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TERMINATING MANAGEMENT CONTRACTS: PRACTICAL AND OPERATIONAL ISSUES

PRESENTER



Bill Hoffman

- President and CEO of Trigild, a San Diego-based company he founded in 1976.
- Hoffman is recognized by the American Hotel and Lodging Association as a Certified Hotel Administrator, and is a former president of the California Lodging Industry Association (CLIA), serving seven years on CLIA's Board of Directors.
- Serves on the American Bar Association's Hotels, Resorts & Tourism Executive Committee, as well as on the Board of Directors for the San Diego Receivership Forum.



Steve Lerner

- President & CEO of Redstone Companies Real Estate, LLC
- Oversees all real estate acquisitions, development and growth opportunities.
- Partner and member of the Investment Committee of Redstone Capital Partners.



David Comeaux

- Shareholder, Ogletree Deakins
- Practices in the areas of employment law and litigation.
- Represents management in all legal matters related to the employment relationship and has represented clients in numerous cases involving wage and hour; sex, race, age, religion, and disability discrimination claims.

THE MANAGEMENT CONTRACT ITSELF

- Whose employees are they?
- Does Owner have approval for wages and benefits?
- What reimbursements are payable to the management company?
- What Owner meetings & reports are required?
- What is the budget approval process?
- What variances from budget are allowed?
- What owner involvement is permitted?
- Which party contracts with vendors?
- Any unique services offered by the management company?
- Any commissions payable to the management company?

- Any insurance on “master policies”?
- How are training costs covered?
- Travel and entertainment costs for trade shows, etc.?
- Who owns the Accounting software?
- Who provides IT support?
- Where are servers located and backed up?
- Fees: Base, Incentive, Accounting and Payroll, Professionals, CapEx.
- Termination with or without cause.
- Notices and Cure Periods
- Termination Fees

TRANSITION TO THIRD PARTY MANAGEMENT COMPANY

- Location and ownership of Records, software, passwords
- Contracts with vendors
- Any restriction on hiring existing staff?
- Proprietary Materials – forms, handbooks, training programs
- Liquor licenses held in whose name? (Owner, Mgr, SPE)
- Business licenses and permits.
- What electronic data will Company 1 be required to deliver, if any?
- Will employees files and payroll records be turned over? Can they be?
- Will all vendors honor any special programs offered to the Company 1?
- Accrued vacation and/or bonus. Is it “cashed out” or “credited”?
- Are any future bookings at risk if the brand is changing?

- **Employer Successor Liability for taxes, etc.**
- **Credit Card Transmission - through PMS? (Halt transmission, change account & Merchant Numbers)**
- **Status of Franchise - Payments, QA Inspections, Pending PIP, Standards met?**
- **Contracts, licenses, and agreements (Maintenance, Service, Construction, and Related Warranties)**
- **Establish Tax ID numbers, review outstanding amounts**
- **Contact all Utility Companies**
- **Review of Health Inspection Reports**
- **Website-Who owns the URL/Host**
- **Obtain Password codes and Security codes (PMS, POS, keycard machines, security systems, safes)**

- Insurance carrier and coverage amounts – “Best” rating, additional insured's, "replacement cost”
- Bank Statements
- Financial Statements
- Current Ledger Balances - Guest, Advance Deposit, AR, Gift Certificate
- Current AP and AR
- Life Safety Issues
- Outstanding Worker Comp Items
- Current Cash Needs/Capital Needs
- Current Budget
- Inventory of FF&E, Equipment, Supplies, F&B
- Verify System Backups
- Historical data - ADR, RevPar, Revenues, STAR reports, marketing collateral

TRANSITIONING FROM A FRANCHISOR/ MANAGEMENT COMPANY

- Will franchise approve the new company?
- Logo items
- Signs
- Reservation systems
- Referral networks
- Approved vendors