



The ABC's of Evicting Guests

This article discusses the legal and practical considerations which come into play when an innkeeper finds it necessary to evict a guest or some other occupant of his or her hotel. The first, but certainly not the only, questions which the innkeeper needs to ask himself or herself when considering the eviction of an occupant are: **(1)** Do I have proper legal grounds, or reasons, to evict the individual in question? **(2)** Assuming that I have proper legal reasons to evict the individual, is he/she **(a)** a *guest*, whom I can evict right now, without prior notice or the need to go to court, or **(b)** a *tenant*, whom I can evict only by giving appropriate notice and filing a lawsuit? **(3)** Assuming that the occupant is legally a guest, what is the best *practical* course of action to follow to accomplish my goal of evicting the occupant? **(4)** What pitfalls should I be aware of to avoid subjecting myself or my employees to liability?

As to the first question—whether the innkeeper has proper legal grounds, or reasons, to evict someone—it is generally the case that the grounds which permit an innkeeper to evict a guest are the same grounds which would have permitted the innkeeper to refuse to give the occupant a room when the person tried to check in. As discussed in Chapter 4 of *Laws Pertaining to the Innkeeper* (3rd rev.ed., California Hotel & Lodging Association, 2002), those grounds are, generally, a lack of available rooms, inability or refusal to pay, potential improper conduct, and so on. Thus, if the occupant wants to stay longer than he/she initially agreed and the innkeeper has a full house coming in, or if the person stops paying, or if the person engages in inappropriate conduct (e.g., committing a crime, disturbing the other guests), the innkeeper will typically be entitled to evict the individual. If, however, the reason that an innkeeper wants to evict a person would **not** have constituted “just cause or excuse” to refuse to give the person a room in the first place (see Section 4.2.2), that reason will probably not form a sufficient legal ground, or reason, for the innkeeper to evict the person.

It is also important to keep in mind the legal distinctions between *guests* and *tenants* and the different rights that they have vis-à-vis the innkeeper. To reiterate briefly: While a *guest* merely has a license to use the premises, and may therefore be summarily evicted for “just cause” (discussed below), the innkeeper must resort to the courts for appropriate action to

evict a *tenant*. Moreover, a guest, unlike a tenant, is not entitled to receive a notice to “quit” (leave) prior to being evicted.ⁱ

If the first two questions posed in the opening paragraph are answered satisfactorily (that is, are the sufficient legal grounds to evict the person and is he/she a guest whom I can summarily evict?), the innkeeper still has a number of important issues to consider. One cannot merely “throw” someone out of the hotel, regardless of the time of day, the weather, and other factors, and some careful thought has to be given as to how best to handle the situation so that there is no violence or similar problem. The innkeeper might need to get the police involved in some cases. The manner in which the innkeeper and his staff handle the situation can expose the property and the employees to considerable liability for defamation, infliction of emotional distress, assault, battery, and so forth.ⁱⁱ

Appropriate Grounds for Eviction of a Guest

As noted above, the same reasons that would give an innkeeper the right in the first instance to refuse to give a room to a prospective guest will constitute sufficient grounds to evict the person after he/she has become a guest at the hotel.

✓ Lack of Available Rooms

This situation typically arises in the case of an existing guest when the guest promises to leave on a specified day and fails to do so, and the innkeeper has a full house coming in and has valid reservation contracts with arriving guests who will have to use the existing guest’s room. If the innkeeper cannot get rid of the existing guest so that he/she can accommodate the incoming guests, the innkeeper will have breached his/her contract with the incoming guests and will incur liability as a result.

Of course, if the existing guest refuses to leave the property when he/she promised to do so, it is a breach by the guest of his/her contract with the innkeeper. In such a case, the innkeeper

could sue the “holdover” guest for the damage that the innkeeper suffers as a result of the breach, but collecting it after the holdover guest departs is typically difficult and not worth the effort.

This unsatisfactory set of alternatives caused many innkeepers to consider eviction of the holdover guest as the simplest way to deal with a bad situation. Unfortunately, prior to January 1, 2000, the law in California was very unclear as to whether an innkeeper had an unbridled right to “lock out” the holdover guest in such a situation. Consequently, the California Hotel & Motel Association introduced legislation in 1999 to remedy this situation by making it clear that an innkeeper can in fact evict a holdover guest, as long as certain simple steps are followed. That legislation (Senate Bill 1171) was signed by Governor Davis and became effective January 1, 2000. Among other things, Senate Bill 1171 added Section 1865 to the Civil Code. The operative provisions of Civil Code Section 1865 as pertains to holdover guests are the following:

1865. (a) For purposes of this section, “hotel” means any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment, but it shall not include any residential hotel as defined in Section 50519 of the Health and Safety Code. “Innkeeper” means the owner or operator of a hotel, or the duly authorized agent or employee of such owner or operator.

(b) For purposes of this section, “guest” means, and is specifically limited to, an occupant of a hotel whose occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from [California’s landlord-tenant law].

(c) In addition to, and not in derogation of, any other provision of law, every innkeeper shall have the right to evict a guest in the manner specified in this subdivision if the guest refuses or otherwise fails to fully depart from the guest room at or before the innkeeper’s posted checkout time on the date agreed to by the guest, but only if both of the following conditions are met:

(1) If the guest is provided written notice, at the time that he or she was received and provided accommodations by the innkeeper, that the innkeeper needs the

guest's room to accommodate an arriving person with a contractual right thereto, and that if the guest fails to fully depart at the time agreed to the innkeeper may enter the guest's guest room, take possession of the guest's property, re-key the door to the guest room, and make the guest room available to a new guest. The written notice shall be signed by the guest.

(2) At the time that the innkeeper actually undertakes to evict the guest as specified in this subdivision, the innkeeper in fact has a contractual obligation to provide the guest room to an arriving person.

In the above cases, the innkeeper may enter the guest's guest room, take possession of the guest's property, re-key the door to the guest room and make the guest room available to a new guest. The shall be entitled to immediate possession of his or her property upon request therefor, subject to the rights of the innkeeper pursuant to Sections 1861 to 1861.28, inclusive [of the Civil Code].

This statute gives innkeepers the right, if needed, to evict holdover guests. Note that, as with Penal Code Section 602(s), which is discussed below, Civil Code Section 1865 applies only to *guests* and specifically does not pertain to "persons who hire" real property, including tenants, lessees, boarders, lodgers, and others, no matter what they are called. It is important that all innkeepers instruct their staff members carefully as to the key elements of this law and establish policies and procedures to insure that it is complied with at all appropriate times. First, when the guest checks in, the innkeeper should, of course, confirm with the guest the date and check-out time when the guest has agreed to leave. Second, the innkeeper *must* give the guest *written* notice: **(1)** that the innkeeper needs the guest's room in order to accommodate an arriving guest who has a contractual right to occupy that room, and **(2)** that if the guest fails to completely vacate and leave the room by the time agreed, the innkeeper may enter the guest's room, take possession of the guest's property, re-key the door, and give the room to the arriving guest who has a reservation. Third, the innkeeper must be sure that the guest signs the notice. The statute does not require the use of any particular words, but the notice which innkeepers provide should be as clear and unambiguous as possible in order to ward off claims that the guest was not fully informed at the time of check-in of what would happen if he/she held over.

The statute does not require that you give all guests this notice all of the time. An innkeeper should determine the specific times of the year, month, week, etcetera, when there is a risk of holdover guests and utilize this procedure on for the periods when it is needed. And as with all other policies and procedures, it is important that this particular mechanism be employed on a consistent, uniform, non-discriminatory basis.

If it becomes necessary to evict a guest from his or her room for failing to depart at the agreed-upon time, and assuming that the appropriate notice was given, the innkeeper should have in place established practices pursuant to which the staff effectuates the eviction. The statute permits the innkeeper to enter the guest's room and collect all of his/her belongings. There is no requirement that more than one employee carry out this task, nor is there any requirement that an inventory be made of the guest's property. However, it is advisable to do both, because this will reduce the risk that there will later be a claim that valuable property was stolen or damaged. (But even if the evicted holdover guest makes a claim that valuable property was stolen or damaged, the innkeeper is still protected by the limits in Civil Code Sections 1859 and 1860). The guest's property should be safeguarded so that it can be returned to the guest when he/she asks for it. The innkeeper cannot keep the guest's property to satisfy a debt that the guest might owe for the room, because the common law innkeeper's lien has been declared unconstitutional in California and in most other states. The innkeeper can, however, initiate a court proceeding to recover the amount that the guest owes and, as part of that court proceeding, get a court imposed lien that will allow the innkeeper to retain the guest's property to satisfy whatever judgment the innkeeper ultimately obtains.

✓ **Refusal to Pay**

The common law granted the innkeeper the right to evict guests who refused to pay any lawful charges incurred at the inn. But the fact that the common law allowed the innkeeper to evict a nonpaying guest and the actual effecting of such an eviction often proved very difficult if the guest decided to "stonewall" it and refuse to leave his room. As a result, the California Hotel & Motel Association sought to get the failure to pay an innkeeper treated as a criminal trespass -- as opposed to a merely civil matter -- and thereby entitle the innkeeper to invoke the help of the police in evicting the guest in such cases.

The Legislature enacted Penal Code Section 602(s) in 1981 for just this purpose. This important statute provides the following:

602. Every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor: * * *

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from [California's landlord-tenant law].¹⁰

Penal Code Section 602(s) makes it a misdemeanor criminal trespass for a hotel guest to refuse to pay for accommodations which he has received. Accordingly, the innkeeper may call the police to have the offending occupant arrested. This becomes important in view of the fact that innkeepers are liable, even where just cause exists for an eviction, if the eviction itself is carried out improperly, as, for example, where excessive force is used. As with Civil Code Section 1865, which is discussed in Section 7.2.1, above, Penal Code Section 602(r) applies only to *guests* and specifically does not pertain to "persons who hire" real property, including tenants, lessees, boarders, lodgers, and others, no matter what they are called.

If the innkeeper is confronted with a guest who refuses to pay what he/she owes, the innkeeper is required to ask the guest to make payment for what is owing. It is when the guest refuses or fails to do so and then refuses to vacate the premises that he/she has committed a criminal trespass under Penal Code Section 602(s). There is nothing in the statute that indicates how much time the innkeeper must give the guest to make payment after the request therefor has been made. In most cases, a court will probably conclude that a "reasonable" period of time should be provided. It is suggested that the innkeeper inform the guest at the time that the request for payment is made that if payment is not made in full within the time specified, the guest must immediately vacate the premises, and that failure to do so will constitute a criminal trespass under Penal Code Section 602(s). The guest should further be informed that the innkeeper will take all appropriate steps, up to and including having the guest arrested, if he/she fails either to pay or to vacate.

At the point where all reasonable means have been used to resolve a non-payment situation, and the guest has clearly become a trespasser within the meaning of Penal Code Section 602(s), the best method for effecting the removal of the trespasser is through the local police or sheriff. In this situation, the matter can be handled in two entirely distinct manners. In the first, *the police office arrests the guest under the officer's authority*. In the second, *the innkeeper makes a citizen's arrest with police assistance*. In the first situation, the police officers are making the arrest, and in the second situation the innkeeper is actually making the arrest (a citizen's arrest), and the police are merely taking the arrested person into custody and transporting the arrestee from the hotel in aid of the citizen's arrest made by the innkeeper.

The first method is clearly the preferable scenario, because it minimizes the risk of innkeeper liability both for false imprisonment and for injuries suffered during the arrest. As a practical matter, when confronted with the authoritative presence of an officer, and facing imminent arrest, many non-paying guests/trespassers will leave on their own. The author is aware that in many cases local law enforcement personnel are reluctant to make an arrest in this type of situation, often because the law enforcement personnel are not familiar with the specifics of Penal Code Section 602(s) or are confused as to whether the occupant might in fact be a tenant, as opposed to a guest. CH&LA suggests that the officers be informed as to the particulars of Penal Code Section 602(s) and reminded that they have full authority to make an arrest and to take the individual into custody whenever they (the officers) see a crime being committed in their presence. That is, of course, exactly what happens when the officers witness the innkeeper demand payment and the guest refuses either to pay or to leave the hotel.

The second means of removing such a "trespasser" is for the innkeeper to effect a citizen's arrest with police assistance. However, this method is less preferable from a liability standpoint. Penal Code Section 837 authorizes a private person to arrest a person who commits a public offense, including a violation of Section 602(r), in his or her presence. Under Penal Code Section 839, a private person who wants to make a citizen's arrest may request the presence of a police officer to perform the physical act of taking the arrestee into custody. California courts have upheld this type of arrest. (*People v. Johnson*, 123 Cal.App.3d 106 (1981) (cert. denied), and *People v. Campbell*, 27 Cal.App.3d 849 (1972).) In both cases the court upheld the right of citizen's arrest for observed misdemeanors and the citizen's right to delegate to a peace officer the act of taking the offender into custody. In this type of situation,

the innkeeper could possibly be liable, depending on the facts, for any false imprisonment since the arrest is made under his or her authority and responsibility, not the officer's. This entire subject is discussed further in Chapter 12 of *Laws Pertaining to the California Innkeeper*.

The California Hotel & Lodging Association often receives questions about whether it is lawful for an innkeeper to refuse to provide services to a guest who refuses to pay what he/she owes. The simple answer is that *as long as the individual is a guest and not a tenant*, the innkeeper can certainly stop providing services, and can in fact do so without exercising its right to evict the guest from the hotel. **But if the occupant is a tenant, a refusal to provide services will often constitute wrongful eviction and subject the innkeeper to substantial liability.**

✓ **Violation of Hotel Rules**

The basic innkeeper-guest contract pursuant to which the innkeeper provides accommodations to the guest typically contains a number of terms and conditions. Some terms and conditions are *expressed* (e.g., a no-smoking policy or a no-pet policy), and others are *implied* from the very nature of the contract. From the very nature of the relationship of innkeeper-guest the law implies a contract on the part of the guest that he or she will act in a proper manner and will refrain from doing anything that is likely to cause annoyance or disturbance to other guests. Thus, the proprietor of a hotel may refuse to serve and may eject a patron who conducts himself or herself improperly, or who annoys or disturbs other guests. The hotel does not violate a guest's civil rights by promulgating "reasonable" department regulations. Those express and implied terms and conditions comprise, collectively, the hotel's rules and regulations. A failure on the part of a guest to abide by those rules and regulations will typically give the innkeeper the right to evict the guest, and it will also generally constitute a breach of contract on the part of the guest. The fact that the misconduct in question constitutes a breach of contract allows the innkeeper to hold the guest to his/her bargain with the hotel by keeping whatever payment in advance the guest might have rendered for his stay, or by collecting from the guest whatever might be owing for the unused portion of the guest's agreed-upon stay (less, of course, whatever the innkeeper can earn by means of reasonable attempts to resell the guest's room).

Many innkeepers call the California Hotel & Lodging Association to ask whether or not they need to post their respective rules and regulations. As noted above, some concepts—such as

the obligation of the guest to exercise suitable behavior—generally don't need to be stated and are simply implied. However, if an hotelier experiences trouble with guests who claim that they were not aware of the innkeeper's rules and regulations and, therefore, cannot be evicted for violating them, it would be wise to post them at the front desk. Innkeepers should also consider adding into their posted rules/regulations statements that help defuse potentially troublesome situations.

In many situations, the existence of the particular hotel rule or regulation in question and the fact that the guest is violating it will be obvious. For example, if a guest engages in loud, obnoxious behavior that is offensive to the other guests, no one would question the fact that the hotel's rules and regulations require guests to refrain from such misconduct. But it is the author's experience that in many other situations the fact that the hotel had a particular rule will be a point of contention between the innkeeper and the guest. This is typically the case with rules that are not imposed by hotels generally, such as, for example, a rule that no pets are allowed in the hotel, a rule that smoking is prohibited throughout the property, or a rule that guests are not allowed to invite non-guests into their guest rooms. In these latter situations, the guest often argues that he/she was never advised of such a rule at the time of reservation or at the time of check-in and, therefore, the innkeeper cannot "amend" their contract by seeking to impose such a condition after the guest has already checked in. The guest might well have a valid legal point if, in fact, he/she was never informed of this type of "not-generally encountered" rule. For this reason, it is strongly recommended that innkeepers take the time to identify their particular rules and regulations, if any, that most guests would not normally expect to encounter at a hotel unless they had received prior express notice of them, and institute procedures to be sure that prospective guests are made aware of them in a way that the innkeeper can prove after the fact in the event that a dispute arises.

It is also important to remember that even if the hotel's rules and regulations are reasonable and clearly posted, they must be applied in a non-discriminatory manner.

✓ **Illness or Contagious Disease**

Health and Safety Code Section 120250 requires innkeepers, among others, to promptly report to the local health officer the name of any person who is ill with any "infectious, contagious, or communicable disease." Normally, following such a report, the health officer will come to the

scene and take charge of the matter. The innkeeper, however does have the same right to evict a guest for illness or contagious disease as he would have the right to refuse accommodations to a contagiously ill person. **Caution:** Even though an innkeeper has an arguable right to evict a guest who has such a disease, the innkeeper should be thoroughly familiar with the dos and don'ts of refusing accommodations to, and evicting, a person with an infectious, contagious, or communicable disease is discussed. The advice of legal counsel should be sought, if at all possible, before undertaking an eviction in this situation.

If the innkeeper determines that an ill guest must be evicted, it is obvious that the person must be removed in a reasonable manner, without imperiling his or her life, at an appropriate hour, and to a hospital or some other place of safety.ⁱⁱⁱ

✓ **Objectionable Conduct**

The right to evict in such instances arises out of the innkeeper's duty to provide for the safety and comfort of the other guests. In many cases, this type of conduct will also violate the hotel's rules. "From the relation of innkeeper and guest, the law implies a contract on the part of the guest that he or she will act in a proper manner and will refrain from doing anything that is likely to cause annoyance or disturbance to other guests. Thus, the proprietor of a hotel, inn, or the like may refuse to serve and may eject a patron who conducts himself or herself improperly, or who annoys or disturbs other guests." (37 California Jurisprudence, Hotels and Motels, 579.) The hotel does not violate a guest's civil rights by promulgating "reasonable" department regulations.

Because a guest does not have any real-property right, or estate, in the hotel, as soon as he/she engages in objectionable conduct sufficient to justify eviction, the innkeeper can take such action without advance notice.

Exactly when a guest's conduct is sufficiently objectionable or improper to allow eviction is not always easy to determine, and each case must be judged on its own facts. Some vintage cases from other states have held that "boisterous or profane conduct," "improper demeanor," solicitation of business, or similar behavior is objectionable to the point of warranting eviction. It is not clear whether a California court would adopt the same standards in today's climate. However, the closer the guest's conduct is to being criminal in nature, and to the extent that it

threatens the comfort and safety of the other guests, employees, and others lawfully on the property, the more likely a court is to determine that the innkeeper acted reasonably in ejecting a poorly behaving guest.

✓ **Illegal Activity**

Such activity may include, among other things, theft, prostitution, drug dealing, gambling, or disturbing the peace, and clearly provides an innkeeper with the right to evict the offending patron. In fact, an innkeeper *must* take reasonable steps to prevent unlawful activity on the hotel's property. Failure to do so can result in the innkeeper violating the law. See Penal Code Section 316. In these situations, the innkeeper would be wise to seek police assistance in removing the offender for many of the same reasons stated previously in this article.

Eviction of Persons Other Than Guests

The innkeeper, not the guest, has control over the hotel's premises, including its lobbies, halls, and other public areas. While the guests of the hotel have the right to invite others to visit them, this right is subject to reasonable regulation and restriction by the management as to the type of person, purpose, time or nature of visit, and similar matters.¹ Similar considerations apply to those who, while not expressly invited, have lawful business with the guest. Rules concerning the admission of invitees of guests and others must be both reasonable and non-discriminatory. If the invitee violates the hotel's rules, he/she may be ejected. In general, an invitee may be ejected for any of the same reasons for which a guest may be evicted.

Individuals who are neither guests nor invitees of guests usually have no right to remain on the hotel grounds without the permission of the innkeeper. An innkeeper has a right and duty to exclude those who would disturb other guests. This is due to the fact that hotel guests have legitimate expectations that their stay at the hotel will be free from all annoyances and solicitations, regardless of the content of the solicitations. Therefore, the innkeeper has a duty to see that those expectations are fulfilled. "As an incident of its duty to supervise its premises, the hotel has the right to exclude strangers as distinguished from new guests and so forth, from its premises; however innocent their conduct appears to be and though no reason exists to foresee harmful or wrongful conduct." In *People v. Vaughan*, members of Jehovah's Witnesses

came into the hotel in question for the purpose of contacting the guests to preach their faith. The hotel had them arrested for disturbing the peace of the guests. The court held that the right of the innkeeper to safeguard the peace and quiet of the guests permitted him to keep the Jehovah's Witnesses out of the hotel notwithstanding their asserted freedoms of speech, press, and religion.

In many cases, hotels hold themselves open to the public in various respects: to shop, to wait in the lobby for guests, to attend or participate in meetings or seminars, to eat or drink, to use the telephone, and so on. In such cases, and to the extent consistent with the nature of the innkeeper's express or implied invitation, members of the public are entitled to be in the hotel, subject, of course, to the innkeeper's right to manage the business of the hotel and his/her duty to protect the safety, peace, and quiet of the hotel's guests, employees, and others lawfully on the property. But even in such situations, the innkeeper certainly has a right to exclude strangers from the guestroom floors.^{iv}

Manner and Time of Eviction

Regardless of the reason for it, any eviction of a guest or other person must be effectuated in a reasonable manner and at a reasonable time. The mere fact that an innkeeper has a legal right to evict someone does not give the innkeeper the right to carry out the eviction in a manner that would place the person in a position of harm. For example, a seriously ill guest should not be summarily thrown out into the winter elements. Nor should a guest be evicted if the time of day or the location could foreseeably lead to an assault. An innkeeper should avoid, for example, evicting a female guest at night in a high crime area, or in other circumstances which might jeopardize her safety and leave the innkeeper liable.

In addition, the innkeeper must take care that the exercise of a lawful right to evict does not lead to liability on other scores, such as defamation, humiliation, and infliction of emotional distress. Thus, the innkeeper should avoid using insulting language, intimidating conduct, or other offensive actions, as they could give rise to liability for damages for intentional infliction of emotional distress. (See endnote 2.)

It is often said that an innkeeper can use reasonable force, as needed, to carry out an eviction. Nonetheless, innkeepers should use force to effect an eviction *only when* an immediate eviction is essential (e.g., to preserve the safety of others) and force is the only way to accomplish the task. However, care must be exercised here, because it is often the case that the evicted party claims that excessive force was used and resulted in injuries. In the eviction area, the courts will again look to determine whether or not the innkeeper's actions were reasonable under all of the circumstances of the individual situation. Due to the legal complexities and variations in circumstances involved, innkeepers are urged to seek the advice of counsel when questions arise regarding evictions. Preferably, this should be done for the purpose of formulating policies and procedures, before a situation calling for eviction arises.

We discussed above some of the specifics dealing with the arrest of someone who refuses to leave a hotel in the situation where he/she has refused to pay. Many of the same arrest-related considerations apply in this situation as well. Specifically, if someone in the hotel (a guest or someone else) is doing something that constitutes a crime, and if a local law enforcement officer sees the person doing so, the law enforcement officer has the authority to arrest the individual and to take him/her into custody. If the officer refuses to do so, or if the officer arrives too late to see the person actually doing the illegal act, the innkeeper can make a citizen's arrest with the officer's assistance. In that latter situation, the officer takes the individual into custody as a result of the citizen's arrest made by the innkeeper. It is important that innkeepers be aware that Penal Code Section 602(o) provides them with some important legal help in this type of situation. That statute states in part:

Every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor: * * *

(o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another *and not open to the general public*, upon being requested to leave by **(1)** a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or **(2)** the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on

each occasion on which the peace officer's assistance in dealing with a trespass is requested. (Emphasis added.)

"Refusal to leave" is one of a variety of trespasses described by [Penal Code] section 602. The other varieties involve some guilty foreknowledge, such as malicious mischief, disregard of posted warnings or unlawful occupancy. Subdivision (o) envisions an originally innocent entry, followed by an unlawful sojourn after refusal of requests to leave." For a person to be guilty of a criminal trespass under Penal Code Section 602(o), the following elements must be present: "(1) physical presence on land, real property, or structures, (2) the property must belong to someone else, (3) the property must not be open to the general public, (4) a request to leave must be given by the appropriate authority, and (5) the person must refuse or fail to leave."

Penal Code Section 602(o) will be of assistance to many innkeepers, because numerous hotels are essentially closed throughout to everyone other than the guests and the guest's invitees. This is true of most extended stay properties and many smaller inns; they don't provide facilities (e.g., telephones, retail shops, restaurants, bars, and lobbies) in which the public typically congregates, as is the case with full-service hotels. Properties of this type are "not open to the general public," and, therefore, would appear to be within the purview of Penal Code Section 602(o). Similarly, if a full-service hotel makes portions of its premises "off limits" to the general public (e.g., guest room floors and areas), the same would apply as to those areas. Innkeepers should discuss the use of this statute with their legal counsel and craft their policies and procedures with the availability of this remedy in mind.

In cases where the innkeeper does not have sufficient grounds to evict someone, he/she can be held liable for damages, including punitive damages.

Eviction of a Tenant

In the first paragraph of this article we posed several questions that an innkeeper must ask himself or herself when considering whether and how to get rid of an occupant of the hotel. The second question was, "Assuming that I have proper legal reasons to evict the individual, is he/she (a) a *guest*, whom I can evict right now, without prior notice or the need to go to court,

or (b) a *tenant*, whom I can evict only by giving appropriate notice and filing a lawsuit?” The discussion so far in this article has dealt essentially with how and when an innkeeper can go about evicting a *guest*. In some cases, the reasons that would give an innkeeper lawful grounds to evict a guest will also give a landlord lawful grounds to evict a tenant (e.g., non-payment, criminal misconduct). **However, where an innkeeper can summarily evict a guest without the need to go to court, a landlord (or an innkeeper in the position of a landlord under California’s landlord-tenant law) can only remove a tenant who refuses to leave voluntarily by means of going to court.** Because of the explosive growth of limited-service hotels and of extended stay products in the lodging industry, it is the author’s belief that more and more innkeepers and their lawyers are going to have to become familiar with the procedures and the potential pitfalls that exist in the area of evicting tenants.

If an innkeeper concludes that a particular occupant of his or her hotel is, *or might be*, a tenant (that is, unless the innkeeper is absolutely certain that the occupant in question is clearly a guest), the innkeeper must put aside any consideration of summarily evicting the occupant without having to go to court, or, in most cases, having to provide any prior notice. An occupant who is a tenant must generally be provided with certain specified notice under California’s landlord-tenant law, and the landlord must go to court to get an order which will force the tenant to vacate the premises. There are a number of different types of lawsuits which the innkeeper/landlord can use in such a case, but the one that is almost always the most advantageous is known as a “unlawful detainer” action. Caution: The California Hotel & Lodging Association receives numerous calls from innkeepers who have some, but not enough, knowledge about unlawful detainer lawsuits, and the nature of the calls is such that it is clear that many innkeepers are trying to “do it themselves” in getting rid of tenants. This is a complex subject, and the particulars of how to undertake eviction by means of an unlawful detainer lawsuit is beyond the scope of this article. CH&LA strongly recommends that innkeepers, management companies, chains, and others who encounter more than an occasional situation in which it is necessary to evict a tenant purchase a copy of *California Landlord-Tenant Practice* 2d ed. (Berkeley, CA: California Continuing Education of the Bar, 2001). This is an excellent two-volume treatise on all of the various issues that arise in this broad field, including, for example, such things as how rent control ordinances might apply to hotels. Although the book is written for lawyers, it is readable by non-lawyers, and it contains many useful practical suggestions and cautions. A copy can be purchased by contacting the California Continuing Education of the Bar’s toll-free order number: 800-232-3444.

© California Hotel & Lodging Association (CH&LA). All rights reserved, including the right to reproduce this document, or portions thereof, in any form. This information is provided as a service of CH&LA. It does not purport to serve as legal or other professional advice, and the counsel of competent professionals should always be sought.

ⁱ Practically speaking, however, an innkeeper should give as much notice as possible before evicting a guest. And in at least one situation, i.e., when the guest quits paying, it is essential that the innkeeper give the guest prior notice. See the discussion of Penal Code Section 602(s) in this article.

ⁱⁱ An unfortunate but true story will help illustrate the problem: The general manager of a large hotel in San Francisco received a call from his security personnel who reported that a well-known prostitute was loitering in the lobby. The general manager joined the security personnel and confronted the prostitute. Unfortunately, the prostitute did not leave quietly, and tempers flared. The general manager eventually lost his temper and used a considerable amount of inappropriate language which, among other things, referred to the prostitute's ethnicity. The prostitute eventually sued the hotel, and the matter was settled before trial for approximately \$100,000. The point is that the hotel had the right to evict the prostitute, but it did not have the right to defame her or to engage in an action which appeared on its face to have a discriminatory component.

ⁱⁱⁱ *McHugh v. Schlosser*, 28 A.291 (Pa, 1894). This old Pennsylvania case involved a hotel which evicted a seriously ill man, at night, into the cold winter weather. The man died and the hotel was found liable for the manner in which it conducted the eviction.

See, also, Jack P. Jefferies, *Understanding Hospitality Law*, 3d ed. (East Lansing, MI: Educational Institute of the American Hotel & Lodging Association, 1995), at page 84:

When a hotel guest is taken ill with a contagious disease, the proprietor, after notifying the guest to leave, has the right to remove such guest *in a careful manner* and at an appropriate hour to some hospital or other place of safety, *provided* this does not imperil the guest's life. As a practical matter, however, it is preferable to consult your local attorney and report these matters to the proper local authorities. Usually, the local authorities will take charge and remove the sick guest. (Emphasis in the original.)

^{iv} See 71 Ops.Cal.Atty.Gen. 225, 232 (1988), confirming that property owners "may close to the general public portions of [their] property for lawful and nondiscriminatory purposes."