

# Probate &

The Magazine of the Real Property, Probate and Trust Law Section of the American Bar Association

November/December 1989

# Property



**The Challenge of  
Developing Resort Hotels**



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*Probate and Property* is aimed at lawyers who devote a large part of their practice to two major areas: real estate law or laws dealing with wills, trusts, and estates. The articles, other editorial matter, and advertisements are intended to provide lawyers with up-to-date, practical information that they can apply to legal questions raised by their clients in these areas of law. The goal of the editors is to print relevant articles and columns that are written in a readable and informative style and that will aid lawyers in giving their clients accurate, prompt, and efficient service.

# The Challenge of Developing Resort Hotels

By Michael C. Shindler

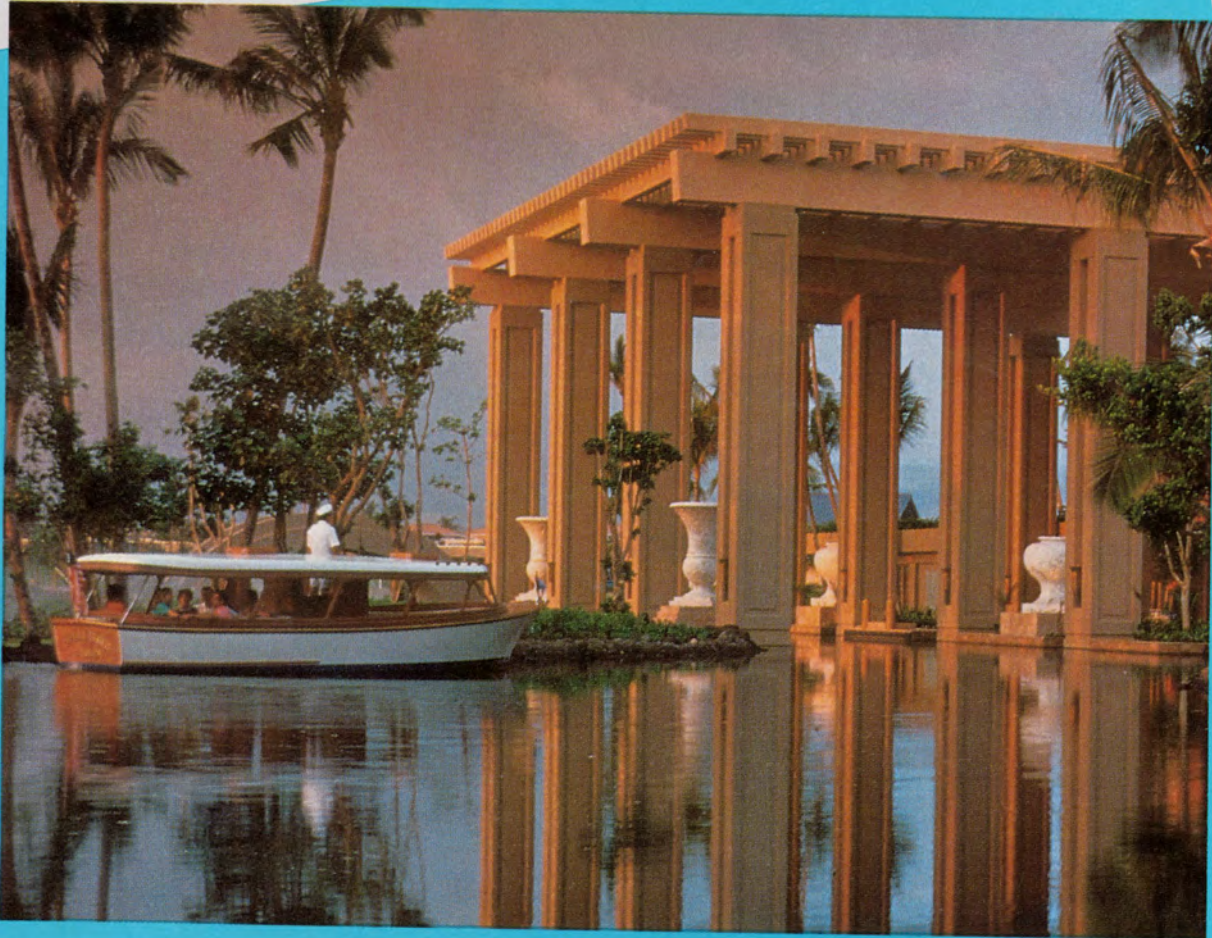


Photo courtesy of Hyatt Hotels and Resorts

The concept underlying the "resort hotel" has undergone dramatic changes in the last century, from "a hot springs spa [in the 19th century] . . . [to] an expansive luxury destination with a wide variety of amenities." Laurence Geller, *The Resort as an Investment Opportunity*, *Real Estate Finance Journal* 53 (Fall 1987).

Today's resort hotel is likely to be all things to all people: a destination with a "fantasy" theme; a place to get away from one's day-to-day existence; an opportunity to play golf on one or more championship courses or to play tennis on tennis facilities with different surfaces; a spot to vacation with one's children; or a base of operations for a ski vacation. Some hotels

may be all of the above. Similarly, the resort community can provide all these reasons for visiting and, perhaps, one other significant rationale: because it is a home, condominium or interval ownership property.

The developer of a hotel in a resort community should be as concerned about every phase of the resort development as about the

hotel itself. Although the interdependence of the hotel and the surrounding community may vary from resort to resort, the hotel and the balance of the resort must be carefully planned and executed to provide maximum value for both the resort and hotel developers and an optimum coexistence between the hotel's guests and the resort's residents. As in any mixed-use development ("MXD"), the planning of the resort community requires a balancing of the needs of all end users of the project with those of the resort developer and the resort's "sub-developers"—those ultimately responsible for the creation of the residences, offices and other commercial spaces, as well as for the hotel and the recreational amenities of the resort—if these sub-developers are independent of the resort developer.

This article will explore a number of issues that a lawyer should consider in connection with the development of a resort hotel within a resort community. It is assumed that the resort developer and the hotel developer are unaffiliated, arm's-length developers with no economic relationship other than that of land seller and purchaser (the relationship could also be ground lessor and ground lessee, although the economic ties in a ground lease are customarily stronger). It is also assumed that the hotel developer and the hotel operator are related parties whose economic interests, if not identical, are substantially similar. This assumption avoids the need to delve deeply into the sometimes conflicting relationship between hotel owner and operator. Lastly, it is assumed that a "resort" is a planned MXD designed to service a vacation and tourist clientele while catering to those who live all or some part of the year in the resort community.

The resort developer's major challenge is to provide residents with a meaningful resort lifestyle without infringement by the transient guests who stay in the resort's hotel. Conversely, the hotel developer's challenge and goal is to provide hotel guests with the vacation experiences they seek. The developers can minimize these conflicts in the early

stages of the resort planning by recognizing and reconciling the inherent obstacles to the successful development of the resort and the resort hotel.

### Development Issues

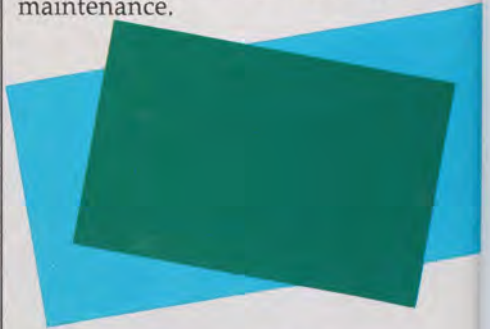
Hotel and resort developers, in attempting to minimize their difficult concerns and conflicting goals, can focus on the infrastructure, amenities, offices, commercial and/or residential aspects, staging/phases of development, and the hotel itself. No one issue is necessarily more important than any other one, and each issue poses problems for the resort and hotel developer that must be satisfactorily resolved for a successful resort community.

### Infrastructure

The infrastructure affects—and is affected by—the planned size of the resort community and, in particular, the hotel. A hotel's utility needs are likely to be greater than those of other components of the resort. The size and location of the utility lines are sources of major concern to the hotel developer who, if the hotel's anticipated clientele consists of conventions or large groups, will find the water, sewage and electrical systems frequently used to capacity according to the daily schedules of those groups. The resort developer and the hotel developer must determine the hotel's anticipated utility needs before finalizing master plans. The size of utility lines may affect their location and the location of those lines may affect the location of other components of the resort. Other issues, common to any MXD, include recapture (e.g., costs, timing of payments and beneficiary of recapture agreements), maintenance, plants for common use and the like. In areas where water may be in scarce supply, the ability to use water for landscaping and plant maintenance becomes critical.

In a golf community, there may be restrictions on the resort's ability to use fresh water for course maintenance. Regardless of its ownership,

the lure of the resort golf course in a golf community is of paramount importance to both developers. Thus the developer must thoroughly investigate the possible limits on using and/or generating sufficient water (whether fresh or treated) for course maintenance.



Another important concern relating to infrastructure is the road leading to the resort hotel. The "driving experience" of guests on their way to a resort hotel can be a critical introduction to the hotel's ambience and, therefore, is of substantial significance to the hotel developer. Factors which affect this "experience" include the location of the road, its length, landscaping, views and passage, i.e., the attractiveness of the part of the resort through which the road runs on its way to the hotel. Each facet of the entrance road must be considered.

One more concern to be allocated between the resort developer and the hotel developer under the general heading of infrastructure is the availability of both a readily trainable work force and housing for employees. Large, destination resorts in remote places may be glamorous and exciting but, because both the resort community as a whole and the resort hotel are service oriented, a shortage of either available labor or housing for those who are employed can contribute to a resort's failure. To the extent a satisfactory work force is imported to a resort community, the developers frequently must provide affordable housing. The resort and hotel developers must allocate both the responsibility and the cost of providing that housing, and the responsible developer must factor the additional cost into its development budget.

Although the resort's infrastructure relating to the hotel may create some problems for the two developers, the linkage of hotel infrastructure with the infrastructure of the balance of the resort may result in cost savings for the resort developer. Careful planning and execution to lessen conflict in this regard may well provide unanticipated benefits.

### Amenities

The provision, development, management and ultimate disposition of the resort's amenities are subjects of other treatises that explore in depth each facet of resort amenity development and therefore will not be discussed in detail here. See, e.g., Patrick L. Phillips, *Developing With Recreational Amenities: Golf, Tennis, Skiing and Marinas*, Washington, D. C.: ULI—The Urban Land Institute (1986). Nevertheless, the resort developer's inclusion of different amenities, designed and conceived, in part, to attract permanent residents (i.e., owners), may also be necessary to enable the hotel to sell its rooms, thereby creating a conflict between the desires of the permanent residents and the desires of the transient guests.

Issues of access to the amenities, ownership, maintenance, cost and similar concerns arise frequently and sometimes with hostility. Consider, for example, that a resort hotel may want to control more than 50% of available tee times at a championship golf course during the hotel's peak season. In addition, a championship golf course requires a first-class clubhouse facility and approximately 150 to 200 acres of land, throughout which the resort developer may desire to sell prime residential sites, all of which adds to the costs of resort development. If a resort developer believes that the resort should have a residents' course and a hotel course, the issue of allocation of responsibility and concomitant cost rears its head again, as will users' accessibility to both courses. Just as a hotel guest may desire different golf experiences during a vacation, the permanent or part-year resident may want to play



Photo courtesy of Hyatt Hotels and Resorts

the hotel's course on occasion. The resort developer and the hotel developer must resolve these issues through careful negotiation and documentation. This process could be complicated further by the sale of the golf course/residence development rights to a golf course/residence development firm, requiring yet another party's involvement in planning discussions and negotiations.

Although the foregoing discussion focuses primarily on golf usage and problems, the hotel/resident conflicts can also be present with a spa amenity, a tennis center, a health club or an equestrian facility if demand exists for both permanent and transient usage. Perhaps the lower (compared to golf) development costs of those types of resort facilities alleviates the difficulty of the issues; nonetheless, the issues exist.

### Residential Office and Commercial Phases

The primary conflict between the hotel developer and the resort developer regarding the resort's residential, office and commercial phases arises over the quality of those aspects of the development. The hotel developer is concerned that the surrounding uses of the resort have a

quality level commensurate with that of the hotel, so that the resort's overall quality and ambience match the quality and ambience of the hotel (and, presumably, the quality of the hotel's guests). Careful planning of the location and the physical interplay between the hotel and other phases of the resort can arrest any problems before they arise. The hotel developer typically wants the hotel to be reasonably close to retail and retail-related facilities such as non-hotel restaurants and entertainment spots, unless the hotel is designed to be entirely self-contained. If the hotel is self-contained, the hotel developer may want greater distances between the hotel and such commercial components of the resort community.

### Staging/Phasing of Development

The staging/phasing of the resort development may dictate certain results to the developers. A well-conceived and executed "fantasy" resort hotel may add value to the surrounding land in a resort community. If the hotel is the initial development in a resort community, the hotel developer may become the driving force in the resort's development, seeking to regain the costs of the hotel development from surrounding land value

increases through joint venture or other profit participation mechanisms. Geller, at 57. Although there is no customary or typical phasing pattern, generally a resort hotel is one of the earlier components in a planned resort community, as the destination nature of the hotel contributes to the critical mass necessary for the remainder of the resort community to grow.



### Examples of Mixed-Use Resorts

The hotel developer and resort developer must carefully plan the hotel contemplated for the resort community. The Hyatt Regency Waikoloa, opened in September 1988, is the newest of the destination resort hotels designed as part of a mixed-use resort, continuing a process begun with the Pointe Resorts in Phoenix (which was built on a junkyard) and the development of Kaanapali Beach in Maui and Wailea on Maui's south shore. Hilton Head in South Carolina is another early example of a successful mixed-use resort. These areas attest to the benefits, both aesthetic and economic, to be derived from the difficult and time-consuming marriage of the mixed use and resort concepts.

A "fantasy" resort, designed so that the traveler need not leave the hotel grounds, is an extremely expensive undertaking. The Hyatt Regency Waikoloa, located on the island of Hawaii, is advertised as the "most expensive resort hotel in the world," having cost approximately \$360 million to build and open. This hotel was planned to create a fantastic environment for the vacation traveler. When guests arrive at the main lobby, they are offered a choice of transportation to their rooms: covered motor cruises operating through a network of canals; tubular trams; or a walk through a mile-long museum way filled with Oriental and Pacific art. The hotel's four-acre salt water lagoon allows guests to swim with trained dolphins. The swimming pool includes waterfalls, waterslides and a grotto bar. Other amenities include seven restaurants, twelve lounges, eight tennis courts and a 17,500 square foot health spa.

### Conclusion

Other issues regarding the nature of the hotel may affect the resort developer's planning. Included among these issues are parking for the resort and the hotel, means of access to the hotel (fly/drive/either), distance from the hotel to the nearest airport, seclusion from the general public and uniqueness of location. Each of these issues presents the hotel developer and, perhaps to a greater extent, the resort developer with a series of planning concerns that they must accommodate. The issues outlined in this article are by no means exhaustive, and each development presents its own peculiar problems and obstacles. If the resort developer and the hotel developer can satisfactorily resolve these issues through careful planning and negotiation, the result should be a successfully planned and executed resort community.

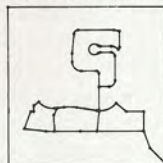
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