



## Limiting liability statutes for guests' property offer protections for hotels

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In the September/October issue of TRC the various theories of liability of hotelkeepers for lost or stolen property of guests was discussed. In that article, reference was made to various limiting liability statutes in every state that limit the monetary liability of the hotel for property losses of their guests. As is the case in many legal issues, the extent of the statute and the requirements on the hotelkeeper vary from state to state. The most notable deviation is in the monetary limit, from \$0 to \$5,000 depending upon the jurisdiction. However, there are other differences about which property managers need to be aware to assure themselves the protection of these statutes. While the major statutory differences will be addressed in this article, hotelkeepers are reminded that they should consult with a qualified attorney in their area for the specific requirements that pertain to their jurisdiction.

### Common Provisions

Once again, there are common provisions of all limiting liability statutes. These can be summarized as follows:

1. The hotel must provide a safe or safety deposit boxes for use by guests to protect their property.
2. The hotel must post notices announcing the availability of the safe or safety deposit boxes.
3. The hotel must post notices announcing that its liability for guests' property is limited.
4. There is a maximum monetary recovery for which the hotel will be liable in the event of lost or stolen property of a guest.

But, even under these common provisions, compliance is not as easy as it sounds. For example, courts have ruled that if a hotel provides a safe in a central location, that safe must be available to guests at all times, 24-hours a day. Other courts have strictly interpreted that the posting requirement for notices limiting liability must be exact as to number and place, conspicuous and specific to the limit of liability. Anything less and the hotel will be subject to unlimited liability without the protection of the statute.

### Problem Areas

Beyond these common provisions, applicability of these statutes can vary widely. However, some generalizations can be made about the applicability of the limiting liability statutes. When deciding cases invoking limiting liability statutes, state courts have made rulings in the following categories:

*Guest statutes:* Generally, courts have found limiting liability statutes applicable during both check-in and check-out, as well as during the stay. This includes any period of time after check-out when luggage may be stored in the hotel's luggage room. Additionally, at least one state (New York) has a statute that limits liability for lost or stolen property while the property is in transit on a hotel shuttle.

*Property not covered by the statute:* Only property of a hotel guest is covered by the statute. The statute has no applicability to property of non-guests, visitors of guests, restaurant patrons, trespassers, or to automobiles on its premises. There may be some liability under bailment theory discussed in the last issue but that liability is not limited by statute.

*Hotel's negligence:* While one state (Nevada) limits hotel liability even when the hotel is negligent, hotels in other states should not rely on similar protection. Therefore, if property is lost or stolen due to negligence by the hotel, its employees, agents, or contractors, and such negligence can be proven, full liability would apply.

*Additional requirements:* Some states have built in added safety features required of hotels seeking protection through limiting liability statutes. For instance, hotels may be required to show they have installed additional locks, bolts or window fasteners to deter theft before they may benefit from the statute. In other situations, hotelkeepers may be required to issue receipts or ascertain the value of bailed property. Hotels that fail to comply with these state mandates risk losing the protections afforded by limiting liability statutes.

*Estoppel:* Perhaps the single greatest factor that could cause hotels to lose the protection of limiting liability statutes is the legal concept of 'equitable estoppel.' This is a legal principle that precludes a person or business from claiming a right or benefit that might have otherwise existed because that person made a false or misleading representation to a person who relied on it to his or her detriment. Typically, this would be brought about by an employee or representative of the hotel making a comment to a guest concerning the operation of the statute. For example, an employee who advises a guest that the hotel's liability is unlimited for property left in a safety deposit box would likely preclude the hotel from invoking the limiting liability benefit associated with such a statute. Similarly, a clerk who states that property may be left safely in a certain area and then the property disappears has potentially exposed the hotel to unlimited liability.

### **Plan of Action**

Now that the trouble spots associated with limiting liability statutes have been discussed, here is a simple plan that can be put in place to ensure the applicability of the statutes to one's lodging premises:

1. Learn the specific requirements of your state's statute. This should include consulting legal counsel in your jurisdiction. Find out exactly what requirements must be followed to put the hotel in compliance.
2. Train employees as to the posting requirements, the location of and operation of safes and safety deposit boxes.
3. Educate personnel about the application of the statute and the importance of not overstating the hotel's liability.
4. Continue to implement theft-deterrent measures on hotel property.
5. As in any procedure, review and update procedures periodically.

Limiting liability statutes protect hotels from exposure to claims resulting from lost or stolen property of guests. While the statutes are not difficult to comply with, the requirements do require monitoring to remain effective. If they shield a hotel from one large settlement or payout, it will be worth it. ✧

*(Michael Gentile, J.D. is an attorney and assistant professor of recreation and sports management at Niagara University. As an attorney, he specialized in personal injury and administrative law and is the former law director for the city of Sandusky, Ohio.  
E-mail: mgentile@niagara.edu.)*