

Nevada laws related to public accommodation liability are generally very favorable to hotels. Hotel operators are exempt from liability for any property that a guest fails to deposit for safekeeping with the hotel unless the gross neglect of the hotel can be established, with the burden of proof resting upon the guest. In order for this exemption to apply, the hotel must provide a fireproof safe or vault in which guests may deposit property for safekeeping and give notice of this service either by telling the guest of the service or by posting notice in the office and the guest's room.²

The hotel is not obligated to receive property exceeding \$750, unless the hotel consents to do so in a written agreement in which the guest specifies the value of the property.³



HOTEL SAFE-DEPOSIT BOXES
AND UNCLAIMED PROPERTY

A CHANGE IN NEVADA'S APPROACH

By Andrew Moore and Jennifer Carleton

Bailment and Safes in Hotel Rooms

A "bailment" is created when a hotel receives something of value on behalf of a patron and agrees to keep it for the patron.

In *Kula v. Karat*,⁴ a patron deposited \$18,300 with a cashier in the casino at the Stardust Hotel. The Nevada Supreme Court found that "[w]here a bailee, either for hire or gratuitously, is entrusted with care and custody of goods, it becomes his duty at the end of the bailment to return the goods or show that their loss occurred without negligence on his part.

Failing in this, there arises a presumption that the goods have been converted by him, or lost as a result of his negligence, and he is accountable to the owner for them."⁵ If a hotel provides a safe in which guests may deposit property for safekeeping and the hotel accepts the property and deposits it on behalf of the patron, a bailment is created and the patron may demand return of his or her property at any time.

The *Kula* case did not address the situation in which a patron deposits his or her property in a personal safe located in a hotel room. With a personal safe in the guest's room, the hotel is not directly



receiving goods from the guest. The guest is depositing the goods directly in the safe and the hotel is not entrusted with care or custody of the goods while the guest is staying at the hotel. The hotel does not have access to the safe because the key is held by, or the digital access code is only known to, the guest. In the event that a hotel guest leaves the hotel without retrieving goods that he or she has deposited directly into the safe in the hotel room, those goods are deemed left by the guest and may be sold by the hotel.⁶

If a guest owes money to the hotel at the time of departure, any of the guest's property left at the hotel may be sold by the hotel after 60 days. "All baggage or property of whatever description left at a hotel, inn, motel, motor court, boardinghouse or lodging house for the period of 60 days may be sold at public auction by the proprietor or proprietors thereof as provided in NRS 108.500."⁷ If a hotel elects to sell such goods, sale of such goods must be by public auction after notice, which includes (a) a description of the property to be sold, (b) the time and place of the sale, (c) the name of the hotel at

which the property or baggage was left, (d) the name of the owner of the property, if known and (e) the signature of the person conducting the sale. If the residence of the owner of the property is known, a copy of the notice should be sent to the owner.⁸

Abandoned Property

In Nevada, property is considered abandoned when there has been no activity or contact with an owner for a specific period of time. The property type will determine the abandonment period; however, it is typically three years. "When a holder's attempts to locate the rightful owner have been unsuccessful, the assets must be 'escheated' to the Nevada State Treasurer's Office, which, in turn, holds the assets in perpetuity. The law requires the state to advertise the rightful owners' names in an effort to return the assets. Once the assets are reported to the state, the holder is released from any liability."⁹

Some resort hotels in Nevada offer their guests safe-deposit boxes that guests may use during their stay,

in addition to the safes provided in guest rooms. Prior to the adoption of AB 419 in the 2015 Nevada legislative session, Nevada's unclaimed property statute would have prevented a hotel from selling the property left in a safe-deposit box or the safe in the guest room. NRS 120A.510 provides that "tangible property held in a safe-deposit box or other safekeeping depository in this State in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law are presumed abandoned if the property remains unclaimed by the owner for more than 3 years after expiration of the lease or rental period on the box or other depository." The Nevada Treasurer's manual related to unclaimed property notes that gaming establishments are subject to the same escheatment laws as any other business in Nevada. Guidance published by the Nevada State Treasurer related to safe-deposit boxes notes that such guidance applies to banks, other financial institutions, and casinos and details that the property left in safe-deposit boxes would need to be inventoried on forms provided by the Nevada Treasurer. Under the applicable provisions in NRS 120A, the property in the safe-deposit box would need to be held for three years by the hotel and if the owner never claimed the property, the property would be provided to the State Treasurer as abandoned property. "Front Money (cash deposited with a casino that the owner withdraws for gambling), hotel safe deposit boxes (with or without rental payments), registered hotel in-room safekeeping, boxes and property, are subject to escheatment to Nevada Unclaimed Property."¹⁰

AB 419, however, added the following section to Chapter 120A – "The provisions of this chapter do not apply to tangible property held in a safe-deposit box or other safekeeping depository which is not

maintained by: (1) A bank or other financial institution; or (2) A safe-deposit company." The explanation of the purpose of the bill reads: "This bill clarifies that the provisions of the Uniform Unclaimed Property Act do not apply to tangible property held in a safe-deposit box or other safekeeping depository, which is not maintained by a bank or other financial institution." The Nevada Resort Association ("NRA") amended the bill after it was originally introduced to include subsection (2) which provides that the unclaimed property provisions apply to safe-deposit companies in addition to banks. The NRA noted that this provision was necessary because Nevada statutes refer to "safe-deposit companies." In its explanation for the amendment, the NRA noted that its intent "is to include companies that are in the business of providing for safe-deposit [boxes], and not include entities that are not in the business of leasing safe-deposit boxes, such as hotels." Lorne Malkiewich of the Nevada Resort Association testified before the Nevada Senate Judiciary Committee on May 12, 2015, regarding the effect of AB 419 and the question of whether a safe in a hotel room is considered a safe-deposit box or other safekeeping



depository: "The statute provides that property in a safe deposit box is presumed abandoned if it remains unclaimed for more than 3 years after the expiration of the lease or rental period. The concept 'lease or rental fee' makes no sense applied to a safe in a hotel room. A presumption of abandonment after 3 years makes perfect sense for safe deposit boxes but would be insane applied to a hotel safe. For example, if a family stayed in a hotel and Junior thinks it would be interesting to put his

teddy bear in the safe, the hotel would be required to keep the teddy bear for 3 years and then turn it over to the Unclaimed Property Division." AB 419 was signed by Governor Sandoval into law on May 21, 2015 and became effective on July 1, 2015.

Resort Casino Safe-Deposit Boxes

It is clear that after the Nevada Legislature amended Chapter 120A, the property that is left by a patron in a hotel room safe is no longer subject to the unclaimed property provisions of the Nevada code. However, it is not as clear whether a resort casino that provides a safe-deposit box to a patron is a “financial institution” subject to those same provisions. AB 419 did not define the term “financial institution.” Even though casinos are defined as a financial institution under the Bank Secrecy Act (31 U.S.C. § 5312(a)(2)(X)), the various definitions of “financial institution” under Nevada law do not include casinos in the definitions. The following provisions in the NRS define “financial institution”: NRS 363A.050, 111.711, 600.045, 239A.040, 657.160. The only one of these various definitions in Nevada law that could arguably include a casino is NRS 657.160 because it defines financial institution with reference to a depository institution. But the definition of depository institution in NRS 657.037 requires that the institution be chartered as a financial institution in Nevada, in another state or by the federal government. Therefore, it does not apply to casinos and resort hotels.

Given AB 419’s effective date of July 1, 2015, all property that has been housed in safe-deposit boxes at a Nevada hotel for a period of three years or longer, as of July 1, 2015 should be escheated to the State of Nevada as unclaimed property. For property that has been left in a safe-deposit box or a

hotel safe for a period less than three years (as of July 1, 2015), Nevada hotels can now dispose of the property because AB 419 clarified that Nevada’s unclaimed property requirements do not apply to safe-deposit boxes or any other safekeeping depository provided to guests in Nevada hotels.

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¹ While the term “hotel” is used in this article, the same analysis applies to inns, motels, motor courts, boardinghouses or lodging houses under NRS 651.010.

² NRS 651.010(2).

³ NRS 651.010(3-4).

⁴ 91 Nev. 100 (1975).

⁵ *Id.* at 104, citing *Mills v. Continental Parking Corp.*, 86 Nev. 724, 475 P.2d 673 (1970); *Alamo Airways, Inc. v. Benum*, 78 Nev. 384, 374 P.2d 684 (1962). Cf. *Traynor v. Carter*, 87 Nev. 281, 485 P.2d 966 (1971); *Donlan v. Clark*, 23 Nev. 203, 45 P. 1 (1896).

⁶ See NRS 108.490.

⁷ NRS 108.490.

⁸ NRS 108.500.

⁹ State of Nevada Office of the Treasurer, Unclaimed Property Holder Reporting Manual (Rev. 05/2015).

¹⁰ *Id.*

