

## NORTHERN CALIFORNIA CHAPTER

MEETING PROFESSIONALS INTERNATIONAL

## **HOTEL CONTRACTS BOOT CAMP!**

Legal Tips and Practical Guidelines for Meeting Professionals

Part 2



**MPI-NCC** 

22<sup>nd</sup> Annual Conference & Expo

January 20-21, 2010 Moscone West San Francisco, CA

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Certified Hospitality Marketing Executive

Consultant and Counselor to Associations, Trade Show & Event Sponsors, Meeting & Convention Professionals™

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### **HOTEL CONTRACTS BOOT CAMP!**

Legal Tips and Practical Guidelines for Meeting Professionals

John S. Foster, Esq., CHME

Part 2

#### I. INTRODUCTION AND OVERVIEW

> What we will discuss today

### II. ANALYZE THIS!

- ➤ Interactive Exercises / Key Concepts
  - Exercise #1 Get your facts straight
  - Exercise #2 Attrition Clause Guest Rooms & Catering
  - Exercise #3 Cancellation by Group (Guest Rooms & Catering)

### III. Q&A

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#### **INTERACTIVE EXERCISES**

The following contract clauses are for discussion only. Each clause came from an actual hotel contract. Analyze each one separately and decide what's good about them, what's bad about them and what should be revised. <u>Do not use these clauses in your contracts</u>

#### EXERCISE #1

## California Association of Liberal Students Wild and Indignant about Nearly Everything

(CALSWINE)

Meeting Dates: January 22-26, 2012

<u>Guest Room Accommodations:</u> This contract applies to the following block of rooms:

DAY	DATE	RUN OF	STAFF	ONE-	TOTAL
		HOUSE	ROOMS	BEDROOM	
				SUITE	
Sunday	January 22, 2012	100	10	2	112
Monday	January 23, 2012	100	10	2	112
Tuesday	January 24, 2012	100	10	2	112
Wednesday	January 25, 2012	100	10	2	112
Thursday	January 26, 2012	0	0	0	0

Total Room Nights Held by Hotel: 448

Anticipated Guest Room Revenue: \$89,600

Allowable Attrition: 10%

Room Rates:

Run of House: \$200.00 single/double occupancy

Staff: 50% off ROH Rate

**Concessions:** 

Comps: 1 per 50 occupied and paid for over the Meeting Dates.

Comps have no value. Comp rooms not used during your

meeting will be lost.

Health Club: Complimentary

One Bedroom Suite: Complimentary / 4 nights (over and above earned

comps)

Upgrades: All staff rooms

<u>Cut-Off Date:</u> One month (30 days)

<u>Commission</u> 10% per paid roomnight to [Third-Party] (excluding

attrition or cancellation and staff rooms)

Minimum Guaranteed Catering: \$50,000

Meeting Room Rental: Comp with 90% pick-up of room block

## EXERCISE #2 ATTRITION CLAUSE – GUEST ROOMS

- a) The rates and terms in this Agreement are based on CALSWINE's total number of room nights contracted, the meeting/function space needed based on your reservations and/or the number of catered food and beverage events and covers anticipated.
- b) The total contracted room block reserved for CALSWINE is 448. The MEGAGRAND HOTEL will allow your CALSWINE to reduce without penalty the guest room commitment to 90% of its original total. All reservations are due thirty (30) days prior to arrival (Cut-Off date). At that time, your room nights should equal no less than 90% of the contracted rooms (or a total of 403). Should room reservations on the Cut-Off Date total less than 403, an attrition charge for rooms below 403 will be posted to CALSWINE's account for convenience
- c) Attrition charges will be computed by multiplying CALSWINE's average rate, plus tax, plus an amount of revenue per occupied room calculated for the month the meeting takes place for lost revenue in room service, bars, restaurants, health club and other retail outlets times the difference between 90% and the actual rooms utilized. Final attrition charges may increase if no-shows or cancellations occur after the Cut-off Date.
- d) Should CALSWINE not pick-up at least 90% of the room block, the MEGAGRAND HOTEL reserves the right to either:
  - 1) Reduce the amount of meeting space it is holding for CALSWINE or charge a reasonable rental for the space used, at the HOTEL's discretion, and
  - 2) Eliminate all concessions and upgrades, including comp rooms, suites, and staff rates
- e) Should any of your catered food and beverage events be cancelled, reduced or taken off property, CALSWINE will be charged for the number of covers that are cancelled or reduced, multiplied by 90% of the revenue expected by the Hotel, plus tax, based on menu prices in affect at the time of the meeting.

#### EXERCISE #3

#### **CANCELLATION BY GROUP CLAUSE**

In the event you cancel this Agreement prior to the initial arrival date of your Group, the MegaGrand Hotel will necessarily incur damages including, for example, turning away other guest room reservations, the ancillary revenue associated with each guest room, meetings or functions, including the additional food and beverage revenue generated for the Hotel.

Under the terms of this Agreement, the MegaGrand Hotel is reserving the Room Block and meeting and/or exhibit space requirements described herein for your use. In the event these reserved facilities and related services are not used by you, the Hotel will experience significant financial losses.

Notwithstanding any other provisions of this Agreement, you shall have the right to cancel this Agreement, without cause, upon written notification to the Hotel at any time prior to the event and upon payment of an amount expressed below:

- Notice and payment received after signature and on or before <u>January 22, 2010</u> (25% of the Room Block x average Group room rate + F&B Minimum) \*\$72,400
- Notice and payment received between <u>January 23, 2010</u> and on or before <u>January 22, 2011</u> (50% of the Room Block x average Group room rate + F&B Minimum) \$94,800
- Notice and payment received between <u>January 23, 2011</u> and on or before arrival <u>January 22, 2012</u> (100% of the Room block x average Group rate + F&B Minimum) \$139,600

\*Calculated based on Total Room Revenue: 448 Room Nights x \$200 = \$89,600 Catering Food & Beverage Minimum = \$50,000 Total: \$139,600

These payments may be subject to the applicable taxes. The Parties agree that these sums are not a penalty and represent a reasonable effort on behalf of the MegaGrand Hotel to establish its loss prospectively and represent liquidated damages.

Such payment shall be made by certified check or wire transfer and shall accompany your notice of the exercise of this cancellation option. Any attempted exercise of this right without the inclusion of payment as set forth above, shall be invalid. Proper notice of cancellation is not a default but rather an exercise of a right under this Agreement to cancel this Agreement without any further obligations.

MegaGrand Hotel will not consider notice of cancellation valid and will not release accommodations held until payment of the liquidated cancellation damages is received, therefore delay in payment may result in higher damages owed.

Any cancellation for the sole purpose of utilizing another facility and/or city will result in one hundred percent (100%) charge of anticipated rooms, food and beverage, and function space revenue without respect to the date of cancellat

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Attorneys at Law 3355 Lenox Road, Suite 600 Atlanta, Georgia 30326

> 404-873-5200 - Office 678-510-1731- Fax John.Foster@FJGLaw.net

# JOHN S. FOSTER, ESQ., CHME Bio and Professional Background



JOHN S. FOSTER, ESQ. CHME is an attorney and counsel whose firm FOSTER, JENSEN & GULLEY, LLC specializes in the legal aspects of meetings & conventions, trade shows & events, and association management. He has been an associate or general counsel for over four hundred (400) national and regional associations and companies since 1986 and has been named as one of the 25 most influential people in the meetings industry by MeetingNews. His peers have also voted John a Special Recognition Award as "Corporate Member of the Year" through the Georgia Society of Association Executives. PCMA Members voted John special recognition as its "Author of the Year" for his frequent contributions to Convene magazine. John has also been selected as a Subject Matter Expert (SME) for the peer-to-peer assistance program and a Platinum Speaker for Meeting Professionals International.

John's professional experience includes twelve (12) years as a director of sales and marketing for Hyatt Hotels and Resorts, Marriott Hotels and Resorts, and Holiday Inns and he holds the Certified Hospitality Marketing Executive (CHME) designation from HSMAI. John is also a founding member of the Academy of Hospitality Industry Attorneys (AHIA) and is active in MPI, PCMA, and IAEM. He is also a long time member of ASAE and has been a member of the Legal Section and the Meetings & Exposition Sections. John is the legal columnist for *Convene*, published by PCMA, and the author of three books on the legal aspects of meetings and conventions: *Meeting & Facility Contracts, Meetings & Liability* and *Independent Meeting Planners & the Law.* John is also a co-author for PCMA's Professional Meeting Management book, chapter on "Contracts in the Meetings Industry". He has also served as a Subject Matter Expert on legal issues for MPI. John also provides outside legal services to MPI on industry contracts.

John has been an adjunct professor at Georgia State University and a guest lecturer at the University of Oklahoma, University of Georgia, and Arizona State University and Kennesaw State University in their respective meeting management programs.

John handles in-house legal training as well as contract preparation and negotiations for corporations and associations nationwide. He is a well-known expert in the hospitality industry and he speaks frequently at industry events worldwide.

Consultants and Counselors to Associations, Trade Show & Event Sponsors, Meeting & Convention Professionals<sup>sm</sup>

## **Hotel Contract Boot Camp - Part 2**

Hotel Contracts Boot Camp - Part 1 Contracting Tips for Meeting Professionals **MPI-NCC** 22nd Annual Conference & Expo John S. Foster, J.D., CHME Attorney at Law **Certified Hospitality Marketing Executive** ©2010 John S. Foster, Esq., CHME, All Rights Reserved Disclaimer: The handouts, visuals, and presentation are provided with the understanding that the presenter and sponsoring organization are not engaged in rendering specific legal advice or professional services through the distribution of the materials or the presentation. If legal or other expert assistance is required, please consult with a professional who is familiar with your specific circumstances What We Will Discuss Now > Interactive Exercises

- · Exercise #1 Get your facts straight
- Exercise #2 Attrition clause Guest rooms
   & Catering
- Exercise #3 Cancellation by Group

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## **Hotel Contract Boot Camp - Part 2**

AMERICAN ASSO WILD AND INDIGNA	CIATION OF LIBERAL STUDENTS ANT ABOUT NEARLY EVERYTHING (CALSWINE)
	Exercise #1
Meeting Dates: Guest Room Accommodations:	January 22-26, 2012 This contract applies to the following block of
DAY DATE R	UN STAFF ONE- TOTAL
Sunday Jan. 22, 2012	
Sunday Jan. 22, 2012 Monday Jan. 23, 2012 Tuesday Jan. 24, 2012 Wednesday Jan. 25, 2012 Thursday Jan. 26, 2012	100 10 2 112 100 10 2 112 100 10 2 112 100 10 2 112
Thursday Jan. 26, 2012 Total Room Nights Held by Hotel	0 0 0 0
Anticipated Guest Room Revenu Allowable Attrition:	e: \$89,600 10%
Room Rates:	\$200.00 single/double occupancy
Staff:	50% off ROH Rate
Concessions: Comps:	per 50 occupied and paid for over the Meeting Dates. Comps have no value. Comp rooms not used during your meeting will be lost.
Health Club:	Complimentary for Board Members
One Bedroom Suite:	Complimentary / 4 nights (over and above earned comps)
Cut-Off Date:	All staff rooms One month (30 days)
Commission	10% per paid roomnight to [Third-Party] (excluding attrition or cancellation and staff rooms)
Minimum Guaranteed Catering:	\$ 50,000
Meeting Room Rental:	Comp with 90% pick-up of room block
ATTRITION	EXERCISE #2  CLAUSE - GUEST ROOMS
a) The rates and terms in t	this agreement are based on CALSWINE's
total number of room space needed based or	nights contracted, the meeting/function n your reservations and/or the number of age events and covers anticipated.
The HOTEL will allow you	om block reserved for CALSWINE is 448. our CALSWINE to reduce without penalty nitment to 90% of its original total. All rty (30) days prior to arrival (Cut-Off date).
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<ul> <li>d) Should CALSWINE not p HOTEL reserves the right</li> </ul>	pick-up at least 90% of the room block, the to either:
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	EXERCISE #3
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## **Hotel Contract Boot Camp - Part 2**

#### EXERCISE #3 - PART 2 **CANCELLATION CLAUSE**

These payments may be subject to the applicable taxes. The Parties agree that these sums are not a penalty and represent a reasonable effort on behalf of the MegaGrand Hotel to establish its loss prospectively and represent liquidated damages.

Such payment shall be made by certified check or wire transfer and shall accompany your notice of the exercise of this cancellation option. Any attempted exercise of this right without the inclusion of payment as set forth above, shall be invalid. Proper notice of cancellation is not a default but rather an exercise of a right under this Agreement to cancel this Agreement without any further obligations.

MegaGrand Hotel will not consider notice of cancellation valid and will not release accommodations held until payment of the liquidated cancellation damages is received, therefore delay in payment may result in higher damages owed.

Any cancellation for the sole purpose of utilizing another facility and/or city will result in one hundred percent (100%) charge of anticipated rooms, food and beverage, and function space revenue without respect to the date of cancellation.



## Any Questions?

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