

Franchising

How to avoid potential pitfalls in franchise agreements

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Hotel and Motel Management

Q What concerns should I have when reviewing my hotel franchise agreement?

A The franchise agreement is the most important legal document you'll need when buying a hotel franchise, since it comprehensively details the nature of the ongoing relationship between the franchisor and franchisee. You should have the contract reviewed by a lawyer familiar with franchise matters, especially since most agreements are extremely one-sided in favor of the franchisor. As such, many agreements are bereft with pitfalls for the unwary franchisee. The following are examples of some of the most abusive and inequitable provisions found in hotel franchise agreements.

Most franchise agreements obligate you to comply with the franchisor's "system." However, the agreement also may allow the franchisor to unilaterally modify the system's terms and impose the costs of conforming to such changes upon the franchisee. Consequently, you may be required to remodel your entire property if the franchisor so transforms its system. Of course, it is critical to the hotel brand and entire franchise system that each property in the system maintain a modern, uniform appearance. However, such provisions give unfettered discretion to the franchisor to implement unlimited changes without any regard for the resulting financial impact to the franchisee.

Many agreements require the franchisee to provide financial information to be used by the franchisor for any purpose. The franchisor could determine, based on financial information provided to it by you, that your occupancy rates and financial results warrant the placement of a competitive hotel in the vicinity of your property. Exclusive territorial rights are the only way to protect yourself.

Many agreements have potentially devastating termination provisions. Agreements have stated that similar violations of the ever-changing franchise "system" within a lengthy period of time, regardless of the materiality of the default, are grounds for termination. Under such a dangerous provision your franchise rights could be terminated over even a trivial but recurring issue. This provision could be easily exploited and result in the abrupt loss of your franchise rights and subject you to liquidated damages.
