

# Best Practices for Negotiating Hotel Contracts in the Current Economy

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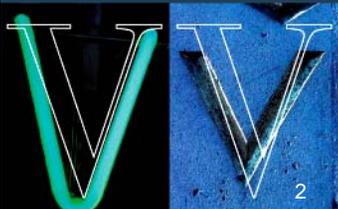
Texas Society of Association Executives



# Changing Negotiation Climate

“Hotels willing to deal to  
keep conference business”

March 26, 2009  
Business Week



## A Note About Exist Contracts

- All planners should be reviewing the terms of existing contracts and conducting a “**viability audit.**”
- Consider having a legal review of the contract terms so you are aware of liabilities, but **don't involve an attorney in discussions with the hotel.**
- What you can renegotiate **depends on what the contract contains.**
- Make it a **win-win.**



## Renegotiating Existing Agreements

- Reduce Room Block or Attrition
- Reduce Room Rate Based on Competitors  
(least favored by hotels)
- Eliminate Cut-Off Date
- Cut Meeting by A Day

Continued ...



## Renegotiating Existing Agreements

- Move Meeting to **Another Day/Year**
- If Possible, **Assign Guest Rooms**
- Renegotiate **F&B Minimums, Prices**



# New Contracts



## Maximize Your Negotiation Posture

- Consider Markets and Hotels  
Waiving Attrition
- Aggregate Smaller Meetings
- Consider Multi-Year Contracts
- Consider Requests for Proposals



# Basic Tenet of Contracting

- Come to the negotiations with *your own core contract provisions*.
- Everything negotiated should be clearly written in a signed contract.
- If you ask for something after a contract is signed, its called *begging*.



## Four Corners Rule

- Clear & Unambiguous – Contract Speaks for Itself
- Most Litigation Arises Because Contracts Are Unclear
- Otherwise, Most Disputes Are Settled



# Contract Terms



## Basic Contractual Elements

- **Rates:**
  - Rooms Rates
  - F & B
- **Penalties:**
  - Attrition/Cancellation
  - Mitigation & Right to Audit
- **Liability:**
  - Force Majeure
  - Indemnification
  - Insurance



## Setting the Rate – Making it Stick



## Lowest Room Rate Available

- **Guarantee Lowest Published Rate**
- **By Hotel or Third Party**
- **Include Internet Sales**
  - **MONITOR THIS**
- **If Lower Rate, Must Match for Entire Group**
  - **Link to Penalties**



# Setting Future Rates

- Provide a formula in the contract for setting future rates
  - Lesser of the Following:
    - Rates quoted one-year prior to meeting
    - The quoted rate plus X per year (2-3% cap)
    - X% off the lowest published rack rate for the dates of the meeting
  
- Negotiate catering and other significant costs, as well.



# Cost Control

## Who Pays?



## Room Block Reservation

What are the organization's obligations for room nights?

- Clearly indicate that rooms are "...made available for reservation and payment by Group meeting attendees."
- Clearly state the room block size.
- Clearly state room rate.
- If room blocks can be adjusted, state deadlines and have the reduced block flow down to attrition/cancellation penalties.



## Avoid Miscellaneous Charges

Now, the rates are set. How do you avoid cost creep?



## No Additional Charges/Authorized Signatures Clause

- **Additional Charges:** No additional charges will be incurred for work performed and/or services provided without written consent from an authorized representative of the Group.
- **Surcharges/Service Fees/Gratuities**



## Managing Penalties Attrition/Cancellation

Consider Negotiating Without Penalties

If Damage Provision Required, Follow These Steps



## Goal of Contract Damages

### *Benefit of the Bargain – Make “Whole”*

- If one side breaches a contract, the other side is entitled to damages but not penalties

### *Types of Damages*

- **Actual** – Amount of loss caused as a direct result of the breach.
- **Liquidated Damages** – Amounts agreed to by the parties at the time of the contract, and before any breach occurs, to approximate damages.



## Attrition and Cancellation

### *What this Means for Hotel Agreements*

- Hotel has an obligation, as a matter of law, to resell unused rooms
- Hotel may not, as a matter of law, end up in a better financial position because you cancelled/under performed than it would have if the contract was fully performed.
  - Can result if Hotel has the right to “double sell”



## Five Steps Prevent the “Double Dip”

***Double Dipping:*** Occurs when the hotel gets the liquidated damages, yet retains the ability to resell the canceled rooms.

1. **Mitigation Clause:** Hotel shall undertake all reasonable efforts to resell canceled rooms, and will **credit** those revenues against the liquidated damages in an amount not to exceed the full amount of such damages.
2. **Timing of Payment:** Damages, if any, shall be due and payable **X days after [original meeting date]** provided the Hotel provides proof of its efforts to mitigate damages and proof that rooms being held for Group's attendees were unsold.



## Prevent the “Double Dip,” Continued

3. Exclude Fees/Commissions/Taxes: Fees, penalties, or liquidated damages, if any, shall exclude service charges, surcharges, commissions, and rebates as well as state and local sales taxes, unless required by law .
4. Deduct Overhead/Profit Margin: If Association is required to pay an attrition fee, the fee shall be **calculated by multiplying X% of the Single Room Rate** by the difference between the number of actually used rooms and the **Room Block with credits from guaranteed no-shows, cancellations, and early departure charges, if applicable.**
  - ▶ Guest Rooms 75 - 85%
  - ▶ F & B – 20-40%
  - ▶ Alcohol Beverage Functions – 80-85%



## Prevent the “Double Dip,” Continued

5. Average Occupancy Rate – Not Last Sell: Association shall not owe any fees, penalties, or liquidated damages if Hotel meets or exceeds its average occupancy level for that particular period of the year.

Example: Hotel has 100 rooms, but only sells 50 on an average night.

Room Block: 40 Rooms – Cancelled

Rooms Sold: 45

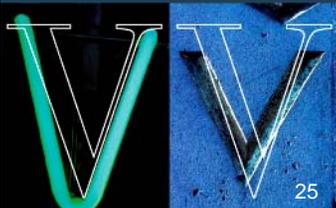
Last Sell: 0 Credit (55 Rooms Remain Unsold)

Average Occupancy: Pay for 5 Rooms



## Attrition/Cancellation Special Issues

- Negotiate Attrition Based on Cumulative Room Nights Rather Than Each Night.
- Consider Clause Giving Credit For Rescheduled Meetings
- How do You Establish “Average Occupancy”?
  - Hotel ledgers
    - Have a formula, such as last 3 years



## Attrition/Cancellation Special Issues

- **What About Food & Beverage?**
  - Yes! Attrition/Re-Sell Can Apply Here, as well
  - Get Credit for Re-Booking or Alternate Business
- **Reverse Attrition/ Cancellation**
  - Hotel must pay damages, equal to room rate, for relocation
  - Specify at point, such as 25% of room block, which triggers cancellation/cancellation damages.
    - In the event of forced cancellation, must pay costs of relocation



## Additional Money-Saving Tools

- Room Block Release
  - Specify a date
  - Reduce the room block for attrition/cancellation purposes
  
- Occupancy Reports
  - Total number and types of rooms in Group's room block picked up during each day.
  - If Group desires an **individualized breakdown** including guest names, arrival and departure dates, etc., be sure to specify.
  
- Right to Audit
  - Include confidentiality language



## Managing the Unexpected

# Force Majeure Indemnification



## Force Majeure

- Common law concept
- Contract provisions go beyond common law



## Five Key Components - Force Majeure

1. Delineated Risks (terrorism, threats of terrorism, government travel advisory, etc.) – tailor to meeting location.
2. Preventing or delaying at least 25% of Attendees and guests from appearing at the event,
3. Or other similar cause, including emergencies and non-emergencies, beyond the control of the parties



## Five Key Components - Force Majeure

4. Making it illegal, impossible, or commercially impractical to hold the event or perform the services.
5. This contract may be terminated or performance excused by either party without penalty for any one or more of such reasons by written notice from one party to the other



## Warranty of Services

Hotel represents and warrants that the Hotel and Hotel's facilities, including services to be provided by Hotel to Association and its attendees pursuant to this Agreement **at the dates herein set forth shall be of substantially the same condition** and quality as currently exists as of the date of this Agreement



## Indemnification Key Provisions

### YES

- **Reciprocal** - A reciprocal clause is desirable where each party indemnifies the other for (is responsible for) its own negligence (mutual indemnification).
- **Limited to Control** - What each party is being asked to be responsible for is within its control.
- **Includes Defense Costs**
- **Limit Scope to Insurance Coverage** (employees? volunteers? third parties?)



## Indemnification

### NO

- **“Sole,” “Gross,” or “As determined by a court”**
  - This restriction would limit liability and make it harder for indemnification to kick in. Only one party would have be at fault, whereas removing "sole" distributes liability among the parties according to percentage of fault.
- **Coverage of third party negligence**
  - Meeting attendees (expect perhaps board members, etc.)



## Managing the Liability You Assume

- “Flow down” to third parties, contractors
- Waivers
- Insurance



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