

LODGING



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LEVERAGING LOYALTY
IN THE LIFESTYLE
HOTEL SPACE

TRAFFIC JAM

CRACKING DOWN ON
HUMAN SLAVE TRADE

▶ THE INDIVIDUALISTS

HOTEL COLLECTIONS AND
SOFT BRANDS TAKING
THE INDUSTRY BY STORM

LINDSEY UEERROTH
PRESIDENT & CHIEF EXECUTIVE OFFICER
PREFERRED HOTELS & RESORTS



BACKSTORY

A Mixed Bag

THE LEGALITIES OF MULTI-USE DEVELOPMENT BY CHRISTINE KILLION

IN MARKETS WHERE REAL ESTATE IS LIMITED or cost prohibitive, multi-use or mixed-use developments offer an attractive solution. The asset-light option can look like a winning strategy to both hotel developers and investors, and the ability to sell off portions of the space creates an opportunity to earn back large sums of money from an investment quickly. Sharing operations and maintenance costs allows for a sustainable model that can benefit a hotel's

bottom line. And with proper planning, the prime space can be well positioned for a smooth sale in the future.

However, mixed-use developments also come with their own set of unique challenges. The arduous process requires juggling multiple interests while navigating ownership rights, licensing, tax planning, and even signage agreements. On top of that, developers must anticipate and prepare for the legal implications of unforeseen scenarios like sales, brand deflaggings, and consolidations.

Dan Bachrach has been providing legal guidance within the hospitality and development space for more than two decades. He has negotiated contracts for timeshares, condominiums, master-planned communities, and hotel management agreements, but the

partner at Foley & Lardner's Hospitality Group says that mixed-use development is like a soup that mixes all of those challenges together. "The ability to get all the pieces and players to work together and accomplish what they need to move forward upon delivery, conveyance, or releasing certain mortgages, requires some creative thinkers and some flexibility," Bachrach explains. He

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adds that the financing of such a project can be a difficult and time intensive task—made more so by any rigidity on the lender's part or inexperienced counsel. The nuances that crop up and steer a deal in another direction delay development further.

But with proper piloting through the construction process, the financial benefits of mixed-use properties are clear. Hotel developers can off-load some of the debt by selling portions of the property for retail, office space, or residential uses. That benefit creates a more attractive ratio of debt to equity than a typical new-build financing scenario, Bachrach says, and it can mean better financing rates, terms, and leverages. The caveat is that the deal must be structured in a way that the lender releases portions of the property when the developer is going to sell. "For instance, if you're getting a construction loan, the lender is going to secure the entire project. If you're going to sell the retail to a REIT when it's completed, the buyer needs to be able to take that piece free and clear from the loan," Bachrach explains. "You have to know how to accomplish that in setting up your legal descriptions. It can be complicated, but it's doable."

For hotel developers considering these kinds of structures, Bachrach points out that the first step should be to make sure that the lender, the lender's lawyer, and the developer's own lawyer have a mutual understanding of the structure and the steps required to effectuate it. In an age of consolidation, negotiations must also address potential occurrences like changing brand standards and deflaggings. "Today, everyone's happy and getting along, but what happens if the two pieces separate or go in different directions? Suddenly you have two different competing brands in the building," Bachrach says. He cites the example of a building with residences and hotels managed under one brand. Both rely on the shared economies of scale from having the same management, operations team, and maintenance. However, Bachrach says, both parties need to negotiate and agree from the start on how to proceed in those types of circumstances. For example, a hotel that switches brands would give the residences an automatic easement to use shared facilities for operations.

With land prices rising in urban markets and a push for efficient, shared operations that have a smaller economic footprint, more hotels developers may consider turning to mixed-use. Starting off on the right legal footing can position those properties for success and sustainability in the long term. ☺