

✦ DANGERS OF “NO ATTRITION” PROVISIONS.

A hotel company recently announced an offer to enter contracts with “no attrition” for certain group bookings. Some planners hoped that this would start an industry trend, but it is unlikely that will happen. A few hotels made similar offers during past economic downturns, but they did not become common for both legal and business reasons.

Typical hotel contracts involve an agreement that at a date in the future the hotel will provide and the customer will use and pay for the guest rooms, meeting space and food and beverage events at the prices agreed upon in the contract. These contracts usually contain a clause, often referred to in the industry as an “attrition” clause¹, stating that if the customer does not meet its minimum commitment, it will pay agreed upon damages to the hotel to make up for the loss. A “no attrition” contract is one in which the hotel agrees that the group will not owe anything if it does not fill its commitment.

However, to create a valid contract, the parties must have binding commitments to each other. If there is no attrition obligation, then the customer is not really committing to provide any minimum amount of room nights or revenue to the hotel. Arguably, in that situation there is not really a binding commitment, and as a result, there is not a binding contract.

There was a famous hotel case from the late 1990’s involving a group that claimed to owe no damages to a hotel because there was no attrition clause in its contract. The court ruled that no damages were owed—not because there was no attrition clause—but because there was no commitment by the group at all, and thus no contract. If there is no valid contract, neither party owes anything to the other for cancellation or attrition.

Thus, a question raised by a “no attrition” provision is what happens if the event is cancelled? The hotel might argue that because the contract had a cancellation clause that there was a binding commitment. However, if the group reserved 500 room nights and owes nothing if it only picks up 10 room nights, a court or arbitrator would probably determine that it would be unreasonable to require the group to pay cancellation damages if it cancels completely. Why would it be fair for the group to owe nothing if it cancels 490 room nights but owe large amounts if it cancels 500?

Groups might think that this is great, as they would not owe the hotel for attrition or cancellation. However, if the hotel and group do not have binding obligations to each other, then the hotel would have the right to cut the group’s room block or even cancel

¹ The correct legal term is actually “performance” instead of “attrition.”

the contract without owing the group. This could be devastating to a group that relies on its annual meeting as its primary revenue source or that planned a product launch and now has no place to hold its event.

Another reason that hotels are unlikely to agree to “no attrition” is that they need “real” business to report to owners, stockholders and lenders. No attrition contracts are reminiscent of the mortgage crisis in which mortgages were bundled and sold as investments and turned out to be worthless. Hotels that consider to no attrition contracts as definite may face similar risks.

No attrition contracts also have broader negative implications for the economy. Whenever a group does not fill its commitment, housekeepers, bell staff, cooks, banquet servers and other hotel employees do not work. Meeting planners do not get commission, and hotel sales staff lose incentive pay. The “ripple effect” continues outward to impact cab drivers, restaurants and so on.

Groups understandably are concerned about potential attrition exposure in a down economy, and may be hesitant to enter into contracts. Instead of requesting “no attrition” there are a variety of ways groups and hotels can partner to keep the industry working while minimizing potential damages. These include:

1. Wait to enter into contracts. Instead of booking years in advance, wait until closer to the event dates when you can better project your needs.
2. Block rooms conservatively. It is better to underestimate the amount of rooms you will need than to risk attrition damages.
3. Look for “need dates” when a hotel has openings and will be willing to offer special deals to fill them.
4. Negotiate room block review dates that allow you to release a certain portion of the block without payment. A hotel may rather have rooms released earlier to have an opportunity to resell than be left with empty rooms at the last minute, even if it is paid attrition damages.
5. If you already are facing attrition, the hotel may be willing to renegotiate some obligations, provide marketing dollars or other incentives to attract attendance or do other things to help you and your event.

Meetings and events are a critical component of the U.S. economy and all participants in the industry should work together to keep events happening. Since “no attrition” contracts pose many risks to the parties and the industry, it is wiser to use other approaches to manage attrition issues.