

## The Next Wave of Alternative Dispute Resolution for the Hospitality Industry

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As the court system has become over-burdened with lawsuits and people have become tired of the costly and time-consuming reality of litigation, the field of Alternative Dispute Resolution (ADR) has grown. In the field of Hospitality, this is no exception. First, arbitration and mediation were introduced, in reaction to unsettled disputes that needed resolution as soon as possible. These processes are appropriate ADR methods for certain situations, but still represent a reactive approach to resolving disputes. Now there is an even better alternative – this time a proactive approach to addressing unresolved issues. This alternative is known as the Issue Review Board™ (IRB™) process. The Issue Review Board™ model has already been used successfully in the construction industry, and is now being introduced into other industries, including the area of Hospitality. The Institute for Conflict Management, LLC (ICM) has recently teamed up with the International Society of Hospitality Consultants (ISHC) to certify lodging industry experts in the IRB™ process, so they may serve on ICM's panel of dispute resolutionists.

The IRB™ process was first launched in the construction industry under the name “Dispute Review Board” (or “DRB”) and has been used in numerous major public works and private construction projects. A survey conducted in September, 2003 by the Dispute Review Board Foundation showed that Dispute Review Boards had been used in all types of construction for 1057 projects, totaling \$77.7 billion. Of these projects, 1285 formal recommendations were issued, with only 28 recommendations taken beyond the DRB process – a success rate of 97.8%! The same ADR process is now being transferred to the Hospitality industry for use in not only the construction phase, but also for post-construction relationships, such as that between a franchiser and franchisee, or a hotel owner and operator.

The Issue Review Board™ process involves a neutral panel of three impartial industry experts trained in dispute resolution, who are selected prior to the start of a project or relationship. Each party selects one panel member, and the two panelists select a third member, who then acts as the Chair. All parties and panelists sign a Three-Party Agreement, which serves as an Addendum to the original contract between the parties. The IRB™ panel is thus part of the process from the outset, keeping up-to-date on the status of the project through regular site visits or meetings. Consequently, they are available to settle disputes as soon as they arise. This arrangement allows issues to be resolved even before they become actual disputes, and thus works proactively to keep projects on track and relationships intact before disputes can grow into costly litigation.

When the parties find that they have a situation that cannot be resolved, they can call the Issue Review Board™ together for a meeting. At the session, both parties present their side to the IRB™, who listen to the issues and then adjourn the meeting. The IRB™ deliberates the matter in private and then issues a recommendation within 72 hours.

Although the recommendation is not binding, it is admissible as evidence in any future court proceeding. As mentioned above, in over \$77.7 billion of projects, there have been 1285 formal IRB™ recommendations made, of which 97.8% were accepted. Imagine the number of potential lawsuits avoided by using an IRB™.

Therefore, the Issue Review Board™ process is an efficient method for resolving disputes while at the same time avoiding time delays and lowering costs. The IRB™ is paid via an on-call retainer, which amounts to a fraction of the cost of litigation. Whereas litigation costs can represent up to 15% of a project's budget, an IRB™ costs only about 1-2% of the cost of a project – not to mention the savings in time!

ICM's model states that any project valued over \$20 million requires a three-member IRB™ panel. For projects under \$20,000,000, the parties have the option of using a three-member or one-member panel if they deem it more appropriate. If the parties are involved in multiple projects each valued under \$20 million, the parties may also opt to have one regional three-panel Board, where one IRB™ serves the many projects.

In the Hospitality industry, the opportunities for using an IRB™ are numerous. During construction of a hotel, casino, timeshare, country club, theme park or other project, an IRB™ can avoid costly construction delays. Once the project is built, an IRB™ can keep the long-term relationship between the hotel owners and their franchisers and operators intact, saving huge sums of money that might otherwise be lost in litigation. It is truly a win-win solution for all parties involved.