



# Risk Management

by Michael Gentile, J.D.

## Duty of care in the innkeeper-guest relationship

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In previous issues of *The Rooms Chronicle*, the concept of an innkeeper's duty to various persons on hotel property or resort grounds has been addressed. That duty has varied depending upon the contractual classification of each person. Those individuals to whom the innkeeper owes the highest duty are guests. The legal status of a guest is often referred to as an "invitee" (often called a business invitee) and the outcome of legal issues involving bodily injury, loss of property or defamation often depends upon that status. It is critical, therefore, that hoteliers know exactly who their guests are.

### The guest

In the hotel industry, generally one is considered a guest when he or she requires a room for an overnight stay. That is to say their primary purpose matches the primary purpose of the hotel; to rent rooms for overnight stay. Conversely, persons in a hotel for other purposes, such as those visiting the restaurant, lounge or attending a function held in the hotel's function rooms do not qualify as guests and generally require a lesser duty of care from an innkeeper. The innkeeper-guest relationship is established through a contract, the hotel offering exclusive use of a room and the guest promising to pay for it.

As in most contractual situations, the intent of the parties is the key. Therefore, registration of the guest may not be required to establish the innkeeper-guest relationship. Advance reservations or delivery of guests' personal property to hotel employees may create such status. Similarly, a guest who is entering a property either with a reservation in hand or with the intention to check-in or inquire about room availability for the purposes of becoming a guest would likely be accorded guest status by the courts, even if they had not checked-in yet.

Certainly, courts in various jurisdictions would decide each case on its own facts. However, the important point is not to assume that one is not a guest simply because they may not have formally registered at the property.

### Termination of the innkeeper-guest relationship

The status of and duty of care owed to a guest does not automatically end when the guest checks out. Guests have a reasonable amount of time after check-out to vacate the premises. Nor does the guest status terminate due to false information being supplied such as marital status, address or vehicle number on the registration form. The innkeeper-guest relationship does terminate under the following conditions:

- The rental period has expired
- The bill is due and has not been paid
- Valid notice is given to vacate the property
- A reasonable time has elapsed after check-out
- The bill has been settled, paid and the guest departs the hotel property

Once any of the above events occurs, the innkeeper-guest relationship ends, as do any duties that may be owed to a guest.

### Current trend

A common and perhaps disturbing trend these days occurs when a person over the age of majority or, worse yet, a parent of a minor child rents a room to be used as a gathering location for a party. Frequently, underage drinking, drug use, sexual activity or assaults may result. The property has a guest relationship with the person to whom the room was rented. Absent more, the property may not be responsible to anyone else who may have been injured in the room, especially if management did not have "constructive knowledge" that others were residing in the guestroom.

### **Constructive knowledge**

However, if front desk personnel observe additional persons waiting with the guest or if complaints have been made to hotel employees about activities and additional users of the room, the property may now be on notice of additional guests in that room. This may be enough to trigger the innkeeper-guest relationship toward the other users along with any duty of care that may go with it.

The prudent approach in these cases is to either not offer the room, or if the room has already been provided, to immediately terminate the relationship by giving proper notice to vacate the property. If the guest is uncooperative or belligerent, this may require the intervention of local police, but this is certainly preferable to the alternatives faced by employees and other guests.

### **Minimum age policy**

To prevent underage registration, especially during prom season, hotels should establish a written policy of minimum age requirements for guestroom rentals and uniformly enforce it. Ask for government issued identification at check-in and check the date of birth to ensure that the registrant meets your hotel's minimum age requirement.

An innkeeper has the right to limit the number of occupants in each guestroom. For safety reasons, establish a maximum number of occupants that are allowed in a guestroom at any given time and enforce this standard. Finally, ask the registrant to sign a "no party" waiver when checking-in. Such a waiver puts the guests on notice that parties, loud behavior inside the guestroom, or inordinate number of persons in the guestrooms or guest halls will not be tolerated. ✧

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