



Condo Hotel Task List

**A checklist of how we can help make
your condo hotel project successful!**

Item

Description

1. Property Acquisition

We can help you with everything related to your property acquisition, including working with brokers and sellers, negotiating Term Sheets and LOIs, documenting the terms of the Purchase and Sale Agreement, due diligence, title, acquisition financing and closing the deal—all with a keen sensitivity to the issues you will confront later on in the development or conversion of your condo hotel project.

2. Land Use and Entitlements

We understand the unique concerns of municipalities and other governmental bodies confronting condo hotel projects. We have great experience in guiding these bodies through the condo hotel issues to get the entitlements you need.

- Local Government (addressing zoning and entitlement, TOT, potential residential impact and municipal concerns unique to condo hotels).
- Coastal Commission and other quasi-governmental bodies.

3. Condo Hotel Regime and Program

We bring the business and legal experience of more than 40 condo hotel engagements to your team. We can help with the *conceptual* legal and business “lay out” of the hotel and condo components—what it takes to accomplish the owner’s goals and create a viable and symbiotic interaction of the hotel and residential components of real estate with the operating business of the hotel and related facilities and services. This is not a market, demand or other feasibility study, but reflects many important legal and business perspectives and will dovetail with any such feasibility study.

- Composition of the condominium “unit” and structure of overall facility.
- Addressing issues of HOA “control” and governance.
- Analysis, strategic considerations and legal issues concerning “common facilities,” “commercial facilities” and “shared facilities.”
- Parcelization (condominiumization) issues.
- Allocation of costs and revenues of condo hotel regime among the various stakeholders.
- Developing a rental management program and providing advice on the appropriate “carrots” and “sticks” for unit owners joining and participating in the rental management program, while complying with all applicable State and Federal securities laws.

Jim Butler

JEFFER, MANGELS, BUTLER & MARMARO LLP

1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067 ♦ (310) 201-3526 ♦ (310) 712-8526 fax ♦ jbutler@jmbm.com

Item**Description****4. Condo Hotel Documentation**

Typical “condo docs” are virtually useless for a condo hotel regime. We bring our experience in representing clients in more than 40 condo hotel projects to helping tailor your basic condo docs to your specific condo hotel regime and program. We help you identify relevant business and project goals and concerns, and integrate these elements into the key legal documents for the condo hotel consistent with (a) the regime we have designed and (b) applicable legal restrictions (e.g. Federal and State securities laws and applicable State laws and policies governing condo sales).

- HOA Articles and Bylaws.
- HOA Management Agreement.
- CC&Rs.
- Shared Facilities Agreement whereby owners of condos are charged costs for shared facilities such as front desk, PBX and the like.
- Rental Management Agreement and/or lease whereby owners of condos may elect to place their units into the hotel rental management program.
- Unit Maintenance Agreement whereby the owners of the condos are required to maintain the condition of their unit to the standards of the hotel.
- Critical business and legal guidance that is interwoven in the “condo docs” and related agreements: appropriate allocation of income and expenses, appropriate deductions before “splits,” HOA fees, management fees, unit availability and restrictions, “blackout” periods, use and access rights, notice periods, charges for access to amenities and all the other important and ever-evolving “technology” of condo hotels.

5. Real Estate Regulatory – State and Federal

We can assist you in obtaining appropriate State and Federal approvals, including agency approvals for all of the essential documents. We find that the key to a successful processing of condo regimes is often in the pre-filing meetings to walk the staff through the project, approach and documents so they are comfortable with the filing when it arrives. This effort includes the filing and processing of the relevant documents prepared in accordance with the condo hotel regime design, and the core foundational documents themselves. It also involves HUD and Interstate Land Sales Act registration or exemption, and assistance with ADA issues.

6. Hotel Agreements

- Hotel Management Agreement – We have worked on hundreds of hotel management agreements and have successfully negotiated with virtually every major hotel management company. We know the players, what is “market” and how to get a fair deal. We can assist you in identifying the appropriate candidates for managing your project and developing a process to optimize the terms with your operator. The management agreement for a condo hotel has many of the elements of a traditional hotel management, but must be adapted to deal with many unique condo hotel operating issues.
- Franchise or License Agreement with a hotel brand.
- SNDA or Subordination, Non-Disturbance and Attornment Agreements that may be required by hotel operator and project lender—making all hotel agreements amenable to and consistent with the requirements of your financing—now and in the future.

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Item**Description****7. Sales and Marketing**

Because of securities laws issues, the sales and marketing program, documentation, and procedures require significant legal direction and guidance.

- Finding the right marketing firm to insure ample presales for financing and a follow on successful sell out. Documenting your arrangement with the marketing firm with appropriate indemnifications and safeguards to protect your profits.
- Design of Sales and Marketing Program – Who should market the condos and how? Who offers rental management program agreement and how? How is the rental management program explained and when?
- Sales and Marketing Program compliance – What needs to be done to keep the marketing program from creating a security?
- Training Materials for sales persons to avoid problems under the securities laws, including specific dos and don'ts.
- Training – Presenting the actual training course on avoiding securities laws problems.
- Sales and Marketing agreements – Documentation for the sale of the condo units, and documentation of sales person compliance by sales people and unit buyers.
- Handling other issues that arise under Federal and State securities laws.

8. Construction Defect Control

- Prevention and containment.
- Assistance on insurance structuring and coverage issues, including WRAP insurance coverage.
- Addressing State laws and policy that impact the liability of the developer.
- Creating a structure reflected throughout the condo docs—the unit purchase agreements, sales documentation, unit maintenance agreements, shared facilities agreements and other related documentation—that is designed to minimize the impact of litigation by homeowners individually and their homeowner associations.

9. Americans with Disabilities Act ("ADA")

The Americans with Disabilities Act ("ADA") and the Americans with Disabilities Act Architectural Guidelines ("ADAAG") raise issues for condo hotels that are best analyzed and coordinated early in the construction or development process. We help resolve these issues and minimize future legal exposure in an environment where local building officials do not seem to have a uniform approach.

- Guidance on ADA compliance under current and new proposed ADAAG.
- Assistance with State Building Code (and in some jurisdictions, also State Health & Safety Code) accessibility compliance requirements.
- Accessibility requirements for hotel room inventory's "public accommodations."
- Accessibility requirements for purely residential units.
- Negotiate with local building department officials regarding disabled access requirements.

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10. Construction and Design Contracts

- Construction Contracts and General Conditions.
- Architect and Engineering Contracts.
- General Service Form Contract.
- Construction Insurance Program (WRAP, OCIP, CCIP, worker's comp, etc).
- Designing an insurance program to dovetail with the liability containment structure to address construction defect and resolution.

11. Labor and Employment

- Dealing with labor and employment issues for the developer, and other related entities involved in the condo hotel, including hotel executives and staff.
- Employment agreements.
- Standard employment manuals and procedures.
- Due diligence on labor and employment issues.
- Labor-management relations, including union prevention strategies, union neutrality agreements, union negotiations and NLRB matters.

12. Financing

We are a major gateway of hotel finance—the bridge between providers and consumers of capital. We facilitate the flow of capital with our legal expertise and hospitality industry knowledge. We also negotiate and document financing to maximize sponsor flexibility while minimizing unreasonable loan exposure and restrictions. Our familiarity with the condo regime structure and docs as well as the hotel management agreement enables us to efficiently handle the interactive effect of these elements with debt and equity financing.

- Equity.
- Construction.
- Permanent.
- Mezzanine.

13. Ownership Entity Design, Selection and Implementation

We advise on the appropriate form of ownership entity(ies)—whether a simple LLC or a complex joint venture—and bring all the relevant, tax, financing, and other business considerations to the negotiation and formation of the vehicles for ownership.

14. Ongoing general advice in connection with project

We bring the practical judgment, contacts and experience that can only be gained over the \$35 billion of hotel transactions on which we have helped our clients—involving more than 1,000 properties around the globe. We also bring the business and legal expertise gained from our engagement in more than 40 condo hotel projects in all the major condo hotel markets in the United States and Latin America.

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