

9 Strategic Points in a Well Written Attrition Clause

1. Base damages on lost profit, not 100 percent of the lost revenue.

Lost profit is defined as gross revenue minus variable expenses, not 100 percent of lost revenue. Hotels track profit and loss separately in each revenue-producing department. In order to know whether a damage clause is asking for "too much" or "too little," you have to know what percentage of revenue represents lost profit to a hotel. The industry average profit margin in guest rooms is 70 percent to 80 percent; in catered food, 30 percent to 40 percent; and in alcohol, 80 percent to 85 percent. Formulas for attrition damages should be based on these percentages.

2. Guest room attrition should be based on a combination "per night" and "cumulative" basis.

Analyze each night of the group's stay to see if the room usage meets the minimum required based on allowable attrition. On nights guest room usage exceeds the minimum, the overage should carry over cumulatively to subsequent nights so that it offsets any nights the group is under the minimum.

3. Define "sold" and "sold out." A "sold" room should be defined as all of the following:

Rooms occupied by a paying guest, rooms comped to a group or individual, and rooms billed to other groups or individuals for attrition, cancellation, no-show, and/or early departure. "Sold out" should be defined as the hotel's total inventory minus off-market and sell-last rooms. Off-market rooms include those being repaired, renovated, and/or comped. Sell-last rooms include rooms held for last sale to members of hotel's preferred guest program. Also, consider stipulating that suite parlors will not count in the inventory.

4. Account for "sold out in advance" situations.

Meeting sponsors should not be responsible for any attrition damages if the hotel represents itself as being sold out to anyone attempting to make a reservation prior to arrival or check-in, and that no additional reservations will be accepted on one or more nights of the group's in-house dates. The fact that the hotel may open up and have rooms to sell later over the group's in-house dates is not something the meeting sponsor can control and should therefore not be held responsible.

5. Anticipate changes in the economy and provide for revisions in the contract.

If the economy declines substantially after the contract is signed, the contract should allow the meeting sponsor to revise attendance and room block projections without limits or liability. Planners and hoteliers can use terms in the contract that allow future room blocks and attendance forecasts to be revised based on the economic indicators published by experts. The recognized leading source for economic statistics is the Conference Board, a nonprofit organization that tracks 10 leading economic indicators. Its data with analysis can be located at www.conference-board.org.

6. Base attrition damages on the hotel's average occupancy for the past three years during the same period.

Suppose you are negotiating with a resort in Scottsdale, Ariz., for a meeting in July, and the property's occupancy in that month historically runs between 50 percent and 60 percent. It's valid to use the high-end figure of 60 percent in attrition calculations: A 500-room hotel becomes a 300-room hotel for attrition purposes (500 minus 40 percent equals 300). The property does not have a realistic expectation of running a higher occupancy than that, so when that level of expectation is reached, the hotel should be satisfied (not wildly ecstatic, just satisfied).

7. State that all rooms occupied in the hotel by your group's attendees will count toward your group's pickup to reduce attrition damages, regardless of rate paid.

Hotels, not meeting sponsors, ultimately make the final determination as to what rate an

individual pays. If the hotel wants to offer discounted rates on its Web site or on Internet sites, that's fine, as long as attendees who obtained a discount rate are still counted in the group's pickup.

8. Insist on an audit provision.

This idea, which I first introduced in a *Convene* article in 1996, is finally catching on. A hotel asserting a claim for attrition damages has the burden of proving that those damages are legitimately owed. A meeting sponsor should always have the right to look at the hotel's in-house records to independently ascertain the accuracy of the hotel's claim. (This right exists without an audit provision as well.) Those individuals looking at the records should agree in advance to sign a confidentiality agreement in order to meet privacy requirements.

.9. Insist on credit for unused comps.

A term frequently seen in hotel contracts is: "Comp rooms must be used during the meeting dates. Comps have no value and cannot be applied as a credit to the master account." Why not? In legal terms, meeting sponsors give "consideration" in order to receive the comps. Since comps are earned, they have value. If your group doesn't use all its comps, then it should receive a credit for the unused comps at the group rate on the master account.