

CHAPTER 10

YOUR RESPONSIBILITIES AS A HOSPITALITY OPERATOR TO GUESTS

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“Good morning, Trisha,” said Sheriff Pat Hutting, as he strode into her office. “It’s great to see you again. Let me introduce Detective Andy Letonski. Andy is from the city police force, and he is working a case. He asked me to arrange this meeting with you because, frankly, we think you could really help us out.”

Trisha Sangus smiled at Sheriff Hutting. He was truly one of her best friends in the business community. He was also the chief law enforcement officer of the county where Trisha managed her hotel. He loved to golf, as did Trisha, and her excellent business and personal relationship with him was extremely helpful in getting a prompt response time when dealing with the occasional guest eviction.

“Good to see you too, Pat,” Trisha replied, “and good to meet you, Andy. What’s going on?”

“Drugs,” replied Andy. “As you know, our area has its share, despite the fact that they go virtually unseen.”

“Yes,” said Trisha. “Pat and I have helped the school district by holding DARE training sessions at our hotel on several occasions.”

“That’s right,” said Pat as he turned to Andy. “No one in the area is a bigger supporter of our efforts than Trisha—and her property.”

“Well,” said Andy, “that’s why I asked Pat to bring me here. You have a guest in room 417. The guest’s name is Marty White.”

“That could be,” said Trisha. “It’s a big hotel, but I really don’t think that particular guest has come to my attention before today. Would you like me to check with the front desk to confirm that Mr. White is a guest here?”

“Well,” replied the detective, “I was hoping you could assist in another way.”

“Andy’s men have had Mr. White under surveillance for three days now,” said the sheriff.

“We believe Mr. White is involved in drug trafficking in the area,” added Andy.

“And what are you asking of me?” inquired Trisha.

“Just to allow us to look at Mr. White’s phone records, so we can see whom he is calling,” said Andy. “They could be a great help in locating his possible source of supply and delivery. Your telephone call accounting system does record the number of all outgoing phone calls, doesn’t it?”

“Yes,” replied Trisha, “it does.”

“That’s great,” said Andy. “Those records would be a big help to us.”

“Let me be sure I understand your request,” said Trisha. “You are convinced that one of our guests is involved with the local drug trade?”

“Absolutely,” said Andy.

“Do you have evidence of the involvement?” asked Trisha.

“We have a significant amount. There is no doubt Mr. White is involved. That’s why I asked Sheriff Pat to set up this meeting with you,” replied Andy. “He told me about your previous involvement in antidrug educational activities in the area.”

“And you, Andy, would like to look at, but not copy, our records of the telephone calls that our guest has made since he has been here?” Trisha queried.

“That’s correct,” said Andy, as the sheriff looked at Trisha somewhat uncomfortably.

“Well,” said Trisha, “let me think about a response. I’ll get back to you within the hour.”

“Can’t we look at them now?” asked Andy earnestly.

Trisha looked at him carefully. She knew what she was going to say, but because of her friendship with the sheriff, she wanted to turn this request down carefully, and in a way that would not embarrass the sheriff, who was, she suspected, an unwilling partner in the meeting.

IN THIS CHAPTER, YOU WILL LEARN:

1. To understand your legal responsibility to admit guests and the circumstances when such admission can be denied.
2. To protect the guest’s right to privacy.
3. To operate and maintain a facility in a way that maximizes the safety of guests and compliance with the law, including Title III of the Americans with Disabilities Act (ADA).
4. To differentiate among various types of nonguests and understand your obligations toward them.
5. To generate the procedures required to safely and legally remove guests from a property.

10.1 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. In this chapter, we will examine guests and their rights, as well as your rights as a manager or proprietor.

Definition of a Guest

The law views a hospitality manager's responsibility to those who come onto a property differently based on the characteristics of the visitor. Consider the case of Eva Barrix. Eva is a motel owner who maintains a pool for the convenience of her guests. Late one night, a robber scales a fence around Eva's property and, because the thief is not familiar with the grounds, accidentally trips, falls, and stumbles into the pool. Clearly, the law does not require that Eva inform would-be criminals about the layout of her facility. In addition, despite the occasional well-publicized personal injury case, thieves would have a difficult time proving to the court that the owner of a business owes a duty of care to them, as discussed in Chapter 9, "Your Responsibilities as a Hospitality Operator." Contrast this example with a guest who may experience a similar fall near the pool area, and you will see why it is important to understand the distinctions involved in determining precisely who is a *guest* and who is not.

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.

LEGALESE

Guest: A customer who lawfully utilizes a facility's food, beverage, lodging, or entertainment services.

» ANALYZE THE SITUATION 10.1

NICOLE FROST AND STEVE Merchand were brother and sister. When their grandfather, Wayne Merchand, was hospitalized for care after a heart attack, the two began to visit him regularly at Laurel Memorial Hospital.

One Sunday afternoon, after visiting with their grandfather, Nicole and Steve went to the hospital's cafeteria for a light lunch. A professional foodservice management company operated the cafeteria under contract to the hospital. Nicole and Steve selected their lunches from an assortment of beverages and prewrapped sandwiches that were displayed unrefrigerated on a tray in the middle of the cafeteria serving line. The sandwiches were made of ham and cheese, with a salad dressing spread, lettuce, and tomato. Steve paid for the sandwiches, beverages, and some chips, and then he and Nicole took a seat in the cafeteria dining room.

Approximately four hours after eating lunch, both Steve and Nicole became ill. They determined that they both had suffered from foodborne illness. The two filed suit against the hospital and its contract foodservice management company. When the facts of the case came out, the hospital maintained that, as visitors, not patients, the hospital had no liability toward Nicole and Steve. The foodservice management company operating the hospital cafeteria maintained that its liability extended only to Steve since he was the only guest who in fact purchased food from its

service. Management maintained it should not be held responsible for the illness suffered by an individual that they did not actually serve.

1. Was Nicole a guest of the foodservice facility?
2. Should Steve bear partial responsibility for the damage he and Nicole suffered, given that he purchased the sandwiches?
3. What type of liability (from Chapter 9, “Your Responsibilities as a Hospitality Operator”) applies in this case? Why?

LEGALESE

Transient guest: A customer who rents real property for a relatively short period of time (e.g., small number of days with no intent of establishing a permanent residency).

LEGALESE

Tenant: Anyone, including a corporation, who rents real property for an extended period of time with the intent of establishing a permanent occupation or residency.

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, by contrast, 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.

» ANALYZE THE SITUATION 10.2

KETAN PATEL OPERATED THE Heartworth Suites, an extended-stay, limited-service hotel of 85 rooms. Approximately 40 percent of his guests were extended-stay, which Mr. Patel's company defined as a stay longer than five consecutive days. The remaining rooms were sold to traditional transient guests, whose average stay was approximately 1.8 days.

Bob Thimming was an extended-stay guest at the Heartworth, and an employee of Katy Highway Contractors. Mr. Thimming held the position of construction foreman for a stretch of interstate highway being repaired in the vicinity of the Heartworth Suites. His company signed a contract with the Heartworth confirming that Mr. Thimming would be given a special monthly, rather than daily, rate because he was staying in the hotel for six consecutive months as part of his work assignment.

In the third month of his stay, Mr. Thimming arrived at the hotel from his job site at approximately 5:30 P.M. to find the door to his room ajar. He entered the room and discovered that his \$4,000 watch, which he had left on the nightstand, was missing. Mr. Thimming contacted Mr. Patel to complain of the theft. Because the hotel was equipped with electronic locks, Mr. Patel was able to perform a lock audit and retrieved the following information for the day in question:

Time	Key Used	Key Issued To	Results
6:30 A.M.	7J 105-60	Guest	Entry
6:32 A.M.	7J 105-60	Guest	Entry
1:30 P.M.	1M 002-3	Maintenance	Entry

Mr. Thimming maintained that someone negligently left the door open, and as a result his watch was stolen. He contacted his company, whose in-house attorney called Mr. Patel. The attorney stated that Mr. Thimming was a tenant of the hotel, and as a landlord, Mr. Patel was responsible for the negligent acts of his employee and should reimburse Mr. Thimming for his loss. Mr. Patel replied that Mr. Thimming was not a tenant but a transient guest, and thus was subject to a state law that limits an innkeeper's liability in such cases to \$350. The attorney disagreed, based on the six-month "lease" signed by Katy Highway Contractors for Mr. Thimming. He demanded that the watch be replaced and threatened to file suit if it was not. Mr. Patel contacted his attorney, who offered, based on his view of the complexity of the case, to defend the Heartworth Suites for \$3,000, with a required retaining (down payment) of \$2,000.

1. Was Mr. Thimming a transient guest or a tenant?
2. Why is the distinction important in this situation?
3. What should Mr. Patel do in the future to avoid the expense of litigation such as this?

Admitting Guests

LEGALESE

Public accommodation:

A facility that provides entertainment, rooms, space, or seating for the use and benefit of the general public.

LEGALESE

Segregate: To separate a group or individual on any basis but especially by race, color, religion, or national origin.

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. However, 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

Search the Web 10.1

Log on to www.usconstitution.net.

1. Select: Plain text version of the Constitution, under the head The United States Constitution.
2. Scroll until you reach the Fourteenth Amendment, and read it carefully.
3. Are women specifically mentioned in the Fourteenth Amendment?
4. How does the wording of this amendment impact admission policies in the hospitality industry?
5. Do you believe the amendment prohibits "ladies only" or "men only" nights?

is not illegal, because it does not discriminate against a protected class of individuals as defined by the Civil Rights Act.

Denying Admission to Guests

Although 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. A public accommodation may legally deny service to a potential guest when:

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. Figure 10.1 is an example of such a policy.
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 also admitting or serving such an individual could put you at great risk. (The duty of care required for an intoxicated person will be discussed more fully in Chapter 12, “Your Responsibilities When Serving Food and Beverages.”) 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. 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 using the Incident Report Form from Chapter 9, “Your Responsibilities as a Hospitality Operator,” in case your actions are ever called into question. Some operators require guests to sign a “house rules” document that clearly states behaviors that the operator will not permit. Figure 10.2 is an example of such a statement.

It is strictly prohibited for any person to carry a weapon, including but not limited to a handgun, or a concealed weapon anywhere on this property, including parking lots.

We reserve the right to search each person, his or her personal effects, and vehicle as a condition of entry onto or presence on this property.

This policy supersedes any right an employee or guest may believe he or she has to carry a weapon, concealed or otherwise, pursuant to state law.

Violators will be prosecuted.

Figure 10.1 Weapons policy.

The following rules regulate the renting of rooms, suites, and cottages on this property. Occupants will be bound by these rules and policies, and failure to comply will result in termination of agreement and removal from property.

1. Renter is 21 years of age or older.
2. Renter will remain in room and not sublease or turn over room to other parties.
3. Renter will not utilize room for parties or unauthorized social gatherings.
4. Renter will not create noise or other disturbance.
5. Renter will not exceed maximum limit for number of occupants per room (five, or local code).
6. Renter will declare to hotel and pay for all occupants.
7. Renter will be responsible for all damage and excess wear and tear to room and property.

Guest Signature

Date

Property Witness

Date

Figure 10.2 House rules statement.

6. *The individual does not seek to become a guest.* Although 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 would, as described in Chapter 4, 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.

10.2 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.

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. (The process for legally doing so will be explored later in this chapter.) Additionally, a guest has the right to expect that no unauthorized third party will be allowed to enter his or her guestroom.

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

» ANALYZE THE SITUATION 10.3

JESSICA BRISTOL AND HER two young children checked into room 104 of the Travel-In motel at 9:00 P.M. on Friday night. She produced a credit card issued in her name as a form of payment and requested that she be given the room for two nights.

On Saturday afternoon, a man identifying himself as Preston Bristol, Jessica Bristol's husband, presented himself at the front desk and asked for the key that she was supposed to have left for him at the front desk. He stated that he was joining his wife and children at the motel; they were visiting relatives, but he had had to work the day before.

The desk clerk replied that no key had been left and proceeded to call the room to inform Jessica Bristol that her husband was at the front desk. There was no answer in the room.

Preston Bristol then produced his driver's license for the desk clerk, which had the same address that Jessica Bristol had used on her registration card. Mr. Bristol also produced a credit card issued in his name with the same account number as that used by Jessica Bristol at check-in. As the clerk perused the license and credit card, Mr. Bristol offhandedly referred to a picture in his wallet of Jessica Bristol and his two children. Based on the positive identification, the clerk issued Mr. Bristol a key to Jessica Bristol's room.

At approximately 6:00 P.M. on Saturday, a guest in room 105 called the front desk to complain about a loud argument in room 104, Jessica Bristol's room. The desk clerk called room 104 but got no answer.

The clerk then called the local police. When they arrived, they found Jessica Bristol badly beaten and her children missing. A description of Mr. Bristol's car quickly led to his arrest and the recovery of the children by the police.

Jessica Bristol recovered from her injuries and completed the divorce proceedings she had begun against her husband. In addition, she filed assault and battery charges against him. Jessica Bristol also sued the motel's manager, owner, and franchise company for \$8 million, stating that the motel was negligent and had violated her right to privacy. The motel's position was that it acted reasonably to ensure Mr. Bristol's identity, and added that it was not an insurer of guest safety and could not have foreseen Mr. Bristol's actions.

1. Did the desk clerk act in a reasonable manner?
2. Did Mr. Bristol have a right to enter the room?
3. What should management do in the future to prevent such an occurrence?

LEGALLY MANAGING AT WORK:

Law Enforcement and Guest Privacy

There are occasions when local law enforcement officers, for reasons they believe are valid, demand entrance to a guestroom. Should such an event occur, it is imperative that hotel management:

1. Attempt to cooperate with a legitimate law enforcement official. You must, however, balance that cooperation with your guests' right to privacy. See the International Snapshot on page 316 for additional consideration under the USA PATRIOT Act.
2. Ask to see a search warrant. The U.S. Supreme Court has ruled that hotel guests have a constitutional right to privacy in their rooms and cannot be subject to illegal search or seizure. Hotel managers should not allow a guest's room to be searched by police without a proper search warrant.
3. Document the event, for the hotel's protection. This would include securing identification information on the law enforcement officer, his or her official police unit, the specifics of the demand, and any witnesses to the demand.

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. See the International Snapshot on page 316 for more details.

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. Ensuring these rights is the morally and legally correct course of action for hospitality managers.

10.3 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. Recall in Chapter 9 that we discussed the duty of care that hospitality operators have to provide safe premises. Failure to do so will place your operation at risk for a personal injury lawsuit.

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 facility
- Effective operating policies and procedures

Each year, too many lawsuits are filed against hospitality operations, resulting from accidents that have occurred inside, or on the grounds 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.

Although it is not the goal of this book to detail all of the preventative maintenance techniques and operating policies used by competent hospitality operations, recall from Chapter 9 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 might not always be easy. 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 other facilities. 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 this.
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 that the pool area, and the pool itself, is well lit, 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. Figure 10.3 is an example of a set of general rules. 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.

Bedbugs

Recently, there has been a surge in pest and bedbug-related lawsuits instituted against hotels and apartment complexes. These suits are often quite costly, with some judgments against hotels totaling hundreds of thousands of dollars in compensatory and punitive damages. The most costly aspect of these suits is that it is rare that punitive damages are covered in an insurance policy, and removing a bedbug infestation is extremely costly. Thus, hospitality facilities must institute a quick, effective, and cost manageable procedure in the event an infestation occurs.

1. Equipment in this room is for the use of reasonable adults only. Improper use may result in serious injury.
2. Children under 16 could be seriously injured by improper equipment use or nonsupervision.
3. Please limit workouts to 30 minutes on cardiovascular machines.
4. Only water is allowed in workout area. No other food or beverage is permitted.
5. Please wipe off all equipment after use.
6. Lower and raise all equipment carefully.
7. Because of high risk of injury, you must use a spotter when using free weights.
8. Please replace all weights, dumbbells, bars, and plates when finished.
9. Children not allowed unless accompanied by an adult.

Figure 10.3 Workout area rules.

It is paramount to remove the infestation quickly, because the larger it spreads the more the costs of eradication increase. Consistent inspection and treatment programs are important, as it is difficult to ever totally remove the possibility of a bedbug situation. This is because guests sometimes bring the bedbugs in with them via their clothing and luggage.

Employees should be trained in detecting the signs of infestation, and a reporting procedure should be in place. Furthermore, preventative measures should be taken to eliminate any threat of an infestation before it begins. Proper sanitation and the purchase of products like bedbug-proof mattress covers are all practices a facility can adopt to actively prevent not only an infestation but also a judgment for negligence.

Defibrillators

On November 13, 2000, President Clinton signed the Cardiac Arrest Survival Act into law. The purpose of the act is to improve the survival rates of people who have sudden cardiac arrest in two major ways: (1) by the placement of automated external defibrillators (AEDs) in federal buildings, and (2) in an effort to spur the use of AED devices in the private sector, by establishing protections from civil liability for persons who use AEDs in an emergency situation, except in cases of gross negligence or willful misconduct. The AED device can be utilized by trained, nonmedical personnel in order to increase the survival rate from a cardiac episode. Since enacting the Cardiac Arrest Survival Act, many states have also implemented regulations in order to broaden the use of AEDs. Check with your state to see if providing AED devices is required in your particular establishment.

Americans with Disabilities Act (ADA), Title III

Facilities must not only be safe but also 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, and were recently amended on September 15, 2010.

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 facilities operated by a private entity whose operations affect commerce and fall within at least one of the following dozen categories:

1. Place of lodging, except for an establishment located within a facility that contains not more than five rooms for rent or hire, and that actually is occupied by the proprietor of the establishment as the residence of the proprietor. A “place of lodging” includes:
 - An inn, hotel, or motel
 - A facility that provides guest rooms for sleeping for stays that primarily are short-term in nature (generally 30 days or less) where the occupant does not have the right to return to a specific room or unit after the conclusion of his or her stay; and provides guest rooms under conditions and with amenities similar to a hotel, motel, or inn, including the following:
 - On- or off-site management and reservations service
 - Rooms available on a walk-up or call-in basis
 - Availability of housekeeping or linen service
 - Acceptance of reservations for a guest room type without guaranteeing a particular unit or room until check-in, and without a prior lease or security deposit
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, or 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 places of public accommodation 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, Braille materials, and large-print materials. The auxiliary aid requirement is flexible. For example, a Braille 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.* These include requirements that guests provide a driver’s license, for example. 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

The recent amendments to Title III address changes in technology, and provide specific requirements to accommodate persons with mobility devices, such as motorized wheelchairs, and video remote interpreting (VRI) communication technology. The amendments also provide for specific exceptions when it is allowable to exclude service animals from a public accommodation, and create accommodation requirements for facilities that allow reservations and ticketed events. Furthermore, the amendments contain a safe harbor provision for public accommodations that have complied with the 1991 requirements. As always, it is important to check that your facility complies with the new Title III requirements, and if there are any questions that arise from the new legislation, you should consult an attorney.

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 online 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. And as you learned in Chapter 4, “Contract Basics,” it is important to have your construction and/or renovation contract specify who is responsible for ensuring ADA compliance.

LEGALLY MANAGING AT WORK:

Five Steps to Facility Evaluation

1. Plan the evaluation.
 - a. Set an evaluation completion date.
 - b. Decide who will conduct the survey.
 - c. Obtain floor plans.
2. Conduct the survey.
 - a. Use a checklist to evaluate the facility.
 - b. Use a tape measure.
 - c. Record results.
3. Summarize recommendations.
 - a. List barriers found, along with ideas for removal.
 - b. Consult with building contractors if necessary.
 - c. Estimate costs of barrier removal.
4. Plan for improvements.
 - a. Prioritize needs.
 - b. Make barrier removal decisions.
 - c. Establish timetables for completion.
5. Document efforts.
 - a. Record what has been done.
 - b. Plan for an annual review.
 - c. Monitor changes in the law.

Search the Web 10.2

Log on to www.usdoj.gov/crt/ada/adahom1.htm.

1. Select: 2010 ADA Standards for Accessible Design.
2. Select: 2010 ADA Standards for Accessible Design, either in HTML or PDF format.
3. Browse through the standards established for accessible design and answer the following questions:
 - a. How many rooms with a roll-in shower are required for a hotel with 800 rooms?
 - b. How many rooms in the same size hotel must be designed to accommodate the visually impaired?
 - c. Explain the term equivalent facilitation as it pertains to room charges for disabled guests.

10.4 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.

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. These precautions will be discussed more fully in Chapter 14, "Safety and Security Issues."

Invitees

LEGALESE

Invitee: An individual who is on a property at the expressed or implied consent of the owner.

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, usually, but not always, for the commercial gain of the property. 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; also in some cases, the hotel also has the duty to fix and eliminate these potential dangers.

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.

Consider the case of Jeremy Cavendar. Jeremy is the manager of a hotel facility attached to a large shopping mall in a major southwestern city. Because of its location, many shoppers pass through the hotel's lobby as they enter or exit the shopping mall. If an individual were hurt while passing through the lobby, Jeremy would likely be responsible for demonstrating that he and his staff had demonstrated reasonable care in maintaining the hotel lobby. This would be true even though the invitee in this

case may have had no intention of utilizing any of the services offered by Jeremy's hotel. The mere fact that the hotel decided to locate within the shopping mall would demonstrate to most juries and personal injury attorneys that the hotel could have reasonably foreseen that a large number of shoppers would be passing through the area, hence that it should take reasonable care in protecting their safety.

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.

Some cases of trespass can be more complex, and operators should be very careful to make a distinction between a trespasser and a wandering guest. Consider the example of Deitra Reeves. Ms. Reeves was a guest of the Red Door Lounge, a very quiet and dimly lit club in a large city. One night, while seeking the ladies room, Ms. Reeves accidentally opened the door to a storage room, ran into a storage rack, and was injured in a fall. The lounge's attorney argued that Ms. Reeves was a trespasser since guests are not allowed in storage areas. Ms. Reeves's attorney argued that Ms. Reeves was a guest, and the lounge was negligent because it should have had the storeroom locked. A facility can expect that guests, if allowed, may wander into restricted areas. When they do, they will, in most cases, still be considered guests.

» ANALYZE THE SITUATION 10.4

WALTER THOMAS WAS VISITING Jeff Placer, who had registered as a guest at a newly opened Lodger-Inn hotel. The hotel was located off an interstate highway exit; it had been open for only three days. When Mr. Thomas left Mr. Placer's room in the evening, he was assaulted in the hotel's parking lot.

Mr. Thomas contacted an attorney, who threatened to sue the hotel for the injuries. Lashondra Tyson, the attorney for the hotel, replied to Mr. Thomas's attorney that the hotel was not responsible for the acts of third parties, and that the hotel had no history of criminal activity taking place on its grounds; thus, it could not have foreseen any potential problem. In addition, Mr. Thomas was not a registered guest in the hotel.

Mr. Thomas's attorney replied that many hotels experience problems in their parking lots, so the hotel should, in fact, have anticipated potential problems. He also stated that Mr. Thomas was an invitee of the hotel and thus the hotel was required to guard his interest in the same manner as that of a guest.

1. What was the legal status of Mr. Thomas?
2. Why is the distinction important in this situation?
3. What records would Ms. Tyson need from the hotel's manager to give her the best chance of winning any potential lawsuit?

10.5 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, for inappropriate conduct, or for certain conditions of health.

Lack of Payment

When guests check into a hotel, or order food in a restaurant, it is reasonable to assume that 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 retainer, which is required in an official tenant eviction. The term *eviction* 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. Thus, it is best to avoid the situation whenever possible. In Chapter 14, we will discuss several ways that you can protect your operation from guests who have no intention of paying their bill.

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

LEGALESE

Eviction: Removal of a tenant from rental property by a law enforcement officer. An eviction is the result of a landlord filing and winning a special lawsuit known as an "unlawful detainer."

LEGALESE

Small claims court: A court designed especially to hear lawsuits entailing relatively small sums of money. They can provide a speedy method of making a claim without the necessity of hiring a lawyer and engaging in a formal trial.

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 chapter). 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.

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. Although 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 sellout 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).

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, extreme care should be taken. The checklist in the next Legally Managing at Work feature can be helpful in performing the removal in a discreet but effective manner.

LEGALESE

Overstay: A guest who refuses to vacate his or her room when he or she has exceeded the number of nights originally agreed to at check-in.

LEGALLY MANAGING AT WORK:**Responding to Guest Health Emergencies**

1. Train employees on their role in responding to a medical emergency.
2. Instruct employees to contact the manager on duty (MOD) immediately if it appears a guest is seriously ill, unconscious, or nonresponsive.
3. Call 911 or other emergency-care providers. If the circumstances surrounding the incident seem suspicious, also notify the police.
4. Instruct the MOD to survey the situation to determine whether other guests are at risk or the area needs to be secured against entry by others.
5. Designate an individual to keep unauthorized persons away from the area until the emergency medical team arrives.
6. Document the incident, using an incident documentation form.
7. Do not touch the guest unless you are medically trained to provide aid.
8. When the emergency medical team arrives, provide them with any information you have that can help to establish the identity of the guest.
9. If the guest is removed from the property, secure and hold any personal property belonging to the guest. The length of time you must retain personal property and the method of disposing of the property at the expiration of that time will vary from state to state.
10. Report the incident to local law enforcement authorities if required to do so by law.

**INTERNATIONAL SNAPSHOT**

Should Foreign Governments Adopt Provisions from the USA PATRIOT Act to Combat Terrorist Acts against the Hospitality Industry?

The scene is becoming all too familiar. Terrorists are attacking hotels in greater frequency. First, it was Egypt. On April 18, 1996, terrorists attacked the Hotel Europa in Cairo, killing 18 Greek nationals. Next, it was the island of Bali. On October 12, 2002, in the late evening, a terrorist attack struck a nightclub on the island, murdering over 180, and injuring hundreds. Then, terrorists struck again in Kenya. On November 28, 2002, suicide-bombers attacked the Paradise Hotel,

an Israeli-owned hotel, located in Mombasa, killing over 15 people, as two missiles were fired at an Israeli holiday jet that had taken off from Mombasa's airport. Recently, terrorists struck in Morocco. In May 2003, in Casablanca, terrorists targeted a restaurant, a Jewish community center and cemetery, and a five-star hotel, killing 45. Indonesia was the next target. In August 2003, suicide-bombers attacked the J. W. Marriott Hotel in Jakarta, murdering 11 people and injuring 150.

International terrorists will continue to attack nonmilitary installations, known as “soft” targets. Unfortunately for the hospitality industry, today’s soft targets include hotels, restaurants, and nightclubs. The central question for the international community, as well as hoteliers, is how to protect the hospitality industry from future terrorist attacks. The answer lies in the introduction of aggressive antiterrorism legislation abroad and increased vigilance by the hospitality industry.

The United States of America is not immune to terrorist attacks against soft targets, as is evident from the suicide-bombing attacks of September 11, 2001. In response to the terrorist attacks, the administration of President George W. Bush proposed sweeping legislation to combat terrorism. President Bush’s immortal words to U.S. Attorney General John Ashcroft, “Never let this happen again,” resulted in the passage of the USA PATRIOT Act (PATRIOT Act). The Patriot Act, not surprisingly, is applicable to hotels in the United States in several ways.

The Patriot Act provides for the use of emergency warrants to search hotel rooms or to obtain guest information. Under the Patriot Act, federal agents of the U.S. government may, with a search warrant, obtain “tangible records” from a hotel relating to guests or “groups of guests” that registered at the hotel. Even without a search warrant, registration records of a hotel guest may be obtained by a federal agent if proper law enforcement identification is produced and shown to hotel management. Furthermore, records of all electronic transactions relating to a guest at the hotel must be produced if requested by a governmental entity. Those records include telephone records, e-mail correspondence, and transactions involving more than \$10,000 in cash.

The Patriot Act grants immunity to hotels that provide voluntary registration information to a governmental entity, if the hotel “reasonably” believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information. In addition, the Patriot Act provides criminal liabilities for individuals that “harbor” or “conceal” a person known, or with reasonable grounds, is believed to have committed or is about to commit an offense of terrorism. If, however, a hotel reports in “good faith” a suspected terrorist directly to the federal government or federal agency (such as the FBI), the hotel will not be subject to liability under the Patriot Act.

The Patriot Act is not the only antiterrorism legislation in the world. Such legislation exists in the United Kingdom, the European Union, and/or other foreign countries as well. But, many countries have limited, or have failed to implement, antiterrorism legislation at all. For instance, it was not until after the J. W. Marriott Hotel in Jakarta was attacked by terrorists that Prime Minister Thaksin Shinawatra rushed into law new antiterrorist legislation before world leaders attended the APEC meeting in October 2003. If the actions of the Thailand government are a barometer of sorts, then the worldwide community has a long way to go in confronting terrorism. Notwithstanding, the international community should consider adopting relevant provisions from the Patriot Act, so that foreign law enforcement agencies may investigate, apprehend, and prosecute terrorists before further hotels are attacked.

Provided by Richard Barrett-Cuetara, Esq., of the Cowles & Thompson Law Firm, in Dallas, Texas. www.cowlesthompson.com.

WHAT WOULD YOU DO?

You are the area vice president of franchising for a quick-service restaurant (QSR) company that serves a unique grilled chicken product, which has become extremely popular.

Because of a strong marketing effort and solid operating results, your company’s growth has been very rapid. In your five-state area, the company is considering purchasing a small chain of 15 units that sells a comparable chicken product. Those units, consisting of older buildings in excellent locations,

are to be converted to units owned and operated by your company. Your immediate supervisor, the company president, has asked you to respond to the following:

1. How will you determine which units are not in compliance with Title III, ADA requirements?
2. What criteria will you use for prioritizing needed improvements?
3. How will you document a good-faith effort to meet Title III, ADA requirements?

Draft answers to your president’s questions.

THE HOSPITALITY INDUSTRY IN COURT

To see how a court views the legal relationship between a hotel operator and its guests, consider two case studies. First, *Young v. Rushmore Plaza Holiday Inn*, 284 F.3d 863 (8th Circuit, 2002).

FACTUAL SUMMARY

Steven Young was a guest at the Rushmore Plaza Holiday Inn in Rapid City, South Dakota. Young and three of his friends rented a suite at the hotel, and after an evening of drinking and bar hopping they returned to the room. Young passed out in the bedroom of the suite, while his two friends continued drinking just outside the door of the suite. Hotel security officers asked the two guests to return to their room or go to a hotel commons area so as to avoid disturbing other guests. The two individuals failed to comply, and hotel security informed them they were being evicted and had ten minutes to pack and leave the premises. Rather than packing and leaving, the two men simply went to the hotel restaurant, leaving the door to the suite partially open and Mr. Young asleep in the room.

The Rapid City police arrived shortly thereafter to remove the three guests from the room. Mr. Young was awakened by the officers, and while disoriented he scuffled with the officers and was arrested for assaulting a police officer. Mr. Young sued the police officers, the city of Rapid City, and the hotel for violating his privacy and for using excessive force in a self-help eviction (carried out by the hotel, rather than authorities).

QUESTION FOR THE COURT

The question for the court was whether hotel guests had the same right to possession of a hotel room as tenants had to a rental property. Young claimed he was a tenant of the hotel and was therefore entitled to the protection of the South Dakota forcible entry and detainer statute. Under the statute, tenants were entitled to three days' notice prior to an eviction and a jury trial to determine if the eviction was justified. The hotel argued the application of the statute would be impractical for hotels, especially in the context of a guest who was only staying for one or two nights.

DECISION

The court held hotel guests were not tenants for the purpose of eviction. Therefore, hotel guests were not entitled to the same protections as tenants in rental properties.

MESSAGE TO MANAGEMENT

There are significant benefits in maintaining the transient status of a guest.

Next, consider *Parr v. L&L Drive-Inn Restaurant* P 96 F.Supp.2d 1065 (D.Hawai'i 2000).

FACTUAL SUMMARY

Plaintiff Eric Parr, a quadriplegic who is able to move exclusively with the aid of a wheelchair, brought suit against L&L Drive-Inn Restaurant (L&L), a franchised fast-food restaurant entity, for violations of Title III of the Americans with Disabilities Act, alleging that L&L had failed to remove architectural barriers to access, which prevented him from utilizing the L&L facility. Specifically, when Parr patronized L&L, he encountered a high entrance threshold, an entrance through the driveway, an incorrectly sloped access ramp, and tables that were too low for wheelchair access. Parr brought suit seeking an injunction against L&L, demanding ADA compliance, and seeking attorney fees and court costs.

QUESTION FOR THE COURT

The question for the court was whether L&L's efforts to accommodate disabled persons amounted to compliance under Title III of the ADA, or if it discriminated against disabled persons. Discrimination under Title III is determined by a defendant's failure to remove architectural barriers that are structural in nature, in existing facilities

where such removal is readily achievable. If accommodation is not readily achievable in an existing structure, then discrimination includes the failure to make such goods, services, facilities, and privileges readily available through alternative methods. Parr argued that the barriers he encountered when visiting L&L were all prohibited under the ADA, and that removal of these barriers was readily achievable.

DECISION

The court held that the barriers were in violation of Title III because they did not comply with the specific standards stated in the ADAAG Standard; specifically that the wheelchair accessibility ramp exceeded the allowable slope as defined by ADA standards, which created an incline too steep for wheelchair users to safely traverse, and the public parking spaces were located too far away from the entrance to the L&L facility. However, the court determined that only the accessibility ramps needed to be brought into compliance because, since fixing them would only be at a minimal cost and effort, compliance was readily achievable. As to the parking spaces, although the cost to move the spaces would be minimal, the court found that moving the spaces would reduce the amount of parking space available to L&L, and it would thus be in violation of a Land Use Ordinance. Therefore, the problems associated with parking compliance outweighed the benefit, and the court determined that moving the parking spaces was not readily achievable.

MESSAGE TO MANAGEMENT

Compliance under the ADA is a serious matter, and the courts will require specific adherence to the standards set forth under the act. However, when compliance is found to be unreasonable, or detrimental to the facility, the courts will allow exceptions to compliance on a case-by-case basis.

Guest is a term used to describe a transient customer, as opposed to a tenant who may utilize a facility for a longer, or more permanent, time period.

Because most hospitality establishments are considered places of public accommodation, they must observe all applicable federal, state, and local civil rights laws that prohibit discrimination in the admission of guests into a facility, as well as the types of services provided.

Guests in hospitality establishments have expectations of privacy, both personally and for any information about their stay. Hospitality establishments are legally obligated to honor those expectations.

A hospitality operator has a legal obligation to provide a reasonably safe physical facility for its guests. This requires significant attention to potential dangers and preventative maintenance procedures. In addition, Title III of the American with Disabilities Act requires hospitality operators to remove barriers from their facilities to allow access to people with disabilities. Even when someone is not an actual guest, managers still may have a duty of care to provide a reasonably safe premise for individuals on their property.

The process of removing guests from an establishment should be undertaken as a last resort and with caution.

WHAT DID YOU
LEARN IN THIS
CHAPTER?

After you have studied this chapter, you should be prepared to:

1. Identify at least four types of guests who could and/or should be denied service, and the reason for denial in each case.
2. Explain how a guest's room in a hotel is similar to his or her home for purposes of a legal search.
3. Create a ten-minute training program to be used to teach new employees the importance of, and procedures for, cleaning up dining room spills and

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slick spots as quickly as possible. Include a testing device to measure the effectiveness of your training.

4. List the four priorities established for ADA compliance, and explain why you agree or disagree with the prioritization.
5. Using the checklist provided in this chapter, evaluate the ADA compliance of a public restroom in your local library, museum, or art gallery.
6. Exculpatory statements (described in Chapter 5, “Significant Hospitality Contracts”) are often posted in recreational facilities, exercise rooms, pools, and spas. Explain their purpose and identify their limitations.
7. Contact your local small claims court administrator to determine:
 - a. The location of the court
 - b. The maximum dollar amount of judgment the court can order
 - c. Any fees required to file a claim
 - d. The forms required to file a claim
8. Develop a one-page checklist of actions that should be undertaken by a hotel staff to remove an extremely ill or deceased person from a room.

TEAM ACTIVITY

In teams, draft a document (one page) titled “House Rules” for a metropolitan hotel that has historically been frequented by minors for prom and graduation celebrations.