

would rather do business directly with a group representative and not have to pay a commission. A group representative may come across a hotel that refuses to provide commissionable room rates and won't consider the use of an intermediary, and the group representative may have to give on this provision. As the provision is written, it provides flexibility in that, if a group representative does decide to use an intermediary, it can be specified in the Exhibit A to the MHSA. If not, this provision isn't triggered and doesn't apply.

- 3.1.1 Commissionable Room Rates. If so specified by Customer, where third-party intermediary ("Intermediary") is designated to act on behalf of Customer in booking a Meeting with Hotel, and unless an Exhibit A expressly states to the contrary, Hotel agrees that: (a) Hotel shall pay a ten percent (10%) commission to such Intermediary on the actualized room revenue; (b) such Intermediary shall be paid such commission within thirty (30) days following the In-House Dates; and, (c) the commission due to such Intermediary is not transferable to another party or agency.

Rebated Room Rates

"Rebated" room rates are a derivation of commissionable room rates and are a bit of an oddball. In some cases, a hotel will be willing to offer a commission on a room rate but will adamantly refuse to lower their room rate by the amount of the commission if the commission isn't needed. As an example, a hotel may specify that its room rate is "\$100, 10% commissionable," but, when a group representative asks the hotel to lower the rate to \$90 because he or she doesn't want the commission, the hotel refuses to do so. That's the oddball part—why won't the hotel further lower the room rate by the amount of the commission that the

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group representative doesn't want? I've never gotten a straight answer from a hotelier as to why, but here's what I've been able to surmise... Apparently, the revenue from a room rate is captured within a hotel's *sales* budget. Commissions, on the other hand, are paid from a hotel's *marketing* budget. Since the sales budget determines compensation for a hotel sales person, and the marketing budget doesn't, a hotel sales person will refuse to lower the room rate (which would cut into the sales person's compensation) but still be willing to offer a commission (which doesn't affect compensation because it's coming out of a different budget). I'm not sure if that's really accurate, but it's my best educated guess. By the way, my guess as to the behavior of hotels in regard to commissionable room rates counters the argument that using intermediaries actually increases room rates for groups.

What does a group representative do in this circumstance? The group representative isn't using an intermediary, so he or she doesn't need the commission. The hotel refuses to lower the room rate by the amount of the commission. But the hotel is still willing to pay a commission. Therefore, there's money (in the amount of the commission) laying on some table somewhere. Here's a possible solution: the group representative should ask for the commission in the form of a rebate paid to the group representative. Some hotels readily give up commissions in the form of a rebate versus lowering the room rate. The *Rebated Room Rate* provision accounts for this oddball situation.

Similar to the *Commissionable Room Rate* provision, this provision is standard fare and doesn't apply unless triggered by an Exhibit A to the MHSA. I've had hotels object to this language because they don't, as a practice, rebate commissionable room rates to a group representative—which is fine. In this provision, the rebate is first used to ❶ pay any amounts due to hotel, and, ❷ if any amount remains unused, to be paid

to the group representative. Be sure to read my discussion of “duty to disclose” following the provision below.

- 3.1.2 **Rebated Room Rates.** If so specified by Customer, and unless an Exhibit A expressly states to the contrary, Hotel agrees that where no Intermediary is designated to act on behalf of Customer, Hotel shall provide a ten-percent (10%) rebate to Customer based on the actualized room revenue. Such rebate shall be: (a) ❶ applied against any amounts due to Hotel from Customer; or, (b) ❷ where such rebate cannot be consumed in the context of the applicable Meeting, Hotel shall remit a rebate to Customer for such corresponding value. Such rebate shall be due to Customer no more than thirty (30) days following the In-House Dates.

There’s another practice of “rebates” that is worth noting here but that the foregoing provision doesn’t cover (nor the MHSA covers)—that’s the practice of a group representative asking a hotel to add a specified amount as a rebate (usually in dollars versus a percentage like commission) to the room rate. The attendees then pay the room rate which includes the rebate and the hotel pays the rebate to the group representative. A legitimate example for using such a rebate would be to add \$5 to the room rate so that the group representative can use that amount to pay for shuttle service for attendees. A not so legitimate purpose would be for a group representative to put the rebated amount to their bottom line. A question arises as to whether there is a duty to disclose a room rate rebate to attendees. In my personal opinion, there is no duty to disclose the rebate if it is being used to solely and directly benefit the attendee. As a further basis for my position that there is no duty to disclose, the attendees are paying the same room rate—the hotel wasn’t willing to lower the room rate anymore but it was willing to

provide me with a rebate as a concession. On the other hand, if the rebate is going to the bottom line of a group representative or a group representative asked for a rebate when in fact he or she could have gotten a lower room rate instead, then, in my personal opinion, the rebate should be disclosed (in advance) to attendees.

Taxes

There is nothing particularly exciting or controversial in this provision. It merely requires the hotel to be detailed in providing information relating to any mandatory taxes or fees imposed by state and local ordinances. Hotels rarely make changes to this provision, and, when they do, it's to clarify a certain mandatory tax or occupancy fee.

- 3.2 **Taxes.** If Room Rates are subject to state and local sales tax or an occupancy fee, all such taxes and/or fees shall be stated in an Exhibit A. Customer shall not pay any taxes on gratuities unless such tax on gratuity is set forth in an Exhibit A and in all cases only to the extent required by law.

Lowest Room Rate; Published or Confirmed

Imagine this... A group representative bargained hard on room rates with the hotel that's hosting the meeting. The group representative went back and forth a few times with the hotel and finally—and firmly—the hotel responded, “We’re giving you an incredible room rate, and we’re not going to lower it a penny more! Take it or leave it.” The group representative smiles and feels proud that he got the best deal possible for his attendees. He responds to the hotel, “You’ve got a deal.” At the meeting, an attendee approaches the group representative and says, “The Left-Handed Paint Ball Players Association is having a meeting here, too. In fact, I met one of the paint ball players, One-Eyed Carrie, at the bar