



CAN A HOTEL ASK A DIFFICULT GUEST NOT TO RETURN?

By Tara L. Lattomus

If you've been in the hospitality industry long enough and have any involvement with the day-to-day operations of a hotel, you've probably encountered the difficult guest. You know the one. The guest that has a long list of complaints and is never happy, no matter how accommodating you are and how many ways you attempt to address the complaints, the guest is never happy. If really agitated, the guest may even threaten legal action or to involve the media (social and/or mainstream).

Once a difficult guest finally leaves, can a hotel tell them to "get out and stay out"? Maybe, but with caution.

What is clear is that anti-discrimination statutes prevent a hotel from refusing service to a guest based upon a number of protected classes. Under federal law, public accommodations cannot discriminate against or segregate guests based upon race, color, religion or national origin. Public accommodations include inns,

hotels and motels. The Americans with Disabilities Act also prohibits discrimination based upon disabilities. In addition, the states have individual anti-discrimination laws that cover discrimination based upon other characteristics. Delaware, for example, also includes age, marital status, creed, sex, sexual orientation and gender identity.

But even guests who are not members of a protected class may find protection under the

common law. Under common law, certain private entities that provide services to the public are required to serve the public without discriminating and can only refuse to provide services on reasonable grounds. The common law did not require that all private entities offering public services do so on a non-discriminatory basis. Restaurants or places of amusement or entertainment could pick and choose their customers on whatever basis they deemed appropriate. However, the obligation of innkeepers and hotel proprietors to accommodate travelers who acted with propriety and who had the means to pay was carried over from English law. Accordingly, under common law, hotels must accept guests unless there is a reasonable or non-arbitrary reason for rejecting a guest. Reasonableness depends upon the individual circumstances, but in the context of a hotel, it would be reasonable to refuse to rent a room to a guest who is engaging in bad behavior or illicit activities or whose admission would somehow interfere with the operation of the hotel. The common law right to rent a room still exists today although claims are less common because of the proliferation of federal, state and local laws providing similar protection since the civil rights movement.

So back to the difficult guest. If the hotel's only concern is with the guest's never ending list of complaints and threats of a potential lawsuit for meritless claims, then there would be no issue with violating anti-discrimination laws because the reason for refusing the guest has nothing to do with the guest being a member of a protected class. But, whether

or not the hotel would be required to admit the guest in the future under common law is not so clear. The hotel would have to determine whether the difficult guest interfered with the operation of the hotel during the initial stay to such an extent that the hotel would have reasonable grounds for barring the guest from future stays. This would depend upon just how difficult the guest was. There is a difference between a guest that calls the front desk five times to complain that the room is hot and a guest who threatens hotel staff and complains to other guests. Accordingly, whether a hotel can justify barring a guest from future stays will involve the subjective judgment of the hotel staff and when subjective judgment is involved, reasonable minds may differ and the guest may be able to assert a claim.

Given the potential exposure to common law claims, a hotel should proceed with caution if it decides to prohibit guests from returning to the hotel. If a guest is that disruptive, then the hotel should carefully document all of the guest's complaints and the hotel's attempts to resolve them. The more details the better. The hotel should also make note of the guest's behavior and treatment of hotel staff, and whether the guest attempted to involve other guests in his or her drama. Although not great for the hotel, it's almost better if the guest demands a refund or other compensation for their inconvenience because then the hotel can ask the guest to sign an agreement indicating that in exchange for the refund or payment, that the guest agrees not to return to the hotel. In that instance, the agreement should provide the hotel with sufficient protection.



About the author

Tara Lattomus helps clients negotiate hotel and resort management agreements with an eye towards avoiding future disputes and litigation. Tara's experience allows her to understand the broad range of issues that can arise in the context of both new-build and transitioning properties and draft agreements that provide her clients with the broadest protections. She represents both large and mid-size management companies, and appreciates that different clients may have different priorities. By working daily with general counsel and other business associates, Tara has developed a real-world approach to her practice that provides great value to her clients.

Tara has been in the firm's Delaware office since it opened in 2005. Since that office started small, Tara had the opportunity to practice in a number of areas and continues to keep her diversified practice to this day. She routinely advises clients involved in bankruptcy cases, assists with litigation matters and counsels local municipalities and authorities on a variety of issues. ABOUT ECKERT SEAMANS Eckert Seamans Cherin & Mellott, LLC, has more than 365 attorneys located in 14 offices throughout the United States, including Harrisburg, Philadelphia, and Pittsburgh, Pennsylvania; Boston, Massachusetts; Washington, D.C.; Richmond, Virginia; Wilmington, Delaware; Newark and Princeton, New Jersey; White Plains, New York; Providence, Rhode Island; Troy, Michigan; Charleston, West Virginia; and Hartford, Connecticut. The firm provides a broad range of legal services in the areas of litigation, including mass tort and products liability litigation, corporate and business law, intellectual property law, labor and employment relations, aviation law, bankruptcy and creditors' rights, employee benefits, environmental law, construction law, public finance, real estate, tax and estate law, and transportation law. Eckert Seamans' practice reflects virtually every industry and segment of the country's business. Clients include Fortune 500 companies, financial institutions, newspapers and other media, hotels, health care organizations, airlines, and railroads. The firm also represents numerous federal, state, and local governmental and educational entities. For more information about the firm, please visit www.eckertseamans.com.