

MANAGER VS. OWNER: WHICH ONE MUST RESPOND TO A DATA BREACH?

By Sandy B. Garfinkel, Eckert Seamans

Hotels are among the most common victims of attacks on electronically-stored data. When hotel guests' personal information is stolen, responding to data breaches can be particularly complicated and costly for hotels because it usually requires compliance with many separate state's laws.¹ These state laws differ from each other but typically require that a specified notification about the incident must be sent to each affected guest and to consumer protection agencies. Other response measures may also be required. These laws often provide for recovery of damages by affected persons or monetary penalties imposed by consumer agencies.

Where a hotel is managed by a third party manager rather than by the hotel's owner, who is legally required to respond when a breach occurs?

Most state notification laws require that notifications must be made by an entity that maintains, stores or manages computerized data that includes personal information. Or, where a vendor maintains, stores or manages computerized data on behalf of another entity, the vendor must notify that other entity of the breach, and that entity must then notify affected individuals and discharge the remaining notice duties.²

Hotel management agreements usually establish that the manager is an independent contractor acting as an agent for the hotel owner in operating the hotel. If personal information of guests is stored, used or maintained at the hotel, the manager may be the one physically using and storing the information, but may be said to be doing so on behalf of the owner as owner's agent, and so, in effect, it is the hotel owner that "owns" the data and the hotel owner that is ultimately responsible to notify affected guests. As a practical matter, the manager may perform notification tasks but charge the cost (and pass on other liability arising out of the breach) to the owner. However, if the manager was negligent in permitting the data to be stolen, the owner may have recourse to seek reimbursement of liability and costs from the manager pursuant to indemnification clauses appearing in most hotel management agreements.³

Sandy B. Garfinkel is a member of the law firm of Eckert Seamans Cherin & Mellott, LLC. His primary practice is commercial litigation specializing in disputes within the hospitality industry. He has substantial experience advising clients regarding data security issues, including data breach response. He can be reached at sgarfinkel@eckertseamans.com, 412.566.6868. This article is for general informational purposes and does not constitute legal advice. For more information, please visit www.hospitalitylawyer.com.

This article was originally published in *Hotel & Motel Management*, available at <http://www.hospitalityworldnetwork.com/safety-and-security/legal-faq-hotel-data-breaches>.

¹ The data breach response laws of each affected guest's state of residence, not the law of the state where the hotel is situated, apply when guests' personal information is compromised.

² Legal requirements governing who must issue breach notifications vary from state to state.

³ Management agreements differ as to indemnification rights and duties between the manager and owner.

