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Beyond Force Majeure:
Navigating Hotel and Venue Contracts in a Post-COVID World

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Returning to In-Person Meetings

- Moving past the pandemic and related restrictions, what's next?
- Without government restrictions, it has become nearly impossible to successfully argue a force majeure termination
- Are there other ways associations can protect themselves?

Overview of Topics

- Room Block Review
- Site Visits
- Attrition
- Walk Clause
- Labor Issues (Strikes)
- Deposits and Deposit Schedules
- Cancellation Schedules
- Rebook and Mitigation
- Force Majeure
- Legislation
- Bankruptcy/Change of Brand or Management
- Construction/Renovation/Repairs
- Unavailability of Convention Center/Host Hotel

Preparing for Attendee Slippage

- Four years later, many associations are seeing significant decline in event registrations, and you need to be able to plan for potentially reduced attendance from pre-COVID years
- Account for hybrid conference registrations
- Depending how far out your event is, build in at least two opportunities to review and adjust your room block (increase or decrease) prior to the event date
- Reduction should be reflected in attrition/cancellation fees and F&B minimums

Site Visits

- Plan to schedule at least one or two site visits prior to the event
- Gauge staffing, availability of facilities, condition of hotel (including construction or changes to layout)

Attrition

- Don't get stuck paying penalties!
- Negotiate attrition for both food and beverage and room revenue to account for a potential reduction in attendance
- Attrition and all minimums to be based on final, adjusted room block
- Often, hotels are unwilling to offer favorable attrition *and* room block reviews

Guaranteed Reservations

- What happens when the hotel oversells?
- It's critical to have a "Walk Clause" in your contract to ensure your attendees are covered
- Without this clause, there is no protection for you or your attendees in an oversold situation

Labor Issues

- Very timely as Unite Here and major hotel brands have been unable to come to an agreement on contract – many expired on August 31
- Without a clause addressing labor issues specifically, groups are faced with difficult decisions including crossing picket lines
- Ideal clause provides:
 - Notice to group of any actual or impending labor dispute
 - Allows for termination without liability if labor disputes arise within 90 days of the event
 - Allows for termination despite the fact hotel claims they can still perform

Deposits

- Venues are asking for large deposits far in advance of the event
- For meetings several years in the future, negotiate a reasonable deposit schedule
- Makes successful termination without liability far more difficult
- Deposits should ideally be made on a staggered basis leading up to the event date

Cancellation Fees and Rebook Clauses

- Similar to deposits, cancellation fees are high from the time of contract signature
- Pay special attention to the dates and fees in the cancellation schedule
- Even if you have to pay fees, include a rebook clause to apply the fees to a future event
- Add a clause that requires the venue to “mitigate” its losses by making a reasonable effort to resell the rooms
- Include language that restricts the hotel from canceling the agreement for any reason except force majeure

Force Majeure

- Remember: the grocery list isn't the important part
- The standards for terminating are critical – impossible, illegal, commercially impracticable
- Commercial impracticability is a legal doctrine with a long-established history
- Include language that removes minimums in the event you decide to move forward despite the existence of a force majeure occurrence
- Force Majeure termination does not create an obligation for you to rebook
- New considerations for force majeure:
 - Discriminatory legislation
 - Cancellation by key attendees (keynote speakers, leadership)

Discriminatory Legislation/Administrative Actions

- We've now seen several situations where meetings are being cancelled due to legislation enacted in the particular jurisdiction
 - Transgender legislation
 - Gun legislation
- States are also restricting government-sponsored travel to other states with such legislation
- Consider a clause that allows for termination based on the introduction or enactment of discriminatory legislation – but only if you believe it will cause a significant reduction in attendance

Bankruptcy/Change of Brand or Management

- Allow for termination if either party declares bankruptcy or other financial distress
- Your contract is with a particular hotel brand or management company – if that changes, the hotel must notify you and you can terminate without liability.

Construction/Renovation/Repairs

- Many venues do not want to allow groups to terminate for construction
- Construction that causes a material disruption in your event should be a reason to terminate without liability
- Venue should provide you with notice of any construction being planned at least six months in advance
- Act in good faith – on both sides

Unavailability of Convention Center/Host Hotel

- For larger conferences, it is important to include language regarding the unavailability of the convention center
- Many agreements are with the CVB or the city itself – work with your representative on concessions, discounts, and availability
- Every secondary hotel agreement should allow for termination for cause if the convention center is not available for any reason whatsoever

Convention Center Agreements

- Oftentimes, convention center agreements are very one-sided as the convention center is likely owned by the city
- There are still ways to protect your event:
 - No reallocation of space without written approval
 - Read the fine print regarding sponsored spaces in the convention center – those may lead to restrictions on your event
 - Convention center must warrant that it will have functional heating/cooling
 - Convention center cannot terminate outside of a force majeure cause

Work With Counsel!

- This isn't a sales pitch – it's important to have legal review of your agreements
- Our goal is to be reasonable and work with properties to ensure flexibility but also to protect groups
- Nuanced language in these agreements may place you at a disadvantage

Questions?

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