

Duff on Hospitality Law

Premises Security 101 for Northwest Hoteliers and Restaurateurs

By Greg Duff on 12.10.10 | Posted in Hotels

Given the recent attention paid by clients to local security issues (including the recent and well received Hotel Industry Security Forum sponsored with the [Washington Lodging Association](#) – see [Ruth Walter's recent post on this event](#)), I thought it a good time to review the obligations imposed by law on hoteliers and restaurateurs in Washington and Oregon to protect their guests and customers from crimes committed by third parties. In other words, what responsibility does a hotel or restaurant owner have for guests or customers who are injured (or whose property is damaged or stolen) by criminals. As I explain below, the more a hotel or restaurant owners knows about potential criminal conduct at her establishment, the more likely it is that she may be held responsible for not warning and/or protecting her guests or clients against it.

To fully appreciate and understand this issue, it is important to have a little background . . . First, state law in both Washington and Oregon (and nearly every other state) imposes on business owners of all types the obligation to protect customers from dangerous conditions that a business owner knows or has reason to know to exist on the business premises. Second, these same state laws rarely impose on people the obligation to protect others from the criminal acts of third parties. Finally, exceptions to the second principle have been found to exist where business owners enjoy special relationships with their customers so as to put the business owners in a unique (and possibly better) position to be able to protect their customers or clients. Examples of these "special relationships" included transportation providers and their passengers, employers and their employees and, you guessed it, hotel owners and their guests. In 1997, Washington (like a growing number of states who have addressed this issue, including Oregon) concluded that all business owners (regardless of the type of business) have customer relationships sufficient to impose an obligation to both discover and warn or protect their customers against criminal acts where such acts are reasonable foreseeable.

So what does this mean practically for hoteliers and restaurateurs? There are a couple of important key points to remember:

- Hoteliers and restaurateurs only have a duty to discover / warn / protect when the harm to the guest or customer by a third person is foreseeable. Not until the hotelier or restaurateur knows or has reason to know of the harm does the duty arise.

- Foreseeability is likely found to exist where the hotelier or restaurateur knows or has reason to know of the specific harm or general category of harmful activity. In other words, while the hotelier may not have had reason to know that his guest would be physically assaulted in the hotel's garage, the hotelier could be held responsible if he knew of general ongoing criminal conduct (e.g. car prowling, theft, etc.) in the hotel's garage.
- Knowledge on the part of a hotelier or restaurateur includes both actual knowledge and constructive knowledge (i.e. knowledge imposed under the circumstances). Constructive knowledge can be based on the general location or nature of the hotelier's or restaurateur's business or the hotelier's or restaurateur's personal experience. Courts that have looked at this specific issue tend to focus on the history of violence known to the business owner. In other words, the more you know about crime being committed in or around your business, the more likely it is that you will be found to have knowledge of future crimes being committed against your guests or customers.
- Finally, and perhaps most importantly, the duty owed to a hotelier's or restaurateur's guests or customers includes both (a) the duty to discover that criminal acts are being committed or are likely to be committed and (b) the duty to warn guests or customers so that they may avoid harm or to protect them against harm.

As I said at the outset, the more a hotelier or restaurateur knows about crime at or around his location (which is the likely outcome of the hotelier or restaurateur fulfilling his obligation to discover criminal activity), the more likely it is that the hotelier or restaurateur must discover even more about the crime and warn of, or protect his guests or customers against, the crime. The standard creates somewhat of a vicious circle for any business owner facing crime at or around his or her business.

While I never advise clients to bury their heads in the sand and ignore the events and activities going on around them, I do routinely advise clients that taking a responsible and proactive approach to area crime requires that they must act appropriately in response to the information that they receive. Knowledge plus inactivity is a recipe for disaster.

Tags: Association, crime, Forum, hotel, Hotel Industry Security Forum, Hotel Security, hotels, Industry, Lodging, Oregon, restaurants, Ruth, Ruth Walters, Security, Walters, Washington, Washington Lodging Association