



Hotel Liability

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- [Background](#)
- [Key Points to Remember](#)
- [Authority](#)
- [Duty to Receive Guests](#)
- [Right to Evict Persons Admitted as Guests](#)
- [Duty to Persons Who Are Not Guests](#)
- [Duty to Provide Safe Premises](#)
- [Responsibility for Personal Property](#)
- [Statutory or Contractual Limitations on Liability](#)
- [Innkeepers' Liens](#)
- [Good Samaritan Acts](#)
- [Unusual Cases](#)
- [Selected State Innkeepers Laws](#)
- [Additional Resources](#)
- [Organizations](#)

Background

Hotel guests should be aware of certain laws and regulations or policies that could impact their visits.

Special concerns affect the "hospitality industry" because its establishments hold their property open to the public at large. For hotels (collectively referred to as "innkeepers" under many state laws), duties owed to the public at large are based on the historic consideration that when weary travelers reached wayside inns as night approached, they were not to be arbitrarily turned away into the dark (the roads were filled with robbers) or otherwise subjected to the arbitrary mercy of the innkeeper with regard to prices or adequacy of quarters. Modern innkeepers' laws are mostly based on old English [COMMON LAW](#).

Key Points to Remember

- Hotels are not liable for every accident or loss that occurs on the premises, nor do they insure the absolute safety of every guest.
- Hotels have a general duty to exercise "reasonable care" for the safety and security of their guests.
- Hotels have a general duty to reasonably protect guests from harm caused by other guests or non-guests.
- Hotels have an affirmative duty to make the premises reasonably safe for their guests. This obligation includes a two-fold duty either to correct a hazard or warn of its existence. The hotel must not only address visible hazards but must make apparent hidden dangers or hazards.
- Hotels are not liable for harm to person or property unless "fault" can be established against the hotel.
- Hotels may be "vicariously liable" for the [NEGLIGENCE](#) of their employees.
- Hotels are generally liable for damages if they cannot honor a confirmed reservation because of "overbooking."

Encyclopedia of Everyday Law: Hotel Liability

- Hotels may generally sue for damages or retain deposits if confirmed reservations are not honored by prospective guests.
- Hotels may generally evict registered guests for a variety of well-established reasons.
- Hotels may retain personal possessions of evicted guests as security for room charges.
- Hotels are generally not required to have lifeguards on duty at hotel swimming pools, except by state [STATUTE](#). However, conspicuous "No Lifeguard" warning signs are minimally required.
- Hotels are generally not liable for valuables that are not secured in the hotel safe, if conspicuous notice is posted.
- Hotels are generally not liable for harm to guests caused by criminal acts of others, unless hotel fault is established.
- Hotels may generally limit their liability for losses if conspicuous notice is given to hotel guests.

Authority

The federal government has limited involvement in the private relationships between hotels and guests.

- Title 42 of the U. S. Code, Chapter 21, Sub-chapter II (Public Accommodations) makes prohibited [DISCRIMINATION](#) under the **CIVIL RIGHTS** Act of 1964 applicable to "any inn, hotel, motel, or other establishment which provides lodging to transient guests."
- Under a phase-in provision, hotels must meet the requirements of the Americans With Disabilities Act (ADA); any new or renovated hotel facility must comply with the Act's mandates for public access and/or removal of physical barriers.
- The Hotel and Motel Fire Safety Act of 1990 (as amended in 1996) imposes additional safety requirements upon hotel facilities above and beyond those found in local building codes.

Generally, most day-to-day liability issues affecting hotels are based on early English common law theories of contract and tort (negligence). States are free to enact their own statutes regarding innkeepers' rights and duties, so long as they do not abridge federal rights and most states have done so. Waivers or limitations to liability are also generally permitted, where not deemed "unconscionable" in law or fact.

Duty to Receive Guests

The very first and most important "public duty" of the hotel is the duty to receive guests. But the duty is not absolute and is subject to lawful excuses. Hotels may generally deny accommodations to a prospective guest for the following reasons:

- If the person is unwilling or unable to pay for a room or other establishment privileges
- If the person is visibly under the influence of alcohol or other drugs or creating a public nuisance
- If the person's use of a room or accommodation would violate the facility's maximum capacity
- If the innkeeper reasonably believes the person will use the room or facility for an unlawful purpose
- If the innkeeper reasonably believes the person will bring in something that would create an unreasonable danger or risk to others

Generally speaking, to avoid liability for refusal to receive a prospective guest, hotels must reasonably believe a person is unable or unwilling to pay, plans to use the room or premises for an unlawful purpose; or plans to bring a potentially dangerous object onto the premises.

Guest Reservations

Most hotels have well-established policies for making, confirming, and holding reservations placed by prospective guests. A confirmed reservation generally constitutes a binding agreement (in essence, a "reservation contract") between the hotel and prospective guest. If the guest fails to use the reservation, the hotel is generally entitled to damages. On the other hand, if the hotel breaches a reservation contract, the guest can sue the hotel for damages. If the hotel actually has accommodations available but fails to supply them as agreed, it may be liable for breach of its duties as an innkeeper.

Hotel overbooking often presents problems, and many hotels have adopted a pledge that requires their assistance in securing comparable accommodations, if, for any reason, a room should not be available for a patron who holds a valid confirmed reservation. A few states have enacted legislation that addresses hotel overbooking. Florida's law, for example, makes the hotel responsible for "every effort" to find alternate accommodations and up to a \$500 fine for each guest turned away because of the over-booking.

Right to Evict Persons Admitted as Guests

Hotels may generally evict a guest and keep the room rental payment, despite the [EVICTION](#), for the following reasons:

- Disorderly conduct
- Nonpayment
- Using the premises for an unlawful purpose or act
- Bringing property onto the premises that may be dangerous to others
- Failing to register as a guest
- Using [FALSE PRETENSES](#) to obtain accommodations
- Being a minor unaccompanied by an adult registered guest
- Violating federal, state, or local hotel laws or regulations
- Violating a conspicuously posted hotel or motel rule
- Failing to vacate a room at the agreed checkout time

Generally speaking, to avoid liability for evicting a guest, the guest must have refused to pay; or the innkeeper must reasonably have believed that the person used the room or premises for an unlawful purpose or brought a potentially dangerous object onto the premises.

Duty to Persons Who Are Not Guests

A person who is not a guest (or intending immediately to become a guest) generally has no right to enter or remain on the premises over the objection of the hotel. Nor can a non-guest resort to public areas of the premises, such as lobbies or hallways, without the consent of the hotel. Despite the fact that the hotel has held itself out to the public with an invitation to enter and seek out accommodations, any person who enters without the intention of accepting an invitation for accommodations remains on the premises only by the consent of the hotel.

A widely-acknowledged exception to this general rule is that a non-guest or stranger coming to the hotel at the request or invitation of an existing guest has a right to enter the premises for that purpose; otherwise, the guest would unfairly be deprived of a privilege necessary for his or her comfort while at the hotel. However, the hotel may revoke such permission if the non-guest engages in conduct which would justify his or her eviction.

There is no duty to permit non-guests into the hotel public areas for the purpose of soliciting business from hotel guests. To the contrary, there is a duty to protect guests from bothersome or troublesome non-guests. Accordingly, most hotels have posted notices that prohibit [SOLICITATION](#) of any kind on the premises.

Duty to Provide Safe Premises

The duty of an hotel to provide safe premises is based on the common law duty owed to business and social invitees of an establishment. Under common law, hotels must exercise reasonable care for the safety of their guests. Hotels may be found negligent if they knew or should have known, upon reasonable inspection, of the existence of a danger or hazard and failed to take action to correct it and/or warn guests about it. Accordingly, hotels have an affirmative duty to inspect and seek out hazards that may not be readily apparent, seen or appreciated by patrons and guests. In addition, they may have an affirmative duty to warn guests of dangers or hazards. If the risk of harm or damage was foreseeable, and the hotel failed to exercise reasonable care to either eliminate the risk or warn guests of its existence, the hotel may be liable for any resulting harm or damage caused by its negligence ("proximate cause").

However, the law does not protect hotel guests from their own negligence. An "open and obvious" hazard, such as a bathroom tile floor that becomes slippery when wet after reasonable use, is not a basis for liability. On the other hand, if a poorly maintained bathroom fixture results in standing water on the tile floor, and an unsuspecting guest enters the bathroom and slips on the tile, the hotel would most likely be liable for damages. Likewise, standing water on any floor in the hotel, if left standing beyond a reasonable time for management to have detected and eliminated it, may result in liability for the hotel.

Hotel swimming pools are a major topic for [LITIGATION](#) battles. After a rash of lawsuits in the 1970s, diving boards have disappeared from almost all hotel pools. But that has not stopped diving accidents from occurring as a result of swimmers leaping from the edges of pools, piers, and docks. It is important that "NO DIVING" signs are posted in highly visible areas. There is no minimum requirement regarding the number or nature of posted warnings, but a hotel's diving-accident history is key in establishing what would be considered "adequate," "sufficient," or "satisfactory" posted warnings in any legal matter. Statutes in most states do not require the presence of lifeguards at hotel pools. However, "NO LIFEGUARD" warnings should be posted and visible from all angles of the pool. All water recreational facilities must have emergency telephone service.

Harm or Damage Caused by Other Guests

Hotels have an affirmative duty to exercise reasonable care for the safety and security of their patrons. This obligation may include the duty to evict or otherwise restrain drunken or disorderly guests or patrons who may possibly cause harm to other guests or their property. However, the hotel also has a duty not to cause foreseeable injury or harm to the drunken or disorderly guest as a result of the eviction. Under those circumstances, hotels must seek more reasonable alternatives, such as contacting police and arranging safe transport of the drunken or disorderly guest or escorting the person back to his/her room (if this can be done safely without the risk of recurring problems).

A major area of liability exposure is in the serving of alcohol to guests and non-guests. If the hotel actually creates the risk of harm by serving alcohol to an already-intoxicated person, other laws come into play, most notably, state "dram-shop" acts. These laws generally provide that persons injured by intoxicated persons may sue the seller/provider of the alcohol (in this case, the hotel). Hotels can also lose their liquor licenses for serving minors, and, in many states, can be sued for a subsequent drunken driving accident caused by the minor.

Hotels also may be liable for the [PERSONAL INJURY](#) of guests caused by the criminal act of another patron or guest, if it can be established that the hotel was negligent or at fault. Criminal acts of other patrons do not always fall into the category of foreseeable risks that hotels can protect against. Nonetheless, in assessing potential fault of the hotel, several factors will be considered. Was the injury or harm reasonably preventable? Who was in charge of security? Were security personnel properly trained? Is there a past history of crime at the hotel? Were assessments of security risks ever established for the hotel? Were security personnel uniformed? Were there an adequate number of security persons on hand to handle routine matters as well as potential emergencies or crises?

Harm or Damage Caused by Third Persons

Hotels have an affirmative duty to exercise reasonable care for the safety and security of their patrons. Therefore, they must protect their guests and employees from foreseeable criminal acts of third parties. In most states, a greater burden of protection is placed upon hotels than upon landlords and other business owners. However, the law in this area varies greatly from state to state. Most states hold that hotels are not liable for third-party crimes unless at fault (negligent) in reasonably protecting guests from foreseeable harm.

For example, numerous court decisions nationwide have found hotels liable for failing to provide adequate locks on doors and windows. While the lodging industry does not recognize an official "standard of security," there are several minimum safety and security measures that indicate compliance with "standard practices," and have in fact been used to establish legal precedent. These would include dead-bolt locks, viewing devices (peepholes) on room doors, chain locks, communication devices (telephones to enable emergency calls for assistance), and track bars for sliding glass doors. Closed circuit television has been found to be fundamental to reasonable security in facilities with several entrances, high-risk parking lots, or remote locations.

It is fair to say that the ultimate test in establishing hotel liability is to ask whether the hotel had taken reasonable steps to prevent certain crimes, in light of the relevant facts and circumstances surrounding the particular incident. Often, the hotel is simply the location of a random crime. Other times, it is the preferred location for a particular type of crime, thereby enhancing the probability of its recurrence, and raising questions of potential liability.

Generally, the same or similar [ASSESSMENT](#) of hotel security will be appropriate for crimes committed by third parties as for those committed by other guests or patrons. Ultimately, there must be fault on the part of the hotel in failing to prevent harm caused by foreseeable risks. The probability of occurrence of a particular crime or type of crime, as well as the level of care required from the hotel, are questions of fact which may vary from case to case.

Natural Disasters, Acts of God, Public Enemies, Catastrophic Exposures

Common law and most state statutes excuse hotels from liability if guests are injured or harmed as the result of an act of God or natural disaster. Hotels are likewise not liable for terrorist acts or harm caused by public enemies. Most hotel insurance policies exclude coverage for catastrophic or widespread disasters which affect a great number of insureds or an unmanageable number of claimants. Acts of war, damages arising from nuclear energy, and certain exposures to pollutants are routinely eliminated from coverage. Notwithstanding, hotels are keenly sensitive to enabling guests to vacate the premises, in an orderly and speedy fashion, in the event of a catastrophe.

Responsibility for Personal Property

To avoid liability, most hotels exempt themselves or substantially limit their liability for loss or damage to valuables kept in hotels rooms. Most will post conspicuous notices declaring that valuables worth more than a certain amount of money (e.g., \$250) must be stored in the hotel safe in order to be covered for loss. When a hotel requests that a guest state a "declared value" for valuables, the hotel generally has the right, on behalf of its insurer, to inspect the valuables for stated value. Room safes are generally recommended only if they contain digital keypads, and the guest assumes all responsibility for getting into the safe and keeping the combination confidential.

A hotel is generally not liable for loss of luggage or other personal items belonging to guests of the hotel and lost in areas other than the guest's private room, unless the hotel or its employees are at fault.

Statutory or Contractual Limitations on Liability

Hotels may waive, exclude, or limit liability coverage for certain losses or harms, including dollar amount limitations on loss of valuables, and may exclude from coverage any assaults or crimes committed by third parties. It is imperative that guests check their hotel's policies prior to checking in, to review its liability limitations.

All states have enacted legislation that permits hotels to limit their liability for damage to guests or their [PERSONAL PROPERTY](#). This action even may include limits placed on damages resulting from the hotel's own negligence ("exculpatory clauses"), unless found to be "unconscionable" in certain jurisdictions.

Whenever hotels intend to limit their liability, it is almost always required that they notify guests in a conspicuous manner. Failure to post adequate notices in conspicuous locations may result in a court finding that the limits are not in effect and that the hotel must cover the entire loss, if applicable.

Innkeepers' Liens

Many states have retained the common law right of an "innkeeper's lien." If a hotel has properly evicted a guest, or if a guest refuses to leave or pay, the hotel may take into its possession the personal property of the guest and hold it as security for hotel charges. Innkeepers' liens differ from others in that the hotel need not take physical possession of the guest's personal property, but may simply prevent its removal from the hotel until the debt is satisfied. Hotels cannot sell the goods or personal property until there has been a final judgment in an action to recover charges.

Good Samaritan Acts

Laws regarding Good Samaritan acts generally apply to hotel personnel in emergencies. Most states have Good Samaritan Acts that generally shield persons from liability if they try to save a life but fail. Florida was one of the first states to enact new legislation allowing hotel desk clerks, among others, to revive heart attack victims using automated defibrillators, without the fear of exposure to unreasonable lawsuits.

Unusual Cases

In the 1996 case of *Woods-Leber v. Hyatt Hotels of Puerto Rico, Inc.*, a federal district court found that the posh oceanfront Cerromar Beach Hotel in Dorado, Puerto Rico was not liable for damages caused by a rabid mongoose that entered upon the hotel grounds and bit a guest. The hotel had no control over adjacent bordering swamplands, and no history of recurrent visits from mongooses.

Nor was there liability in two bizarre swimming pool cases: one involved the death of a 12-year-old girl whose hair was caught in a whirlpool's suction; the other involved a Scottish Inn guest's [ENTRAPMENT](#) when his genitals became stuck in the pool's suction hole. There is no duty to warn of unique hazards.

In 1999, several pre-lawsuit notices were filed against California hoteliers for alleged violations of California's controversial "Proposal 65 of 1986." The statute was intended to provide warnings about hazardous waste sites and contaminated water. However, lawyer Morse Mehrban, on behalf of the California Consumer Advocacy Group, sued Hilton Hotels, Fairfield Inns, and Residence Inns by Marriot for alleged violations of "Prop 65" involving guest exposure to chemicals in alcoholic beverages, chemicals in second-hand tobacco and cigar smoke, and noxious fumes in enclosed parking structures. Under the law, violations must be corrected within 60 days of notice. Prop 65 places primary burden on the manufacturer or packager of alcoholic and tobacco products, but responsibility shifts to hotels when products are separated from their original packaging, such as when hotels serve "house wine" or "house cigars" from hotel humidors. In such cases, liability can be avoided if hotels post required warning signs or correct the defect within the notice period.

Selected State Innkeepers Laws

ALABAMA: See Title 34 of the Alabama Code of 1975, ACA 34-15. Hotel owners may eject guests for [INTOXICATION](#), [PROFANITY](#); lewdness, brawling, or otherwise disturbing the peace and comfort of others. Hotels must give oral notice to leave the premises and return the unused portion of any advance payment. Refusal to leave upon request is a [MISDEMEANOR](#).

ALASKA: See Title 8 of the Alaska Statute, Chapter 56, "Hotels and Boardinghouses." which discusses such issues as registration, refusal to register, liability for valuables, and baggage liability.

ARIZONA: See Title 44 of the Arizona Revised Statutes, Chapter 15. Arizona has special provisions for the posting of minimum and maximum rates, and a [STATUTORY](#) requirement to have advertised accommodations available.

CALIFORNIA: See California Civil Code, Sections 1861-1865. Hotels may evict guests who refuse to depart at checkout, with proper notice of check-out time and a need to accommodate another arriving guest. Moreover, if a guest refuses to leave, the hotel owner may enter the room and take possession of the guest's personal property, re-key the door, and make the room available to new guests. The personal possessions may be sold to enforce an innkeeper's [LIEN](#).

COLORADO: See Title 12 of the Colorado Revised Statutes Annotated, 12-44-302 codifies common law with respect to refusing accommodations to certain persons.

FLORIDA: See Florida Statutes Annotated, FSA 509.141. In addition to the usual reasons for evicting guests, Florida hotels may evict a person for injuring the facility's reputation, dignity, or standing.

Encyclopedia of Everyday Law: Hotel Liability

GEORGIA: See Chapter 43 of the Georgia Code, 43-21-2, et seq; 48-13-50, et seq. Georgia has a very comprehensive statute that expressly outlines the rights and duties of hotels; much of it is carried over from common law.

IDAHO: See Titles 39 of the Idaho Code, Sections 39-1805 and 1809. The statute follows the common law general reasons for denying accommodations to or evicting guests. The statute expressly permits hotel owners to enter the rooms of guests who fail to pay and leave and remove personal property to be held by lien.

IOWA: See Iowa Code Annotated 137C.25C and 137C.25. Iowa follows the general rules for denying accommodations and for evictions.

KANSAS: See Kansas Statutes Annotated, 36-604 and 602. Kansas adds a few more categories to the general rights to evict guests: failing to register as a guest, using false pretenses to obtain accommodations, exceeding the guest room [OCCUPANCY](#) limits, or being a minor unaccompanied by a parent or [GUARDIAN](#).

LOUISIANA: See Louisiana Statutes Annotated 21:75 and 76. Louisiana expressly requires that a hotel owner notify a guest at least one hour before the time to leave, before he may legally evict the guest. After this, the hotel may have law enforcement personnel remove the guest and personal belongings.

MINNESOTA: See Minnesota Statutes Annotated 327.73. Minnesota follows the general rules for denying accommodations and for evictions.

MISSOURI: See Missouri Revised Statutes, 315.075 and 315.067. Missouri follows the general rules for denying accommodations and for evictions.

MONTANA: See Montana Code Annotated 70-6-511 and 70-6-512. Montana follows the general rules for denying accommodations and for evictions and expressly adds the right to evict guests for refusing to abide by reasonable hotel standards or policies.

NORTH CAROLINA: See Chapters 72 of the North Carolina General Statutes, Article 1. North Carolina has express provisions that address liability for lost baggage, losses by fire, safeguarding of valuables, and hotel rights for negligence of the guest. North Carolina also has an express provision for the admittance of pets to hotel rooms.

OKLAHOMA: See Title 15 of the Oklahoma Statutes Annotated, OSA 15-5-8 and 506. Oklahoma follows the general rules for denying accommodations and for evictions.

OREGON: See Chapters 699 of the Oregon Revised Statutes, "Innkeepers and Hotelkeepers." Oregon's thorough statutory provisions cover liability for valuables, baggage, and other property. Special provisions address personal property left in a hotel for more than 60 days. Guests who refuse to leave or pay are deemed "trespassers" under Oregon law and may be removed by force without the hotel incurring liability.

PENNSYLVANIA: See Pennsylvania Statutes Annotated, PSA 37-106 and 103. Pennsylvania follows the general rules for denying accommodations and for evictions.

RHODE ISLAND: See RIGL 5-14-4 and 5-14-5. Rhode Island follows the general rules for denying accommodations and for evictions.

SOUTH CAROLINA: See South Carolina Statutes Annotated, SCSA 45-2-60 and 45-2-30. South Carolina follows the general rules for denying accommodations and for evictions.

TENNESSEE: See Tennessee Code Annotated 68-14-605 and 68-14-602. Tennessee follows the general rules for denying accommodations and for evictions.

UTAH: See the Utah Code Annotated, UCA 29-2-103. Utah follows the general rules for denying accommodations and for evictions.

Additional Resources

"ADA Compliance Needs Practical Approach." Dawson, Adam, and Charles Sink. *Hotel & Motel Management*, 15 September 1997.

"California Hoteliers Fend Off Lawsuits Alleging Harmful Chemical Exposure." Carolyn Woodruff. *Hotel & Motel Management*, 19 July 1999.

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The Laws of Innkeepers. Sherry, Jophn H. Cornell University Press, 1972.

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U. S. Code, Title 42: Public Health and Welfare, Chapter 21: Civil Rights, Subchapter II: Public Accommodations. U. S. House of Representatives, 1964. Available at http://uscode.house.gov/title_42.htm

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Organizations

American Hotel & Motel Association

1201 New York Avenue. NW, #600
Washington, DC 20005-3931 USA
Phone: (202) 289-3100
URL: <http://www.ahma.com>

Educational Institute of American Hotel & Lodging Association

800 North Magnolia Avenue, #1800
Orlando, FL, FL 32803 USA
Phone: (800) 752-4567

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