

How to terminate a hotel management agreement when an operator really deserves it! - By Jim Butler,
author of www.HotelLawBlog.com

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The love-hate relationship between hotel owners and operators is as old as the institution of hotel management arrangements (going back to the 1970s). A good hotel operator can add up to 25% to the value of a hotel. A bad one can subtract the same amount or even more.

In 20 years of focusing on the hotel industry, and specializing in representing hotel owners, developers and lenders in more than \$50 billion of hotel transactions involving more than 1,000 hotels around the world, we have seen a lot of eager owners anxious to sign up with a big hotel brand, thinking that was the end of their worries. Often it is.

Often it is NOT. . .

But hotel owners don't come to hotel lawyers to tell them how happy they are with a hotel operator. They either come to hotel lawyers to get help in signing up a hotel operator, or to complain about the unbearable financial pain caused by the incompetence, dishonesty and arrogance of their hotel operator. Sometimes the complaints are well-grounded and justify the termination of the long-term hotel management agreement, and perhaps even millions of dollars of compensatory and punitive damages.

How is it possible to terminate a hotel management agreement -- particularly one that purports to be a 30- or 50-year "no cut" management contract? Here at www.HotelLawBlog.com we have a few ideas . . .

Let's take a look at a few possibilities.

HOTEL LAWYERS -- OUR PERSPECTIVE

We are not "hotel operator bashers." This is a very small industry. We know and work with all the operators -- branded and independent -- and they are an invaluable part of the puzzle of successful hotel operation in most cases. We have had operators who only half-jokingly called us one of their most effective development offices. We have never failed to get a deal done for a client that wanted it done -- after the client understood the likely effects.

But JMBM's Global Hospitality Group(R) is not likely to be the first referral from many of the brands, because we don't lay down for the referring source, and we take our duty to protect our client seriously. We flourish on referrals from satisfied clients and consultants who appreciate the substantial value we can help create in a hotel management agreement.

Nonetheless, we are proud to say that we represent hotel owners, hotel developers and hotel lenders. We do NOT represent ANY of the major hotel brands (Marriott, Hilton, Starwood, InterContinental, Hyatt, Mandarin, Carlson or the others), because we made a conscious decision many years ago to serve the interests of hotel owners, hotel developers and hotel lenders. That decision has made it possible for us to advocate our clients' interest without compromise.

We have negotiated, re-negotiated, litigated and advised on many hundreds of management agreements -- possibly more than a thousand. In fact, we have more experience with more operators on more transactions than many representatives of the hotel companies themselves.

We know the hospitality industry's players, norms, customs and practices. We are part of the fabric of the industry. We act as consultants and advisors to help owners, developers and lenders get the right business terms on their projects, because we start with strategies, checklists, deal terms, approaches and documents that are specifically built from the ground up for hotel projects.

HOW TO TERMINATE A HOTEL MANAGEMENT AGREEMENT

Q: So why would JMBM's Global Hospitality Group(R), as an integral part of the hospitality industry, ever take on the operators to terminate a hotel management agreement?

A: Because SOMETIMES they deserve it., Our clients do what all business owners do when their contractual agreements are broken -- they call their lawyers. And we are hotel lawyers that represent the interests of owners, developers and lenders. We have no conflicts taking on the brands. That is really how we started our practice in the late 1980s -- breaking long-term no-cut hotel management agreements.

Q: How do you terminate a long-term, no-cut hotel management contract?

A: Terminating a long-term, no-cut hotel management contract is very difficult, but not impossible in the right circumstances. There are no "silver bullets" but there are a number of technical legal tools that may be available in the appropriate situation.

Q: So exactly how do you terminate a hotel management agreement? What are these tools?

A: The answer to that question is complex. It is best answered by describing some of the critical tools in the tool chest -- by laying some foundations, and building upon those. We anticipate doing just that in this blog (How to terminate a hotel management agreement) so our readers will understand some of the potential, and the cost benefit analysis.

WHAT ARE THE LEGAL TOOLS FOR TERMINATING A HOTEL MANAGEMENT AGREEMENT?

The critical starting point requires you to understand two things:

(a) it is possible to terminate a long-term, no-cut hotel management agreement (see the success story of our long-suffering client, the owner of the Ritz-Carlton Bali),

and

(b) a few basic pieces of information, like understanding that a hotel operator is an "agent" of the owner in most cases. For this, please see the JMBM article published in February 2000 (link is below) about Sheraton's actions on a large hotel in Washington DC. Appeals subsequent to the article changed the damages but not the underlying legal principles. See Terminating Hotel Management Agreements -- Thunder over Woodley Road.

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This is an important issue for hotel owners, developers and lenders. We will talk about it more and invite you to participate in this dialogue.

About the Author



Jim Butler is recognized as one of the top hotel lawyers in the world. He devotes 100% of his practice to hospitality, representing hotel owners, developers and lenders. Jim leads JMBM's Global Hospitality Group(R) -- a team of 50 seasoned professionals with more than \$40 billion of hotel transactional experience, involving more than 1,000 properties located around the globe. In the last 5 years alone, they have brought their practical advice to more than 80 "hotel-enhanced mixed-use" projects, a term Jim coined to fill a void in industry lexicon. This term describes one of the hottest developments in real estate-where hotels work together with shopping center, residential, office, retail, spa and sports facility components to mutually enhance the entire project's excitement and success.

Jim and his team are more than "just" great hotel lawyers. They are also hospitality consultants and business advisors. They are deal makers. They can help find the right operator or capital provider. They know who to call and how to reach them. They are a major gateway of hotel finance, facilitating the flow of capital with their legal skill, hospitality industry knowledge and ability to find the right "fit" for all parts of the capital stack. Because they are part of the very fabric of the hotel industry, they are able to help clients identify key business goals, assemble the right team, strategize the approach to optimize value and then get the deal done.

Jim is the author of the www.HotelLawBlog.com. He can be reached at +1 310.201.3526 or jbutler@jmbm.com.

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