

VENDOR CONTRACTS

Managing Hospitality Risk



WHAT'S AT RISK?

Many of the lawsuits that involve hotels throughout the country have their foundation in a disputed or breached contract, or from legal obligations created in a contract. Because of the complexity of contract law, even if you win your case, you may lose out in defense costs. Therefore it is vitally important that hotels get competent legal representation and actively manage all contracts. This bulletin deals specifically with written contracts between you and various vendors who interact with your hotel.

WHAT ARE YOUR LEGAL OBLIGATIONS?

When entering an agreement with any vendor who will be providing a good or service to your hotel, get it in writing. Written contracts spell out the responsibilities of both parties, and eliminate the risk of faulty memories and turnover.

You should work with an attorney who knows the laws in your territorial jurisdiction; one contract may not fit all your locations. In every jurisdiction, your contract, to be legally valid, must consist of a legal offer, acceptance, and consideration. The offer states what the offering party (vendor) is willing to do, and what they expect in return. The acceptance is a clear indication by the second party (your hotel) that you agree to the terms. Consideration is something of value (typically their service or product, and your payment) that is exchanged. Legal acceptance may include verbal or nonverbal agreement, acceptance of

a deposit, acceptance of partial or full payment, and the signed agreement in writing.

The Uniform Commercial Code (UCC) governs most purchase agreements and sales contracts, so hospitality managers should have a general familiarity with the code. Always make clear the payment terms, delivery or start date, completion date, performance standards, requirements for licenses and permits, indemnification, non-performance clauses, and dispute resolution terms.

HOW CAN YOU BETTER PROTECT YOUR ORGANIZATION?

For some suggestions designed to assist you in developing sound policies and procedures for your organization, please turn this document over and review the attached checklist.

For more information about this and other hospitality risk management topics, please contact:

**National Specialty
Underwriters, Inc.**
10900 NE 4th Street
Suite 1100
Bellevue, WA 98004
(425) 450-1090
www.nsui.com



Checklist: Vendor Contracts

- Ask an attorney who specializes in contract law and has knowledge of state and local legal environments to help you design and standardize your vendor contracts.
- Make sure the true legal name of the contracting vendor is inserted in the contract, so that, in the event of litigation, the legally responsible party is properly identified.
- Identify who is authorized to modify the contract.
- Include a detailed specification of the services and materials being purchased so that the performance of the contract can be measured.
- Include the specific terms of all labor and material warranties, including the duration and scope of the warranties.
- Include an early termination provision that allows you to terminate during the term without having to pay a fee or penalty.
- Make sure your vendors have all required licenses and permits. Require copies or other proof.
- The contract should provide that the vendor or supplier indemnifies, defends and holds you, the owner of the property, your officers, employees and agents harmless against any acts or omissions of the vendor or supplier (including their employees and contractors) that directly or indirectly cause harm or damage to your property or anyone in, on or about your property, such as employees, guests or other vendors.
- Require and obtain current certificates of insurance. Require the vendor/supplier to provide copies of insurance coverage via a certificate of insurance showing that they have the right types of insurance at the appropriate minimum limits.
- Define the remedies for nonperformance. Make sure your contract contains these provisions so you will know how to handle these types of situations or that you made an informed decision to leave them out of the contract.
- Don't allow automatic renewals. Specify a time period on each contract and stipulate that it must be formally renewed after that period.
- Don't make any personal guarantees. Avoid forms that require the property owner or manager to sign a personal guarantee primarily used for securing payment in the event the property is unable to pay.
- If your vendor will have access to any confidential information be sure to include a confidentiality clause in your contract.
- Consistent with state law, specify how the parties will bear attorney's fees should litigation arise.