



2009 Edition

California Innkeeper's Bill of Rights

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A Premier Hospitality & Real Estate Law Firm

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SERVING LODGING OWNERS & THEIR MANAGEMENT TEAMS
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Foreword

It is our privilege to present to the members of the California Lodging Industry Association, the 2009 edition of *California Innkeeper's Bill of Rights*. As advisers and advocates to lodging property owners, we understand the many difficult challenges and risks involved in developing, owning, and operating hotels in these times.

It seems like only yesterday that Y2K was paramount on everyone's minds. Innkeeping has become way more complex and risky. In addition to the ever changing and increasing number of local, state and federal laws and regulations with which a hotelier must comply, the external economic and political conditions can be unpredictable. Consider the events of September 11, 2001 and its aftermath during which travel nearly halted; the recession of 2002 – 2003 which perpetuated the negative effects of our already wounded industry; and the Hong Kong Flu and the Swine Flu that deterred fearful travelers. More recently, the financial meltdown of the credit markets and the second recession of the decade have crippled the debt markets and consumer spending that had become so reliant on newly created debt programs. Finally, though a new administration in Washington offers hope to many, it has used the bully pulpit to discourage business travel, further weakening an already distressed meeting and convention business.

Yet as always our industry will continue to survive and indeed in the days and years ahead the best and the brightest among us will thrive. Assisting hoteliers in using best business practices is what *California Innkeeper's Bill of Rights* is about. The goal is to provide concise, easy to understand information that can be readily used to guide a hotelier through a variety of situations encountered.

My career in the lodging industry now spans over a quarter of a century. Although I now serve as counsel to numerous hotel owners and management companies, during my career I have worked in almost every phase of our industry including, legal, financial, development, operations, marketing, and food and beverage. Each hotel, as a profit center and valuable business asset, has opportunity for creativity in concept and execution. The service we provide to our guests distinguishes our properties and fosters goodwill and repeat business. I remain passionate about the joy and comfort we bring to our guests and the challenge of helping to create positively memorable experiences in the context of great business opportunities. I urge all of the members to relish in their good fortune of being participants in our industry, and counsel that the resulting optimism will focus one's energies to optimize success.

Thank you to all of you who have supported us through the years, appreciated and sought our counsel, and recognized our commitment to remain at the leading edge of new ideas and ways of improving performance. We look forward to serving you all for many years to come.

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About the *Innkeeper's Bill of Rights*

This booklet, which we call "*California Innkeeper's Bill of Rights*," outlines some important legal issues and rights affecting innkeepers in providing accommodations, removing guests and access to and control over their establishments. We think you will find the information helpful in dealing with the unique challenges of running a lodging establishment today. More in-depth information is available through CLIA on many of the topics referred to in this booklet. Please note, however, that this publication is made available for the exclusive use of CLIA members.

Topics Covered

- Innkeepers May Charge Any Rate for Their Rooms
- Innkeepers Have a Duty to Furnish Accommodations, Unless Good Cause Exists to Refuse Accommodations
- Innkeepers Have a Right of Access to, and Control Over, Their Establishments
- An Innkeeper Can Remove a Guest if the Guest Acts Unreasonably or Annoys/Offends Others
- Innkeepers Can Place a Lien Upon Baggage and Other Property Belonging to Their Guests
- An Innkeeper's Liability for a Guest's Personal Property is Limited by Statute
- Notice to Law Enforcement Regarding Trespass
- Providing Accommodations to Minors
- Innkeepers have a Duty to Implement and Maintain Reasonable Security Procedures to Protect a Guest's Personal Information
- Innkeepers Duty Regarding Lost Property and Finder's Entitlement
- Bad Check Charges
- Pools and Lifeguards
- Shuttle and Van Transportation
- Overtime: Who is Exempt?
- An Overview of the American with Disabilities Act (ADA)

California Innkeeper's Bill of Rights

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Innkeepers May Charge Any Rate for Their Rooms

There is currently no legislation in effect with respect to the rates that may be charged by inns, hotels, and the like. However, every innkeeper must post in a conspicuous place such as the office or lobby and in every room a statement of the rate or range of rates charged for each room. (*Cal. Civil Code §1863(a)*). If a hotel nightly rate exceeds the posted rate, the penalty is that the guest may request (within 30 days) an adjustment of the bill. The hotel owner can either adjust the bill or may be forced to pay the greater of \$100 or three times the amount of the sum charged in excess of the posted rate. (*Cal. Civil Code §1863(b)*).

Innkeepers Have a Duty to Furnish Accommodations, Unless Good Cause Exists to Refuse Accommodations

Innkeepers have a duty to furnish accommodations to all persons absent good cause. While an innkeeper cannot deny accommodations to a person based on sex, national origin, color or disability under the Unruh Civil Rights Act (*Cal. Civil Code §51*), he or she may refuse accommodations for good cause (such as the violent propensities of the person). (*Archibald v. Cinerama Hotels*, 73 Cal. App. 3d 152, 1977 - "just cause" may include inability to pay or carrying of infectious disease. See also *Rahmel v. Lehndorff* 142 Cal. 681, 1904). Hotel owners should probably avoid trying to deny entry to persons based on infectious disease without convincing evidence because some diseases such as HIV/AIDS are considered a disability under the ADA which would make it illegal to discriminate against persons with HIV/AIDS.

Note: If an innkeeper refuses accommodations to any person without just cause or excuse, he or she may be guilty of a misdemeanor. *Cal. Penal Code §365*.

Innkeepers Have a Right of Access to, and Control Over, Their Establishments

Innkeepers have a right of access to and control over every part of their establishment because guests or patrons of an inn or similar lodging facility are mere licensees and not tenants. *Cal. Civ. Code §1940*. Thus, even a guest's individual room may be entered (if reasonably necessary) by a maid or other agent of the innkeeper. This right to enter an individual room clearly applies to entry to prevent damage or destruction of the innkeeper's property. *People v. Minervini*, 20 Cal. App. 3d 832, 1971 - *the management of a hotel retains control over all premises, including rooms occupied by guests. Roberts v. Casey*, 36 Cal. App. 2d Supp. 767, 1939; and *Fox v. Windemere Hotel Apartment Co.*, 30 Cal. App. 162, 1916.

Courts have held in the criminal context that a guest has a reasonable expectation of privacy in the individual room they rent. While this does not prevent the innkeeper from entering the room when reasonably necessary (i.e., in the performance of their duties), police cannot search a room without a warrant or facts constituting an exception to the warrant requirement. *People v. Williams*, 45 Cal. 3d 1268, 1297, 1988, see also *People v. McGrew*, 1 Cal. 3d 404, 1969.

Note: An innkeeper cannot waive a guest's fourth amendment rights to allow an otherwise unlawful search of a hotel room. *United States v. Winsor*, 846 F.2d 1569, 1571 (9th Cir. Cal. 1988).

An Innkeeper Can Remove a Guest if the Guest Acts Unreasonably or Annoys/Offends Others

A guest may be removed from the premises if he or she engages in unlawful or unreasonable conduct. Because guests do not have the rights of tenants (*Cal. Civ. Code §1940*), if a guest has breached his or her contract, the innkeeper may require him or her to leave the premises at once.

Under *California Penal Code §602*, occupancy at a motel for less than thirty days (without a written agreement to the contrary), will not be considered a tenancy and therefore a guest has no right to remain on the premises after being asked to leave for legitimate reasons. Thus, there is clearly no need to resort to legal eviction proceedings before forcibly removing a guest from the premises. *Perrine v. Paulos*, 100 Cal. App. 2d 655, 1950 —Innkeepers have a duty to furnish accommodations absent some reasonable grounds for refusing to do so.

Innkeepers Can Place a Lien Upon Baggage and Other Property Belonging to Their Guests

Because innkeepers are obliged to receive guests (unless good cause exists for refusing accommodations), they are given the right to compensation and the right to a lien on a guest's baggage that is brought to the hotel in connection with the guest's stay. To enforce this lien, an innkeeper must first obtain a writ of possession to take possession of the guest's belongings. After a writ has issued, a hearing is held to determine if the guest should be held responsible for the charges. Should the innkeeper prevail, judgment is entered and the property may be sold at public auction thirty days after the judgment has become final. After the sale is complete, the innkeeper receives the amount owed by the guest. The balance of the money, if any, may be claimed by the guest. *Cal. Civ. Code §1861*

An Innkeeper's Liability for a Guest's Personal Property is Limited by Statute

An innkeeper's liability for loss of (or injuries to) personal property is limited to \$1,000 in the aggregate. As to specific items, liability is limited to \$500 for each "trunk" and its contents, \$250 for each "valise or traveling bag" and its contents, \$250 for each "box, bundle or package" and its contents, and \$250 for all other personal property of any kind. However, an innkeeper may consent in writing to assume greater liability if he or she so desires. *Cal. Civ. Code §1859*.

A different standard applies to liability for loss (or injury to) "articles of unusual value," such as money, jewelry, documents, furs, jewelry, money. For these items, an innkeeper may limit his or her liability by providing a fireproof safe for the guests' use and place a notice in the room regarding the safe. If such a safe is provided, the innkeeper is not liable for any loss of (or injury to) such items if they are not placed in the safe (unless the acts of the innkeeper cause such loss). Even if items are placed in the safe, the innkeeper's liability is limited to \$500 (unless the innkeeper provides the guest with a receipt for the item and agrees to incur additional liability). *Cal. Civ. Code, §1860*.

Notice to Law Enforcement Regarding Trespass

Getting law enforcement officials to assist innkeepers in removing trespassers (guests or others), is often a challenge. Frequently, innkeepers encounter resistance by law enforcement to take actions, that by law, they are required to take when an innkeeper requests assistance. CLIA has developed the following "Notice to Law Enforcement Regarding Trespass" which we hope will be helpful in those circumstances where an Innkeeper needs law enforcement to intervene. Additional copies of the Notice are available from CLIA.

This notice advises of *Penal Code §602* (Misdemeanor Trespass) that became effective January 1, 1995.

1. For Occupancies of Less than Thirty Days, there must be Written Evidence of Tenancy for a Longer Duration.

Penal Code Section 602(s) provides that it is a misdemeanor for any individual to refuse or fail to leave a hotel or motel, where the individual has obtained accommodations and has refused to pay for the accommodations, upon request of the proprietor or manager, and the occupancy is exempt under *Civil Code Section 1940*:

"For purpose of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration be exempt under *Civil Code §1940*."

In other words, law enforcement need not evaluate any claim by guests of less than thirty days that they had an oral agreement that they could occupy the premises for more than thirty days. Unless a guest staying less than thirty days produces written evidence of some agreement for indefinite tenancy, the occupancy is exempt and the non-paying guest is subject to summary eviction and misdemeanor trespass charges for refusing to leave the premises.

2. Any Occupancy, Regardless of Duration, is Exempt if the Occupant Failed to Pay All Room Charges Owing as of the Thirtieth Day of Occupancy.

Civil Code §1940 adds a provision that a “tenant” subject to the protections of that Section ...

“shall not include a person to whom this paragraph pertains if the person has not made valid payment for all room and other related charges owing as of the last day on which his or her occupancy is or would be subject to (the bed tax, i.e., 30 days).”

In other words, a guest does not become a tenant by staying more than 30 consecutive days where the person has not made valid payment for all room and other related charges on the 30th day of occupancy. Such occupancies, regardless of duration, are exempt and, therefore, the occupant is subject to summary eviction and misdemeanor trespass if he or she fails to pay for any accommodations received and refuses to leave.

The purpose of these amendments is to better enable hotels and motels to enforce their rights against non-paying guests and to assist law enforcement officials to more readily enforce the trespass laws to evict non-paying hotel and motel guests.

Note: Be sure to check the guest out and obtain payment on or before the 30th day. Check the guest back in the next day if you wish.

Providing Accommodations to Minors

It is important to note that you cannot refuse to provide accommodations to a minor merely because of a person’s status as a minor. An unaccompanied minor who is still under the care of his parents may be able to disaffirm and not pay the hotel bill. *Cal. Family Code §6712*. An innkeeper can protect themselves when renting to minors by requiring that a parent agree in writing (such as by a fax signature) to pay the entire liability for the bill as to lodging, other charges, food and beverages and other services provided or damage caused by the minor to any person or property. *Cal. Civil Code §1865*.

Innkeepers Have a Duty to Implement and Maintain Reasonable Security Procedures to Protect a Guest’s Personal Information

An innkeeper is required to use safeguards to ensure the security of their guests’ personal information (defined as name plus SSN, driver’s license/state ID, or financial account number). An innkeeper that discloses personal information to a nonaffiliated third party must require that the unaffiliated third party consent to maintain the financial privacy of the guest’s personal information. *Cal. Civ. Code §1798.81.5*.

Reasonable safeguards include shredding, erasing, or otherwise encrypting the personal information to make it unreadable or indecipherable. *Cal. Civ. Code §1798.8*.

Innkeepers Duty Regarding Lost Property and Finder’s Entitlement

An innkeeper’s duty of care extends to lost or misplaced property. All employees should be instructed to immediately turn over to a designated person any found articles. A written record should be made specifying the date and place found, the description of the article, the name of the last occupant of the room where found, and the name of the finder. The article should then be deposited in a secure place.

Prompt efforts should be made to locate the owner. If the owner cannot be found or declines to claim the property, the property should be turned over to the local police department within a reasonable time. Once deposited to the police department the innkeeper is relieved of further responsibility for the property.

The employee who found the unclaimed property might assert a “finders” entitlement to the property. To avoid disputes as to ownership, innkeepers are advised to have a written agreement with all employees and independent contractors that requires them to turn over to management all property found within the hotel and waive any rights they might otherwise claim as finders.

Bad Check Charges

If a guest passes a check backed by insufficient funds (ISF), then the hotel may charge \$25 as a service fee for the first bad check, and \$35 thereafter for subsequent checks. *Cal. Civil Code § 1719*. The hotel may pursue the guest by sending a written demand for payment in full (including the check amount, the cost to send the certified mail, the service charge), sent via certified mail and referencing *Cal. Civil Code §1719*. The guest has 30 days from the date of mailing the demand to pay; otherwise, the guest can be liable for the greater of three times the amount of the check with a minimum of \$100 and a maximum of \$1,500 more than the check. When you collect treble damages, you cannot also collect the service fee or the cost of mailing.

Pools and Lifeguards

For limited service hotels that provide pools free of charge, there is no requirement to provide lifeguard service, but the pools must provide signs stating the hotel provides no lifeguard service. *Cal. Health and Safety Code §116045*. If the hotel charges a direct fee (separately stated) for the pool, then the hotel must provide lifeguard service. If the hotel provides lifeguard service, the lifeguard must have no duties other than being a lifeguard (such as handing out towels, etc.). *Cal. Health and Safety Code §116028*. If you supply lifeguards, there must be adequate lifeguards to maintain continuous surveillance over the bathers. *22 CCR §65539*.

Shuttle and Van Transportation

If the hotel provides shuttle service to and from the airport or other locations, the shuttle needs to comply with all regulations for buses. A “bus” is defined as a vehicle that carries more than 10 persons including the driver. *Cal. Veh. Code §233(b)*. If a vehicle is a bus, then the driver must have a commercial driver’s license, have drug and alcohol testing and specific maintenance requirements. If a hotel owner has a bus, it should contact the local CHP office to make sure that all vehicles are in compliance and get appropriate maintenance and inspections by the CHP once every 13 months. *Cal. Veh. Code §34501*.

Overtime: Who is Exempt?

A common issue for the lodging industry is determining when a hotel owner must pay overtime or when a worker is legally “exempt.” An “exempt” employee is one who meets two requirements with respect to both 1) duties, and 2) salary.

To meet the duties requirement, a worker must be either an Executive, Administrative, or Professional employee. The definitions of an Executive, Administrative, or Professional employee are defined by California law in *8 Cal Code Regs §§ 11010-11170*. One misconception is that job titles alone such as “manager” or “administrator” or “executive” determine whether an employee is exempt from overtime. That is simply erroneous. Job titles alone do not determine exempt status, pursuant to *Federal law, 29CFR §541.2*. It is also important to note that the employer must prove exempt status and that exemptions are strictly interpreted. *Coast Van Lines, Inc. v Armstrong (9th Cir 1948) 167 F2d 705, 707*. To be exempt, even if an employee may have some exempt functions, the employee must spend more than half of their time doing exempt work, that is administrative, executive, and professional work.

To meet the salary requirement, an employee must be paid two times the California minimum wage, which is a minimum monthly salary requirement of \$2,773.33, or \$640 per week. These amounts cannot be reduced for part-time schedules.

An Overview of the American with Disabilities Act (ADA)

Note: If your building has been inspected and approved (by making any required changes) by a licensed inspector (CASp licensed inspector), then you can obtain a temporary 50 day stay for any ADA lawsuit. *Cal. Civil Code § 55.53*. The inspection must be done before a lawsuit was filed. While there are no guarantees, the practical effect of having your hotel inspected and by providing the other side with that inspection report may facilitate an early dismissal of the lawsuit or a settlement on more favorable terms

ADA regulations are detailed and complex and we will give a short overview of the key areas a hotel owner should keep in mind.

Parking and Loading Zone: Verify minimum number of handicap accessible parking spaces based on the number of spaces in the lot. (For example, if you have 100 spaces, then you need three standard handicap spaces and one van accessible space). You also need to check signage, slopes, ramps, and the height of the parking area.

Exterior Routes: Verify slopes for entry and exit of premises, entry and exit to accessible guestrooms, swimming pools, bars, dining areas, and restrooms, fire exits. Also, verify warning barriers for obstructions, such as stairs, for blind or the sight-impaired persons.

Building Entrances and Lobby: Verify lobby entrance clearance, door controls, and that the check-in desk is no more than 36 inches high.

Interior Routes: Check slopes, doors, ramps and elevators for hallways, restrooms (for dimensions and accessibility), gift shops, dining areas, entrances and exits. In addition, check signage to make sure it is ADA compliant.

Rooms: Check to be sure that the hotel has the appropriate number of both hearing impaired rooms and accessible rooms based on the total number of hotel rooms.

Operating Issues: Make sure to train staff in how to assist persons with disabilities, have a TTY reservation number, and closed captioning.

Please note that the foregoing items is not intended as an exhaustive list but only representative issues about the ADA. For more in depth information contact the Department of Justice, or company specializing in performing ADA inspections and audits.

Below are a few resources to help learn more about ADA through the U.S. Department of Justice and their ADA homepage, by phone you can reach them at 1-800-514-0301, or TTY 1-800-514-0383. On the Internet, visit:

www.ada.gov
www.ada.gov/fivestep.htm
www.ada.gov/hsurvey.htm

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