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# Construction Law

Spring 2008

Focus on Hotels

## The Ten Most Deadly Hotel Construction Sins & How to Avoid Them

1. *Not focusing upfront.*
2. *Not choosing the best project delivery method.*
3. *Not assembling the right project team.*
4. *Not coordinating the project team.*
5. *Not executing the best project delivery method.*
6. *Not truly understanding local conditions.*
7. *Not scheduling accurately, or scheduling too elaborately and/or not updating schedule.*
8. *Not meeting periodically or failing to keep job meeting minutes.*
9. *Not having a vision for dispute resolution.*
10. *Nor recognizing that quality always wins.*

### Success Depends on Focus

As counsel to hotel owners and owners of other large properties, our firm is often introduced to a client after a construction or renovation project is already off track and headed to court. In the resulting litigation, we find recurring themes, or “construction sins,” that could have been avoided from the beginning.

Project delivery success depends on continuous focus by the hotel owner. The owner must thoroughly know

the project from inception, choose the right advisers, prepare the right contracts, set the right ground rules for dispute resolution, pick the right project team, establish quality and create good candid communications.

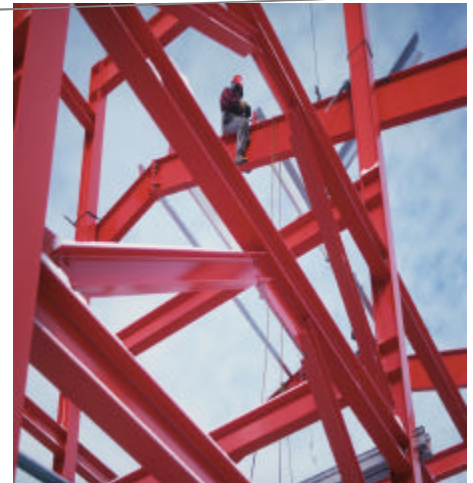
New hotel openings or extensive refurbishments are always taking place in Manhattan. We recommend you review the 10 Deadly Sins list before your next project for a better project, better dispute resolution and less project pain.

### Legal Issues for Hotels: Counsel’s Role in Facility Management, Construction and Renovation

From our experience acting as general counsel to a major New York City hotel and teaching “Legal Issues in Hospitality” in the NYU Preston Robert Tisch Center for Hospitality, Tourism and Sports Management, we have realized that sound legal advice is essential in day-to-day hotel management as well as during construction and renovation.

#### Legal Issues Checklist

- ✓ Preparing design and construction contracts.
- ✓ Assisting in the preparation of the bid and in the award of construction and renovation contracts.
- ✓ Assessing environmental issues and assisting in preparation of compliance strategies.
- ✓ Defending and correcting environmental violations.
- ✓ Developing engineering and facility management strategies to achieve building code compliance
- ✓ Managing legal issues and defending lawsuits related to premises liability and hotel security.
- ✓ Representing hotels in litigation, arbitration and mediation of disputes.



New York City Department of  
Buildings News

### New Protocol for Tower Cranes

On Tuesday, March 25, Buildings Commissioner Lancaster announced changes to the Department's protocol regarding the erection and dismantling (including jumping) of tower cranes. A Buildings inspector is now required to be present on a construction site whenever a tower crane is being raised or lowered, until further notice.

### Top 10 Elevator Violators Published

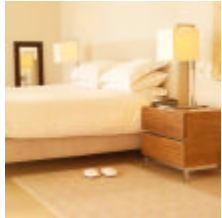
On March 5, Buildings Commissioner Patricia Lancaster announced that the Buildings Department is publicly listing the Top Ten Worst Elevator Offenders as part of a shame campaign and aggressive enforcement agenda to ensure safe and reliable elevator service and to force residential building owners with chronically defective elevators to fix them.

# Construction Law

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## Focus on Hotels

### Strategies for Renovating While Keeping the Lights On



Although hotels occasionally decide to close during an extensive renovation, many hotels are renovated

without closing a single day. When the Peninsula Hotel was renovated in the 1990s, it closed entirely until construction was complete. However throughout the extensive renovations of the New York Hilton and the New York Palace guests continued to be served.

Renovating while remaining open requires careful isolation of work areas and their HVAC systems. While aesthetics are often neglected the phased renovation of the New York Palace featured the construction of a magnificent temporary lobby that was demolished once the new lobby was complete. The guests were barely able to tell a renovation was taking place.

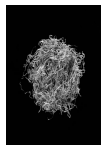
#### *Avoid Costly Mistakes*

Although seamless operations cannot always be assured, costly and dangerous mistakes can be avoided by focusing upfront on the following issues and taking care during the design and construction process.

- ♦ **Make a thorough, accurate physical assessment** of the area to be renovated—especially in an older facility where crumbling masonry or plaster or corroded piping can turn a routine renovation into a nightmare.
- ♦ **Conduct a well thought-out environmental assessment**—failure to account for asbestos, lead paint, or conditions leading to mold contamination or legionella can cause delays and complicate renovation.

- ♦ **Reach 100% design** prior to bidding the work.
- ♦ **Schedule and sequence** the work with a focus on avoiding dust contamination, security risks and accidents.
- ♦ **Enter well tailored construction and design contracts**, which clearly define scopes of work, coordination and methods of dispute resolution.
- ♦ **Develop a streamlined method of communication** and decision making among the key players—hotelier, architect and contractor; avoid cost overruns and delays with prompt and well reasoned decisions.

Remember, the theme is the same whether renovating a hotel or operating one: responsive, efficient and customer-friendly. Keeping the lights on during renovation is a daily challenge, which requires a committed renovation team that is well informed, consistently involved and focused on schedule, budget and serving the guest.



### Controlling Mold Practical Steps to Avoid Environmental Risks

Astronomical risk relating to mold and other significant environmental disasters can be significantly alleviated by setting practical legal, design and construction management protocols to control the construction or renovation project.

Basic legal, insurance and contract document issues must be addressed as a preliminary matter. As water intrusion is always a possibility, the contractual responsibilities of each trade contractor, the design professionals and CM must be clearly defined and coordinated. Examination must be made into the effectiveness of general liability coverage

and consideration of a special mold endorsement.

The key to protecting against potential lawsuits over mold is to prevent water intrusion and mold growth in the first place. Although the owner of a large property will be focused on the responsibilities of the CM or GC, it is most essential that all of the different trade contractors sequence and coordinate their work so that water does not get into the building. And if the building does take on water, the CM or GC must promptly coordinate the various trade contractors and immediately to dry out the building. Allowing mold remediation to yield to practical expediency is a prescription for disaster.

## Industry News

### Virginia Graeme Baker Pool and Spa Safety Act

The Virginia Graeme Baker Pool and Spa Safety Act (Act) promotes the safe use of pools, spas and hot tubs by imposing mandatory federal requirements for suction entrapment avoidance and by establishing a voluntary grant program for states with laws that meet certain minimum requirements as outlined in the Act. Effective December 20, 2007.

**ANSI/APSP-7 Standard Exceeds Federal Requirements.** All pools and spas configured to comply with the ANSI/APSP-7 Standard will conform to these provisions and any state that adopts the Standard will meet the Act's minimum state requirements. This ANSI/APSP-7 Standard is the only comprehensive approach to engineering swimming pools and spas to avoid all five entrapment hazards.