

Duff on Hospitality Law

The Fine Print on Daily Deals and Flash Sites

By Ruth Walters on 4.19.13 | Posted in Group Sales and Events

Deal or No Deal?

Daily deal (or “flash sale” sites) like Groupon, LivingSocial, and Rue La La, are quite popular with both hoteliers and their potential guests, providing, as they often do, slashed rates and an easy method for getting heads in beds during times the hoteliers want them there the most. Unfortunately, these channels may not provide the benefits they seem to, and they pose a number of legal and practical risks that may make them even less attractive.

- **Illegal Voucher Expiration Dates.** Most of these providers issue vouchers to purchasers for redemption at hotels, which vouchers are considered “gift certificates” under most state and federal laws. Despite language in the standard contracts proposed by the providers, and despite hoteliers’ agreement (or desire) to limit redemption periods, the law may require vouchers be honored well beyond the time the hotel intended it to be. Some states have laws prohibiting the expiration of gift certificates period, some have mandated long validity periods, and federal law requires most gift certificates to be valid for 5 years.
- **Lawsuits!** On a related point, both Groupon and LivingSocial and some of their retail partners were sued in multiple class actions in 2011. Both suits are in the process of settling, but this does not preclude more class actions, nor does it mean what they were doing wouldn’t be considered illegal if fully litigated. Both proposed settlements require these sites and their retail partners to honor vouchers that have allegedly expired.
- **Other Legal Issues.** Some states require that gift certificates be redeemable for cash; others impose restrictions on how and whether service or administrative charges may be assessed on gift cards. Even though your property may not be located in these states, you may be considered subject to them if that’s where your guest resides. State escheat and abandoned property laws also apply to gift certificates; compliance can be difficult, especially deciding which state’s laws apply.
- **The Fine Print.** Like many online providers, daily deal site contracts typically consist of a standard set of terms and conditions incorporated by reference with a URL dropped somewhere in a Order Form or similar document in which the deal is described. **READ THESE TERMS.** In our experience, they are uniformly unfavorable to hoteliers. Don’t

expect any help from Groupon, for example, if you end up with vouchers being redeemed three years after you intended them to be. Groupon's merchant terms and conditions are posted; here are some choice excerpts:

- If a Merchant or venue refuses to honor any voucher, Groupon will refund the amount paid upon request in the original form of payment...
- Groupon may offer and sell...Vouchers through a variety of platforms...or affiliate network on multiple occasions and in multiple markets. All...platforms may be made available to...the communities associated with Groupon's affiliates.
- Unless Merchant elects to opt out, Groupon may continue to promote the Merchant Offering through any Groupon platform or channel (including but not limited to targeted emails and search engine marketing), after the Feature Period ends until the Maximum Number of Vouchers is reached...
- Merchant may use Customer Data for the sole purpose of fulfilling its redemption obligations...[and] expressly agrees that any Customer Data ... may not be used to enhance a file or list owned by Merchant...
- **Know the Channels.** Many flash sales sites now allow purchasers to book rooms directly on their sites. This avoids the voucher issues, but may raise other concerns like those associated with more traditional online travel agents (OTAs). The flash sale site Jetsetter has a "mystery hotel" function, similar to an opaque OTA distribution channel. Since the terms and conditions for merchant participation are so broad, it is crucial that hoteliers understand exactly how, when and by what mechanisms their inventory may be distributed.

Yes, lawyers are conservative, and yes, we would be happiest if no one did much of anything at all and therefore incurred no risks, but as the suits described above make clear, these risks are real. Simply being aware of what they are is two-thirds of the battle.

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Tags: Deals, Flash Sale