basis, it can also decide not to allow a guest to **overstay** his or her reservation contract. For this reason, guests may be removed from their rooms if they in fact have breached their contractual reservation agreement with the hotel. While it might appear odd that a hotel would refuse to extend a guest's stay, it does happen. Consider the case of Giovanni Migaldi. Mr. Migaldi operates a hotel in Indianapolis, Indiana. The weekend of the Indianapolis 500 race is always a sell-out for Mr. Migaldi, and he is careful to require that all guests reserving rooms

for that weekend pay in advance. On the morning before the race, a tour group that was scheduled to leave requests to stay an extra night, after the tour bus experiences mechanical difficulty. Mr. Migaldi is expecting the arrival of another tour bus filled with racing fans coming to town for a three-night stay. If Mr. Migaldi allows the current tour bus passengers to stay, he will have no room for the prepaid racing fans due to arrive. All local hotel rooms are sold out, so Mr. Migaldi has no opportunity to move the race fans, nor does he want to violate his contract with them. Clearly, in this case, Mr. Migaldi will have to use all of his management skills to tactfully achieve the removal of the first group in order to make room for the second, confirmed group. This situation also illustrates the difficulty managers can face in maintaining their legal obligations while attempting to serve guests who encounter unexpected travel delays and difficulties.

Registration cards that are completely filled out, including a space for guest initials verifying arrival and departure dates, can be of great assistance in dealing with the overstay guest. Additionally, the registration card can state that additional nights, if approved by the hotel, will be at the “rack rate” (which is usually significantly higher than the rate a guest is actually paying).

D. Accident, Illness, or Death

A guest stricken with a severe illness, or the death of a guest, creates a traumatic experience for any hospitality facility. Just as people have accidents, get sick, die, attempt suicide, or overdose on drugs in their home, similar situations can also occur in hotels and restaurants. When they do, it is important that everyone in the facility know exactly how to respond. The priority should be to maintain the dignity of the guest while providing the medical attention appropriate for the situation.

If an emergency calls for the removal of a guest, reasonable care should be taken in the removal process.