

# GRIMES LAW OFFICES, LLC

ONE LIBERTY PLACE, SUITE 3600  
1650 MARKET STREET  
PHILADELPHIA, PA 19103

Tel: (215) 529-8700  
[www.GrimesLaw.org](http://www.GrimesLaw.org)

**JOSHUA L. GRIMES**  
Admitted in DC, NJ, PA  
E-Mail: [GrimesJ@GrimesLaw.org](mailto:GrimesJ@GrimesLaw.org)

## **CUTTING EDGE LEGAL ISSUES: *NEW CHALLENGES, UPDATED SOLUTIONS***

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**Presented By:**

**JOSHUA L. GRIMES, ESQUIRE**

**Attorney At Law**

**GRIMES LAW OFFICES, LLC**



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PERSONAL SERVICE, PROFESSIONAL RESULTS

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## **JOSHUA L. GRIMES**

Admitted in DC, NJ, PA

E-Mail: [GrimesJ@GrimesLaw.org](mailto:GrimesJ@GrimesLaw.org)

## **ABOUT JOSHUA L. GRIMES, ESQUIRE**

Joshua L. Grimes, Esq. of Grimes Law Offices based in Philadelphia, is a leading attorney in the association, nonprofit, meeting, and hospitality industries. He is a specialist in all matters relating meetings and conventions, as well as association & nonprofit governance.

Mr. Grimes' meeting industry clients include all types of organizations, including meeting planners, corporations, associations, destination management companies, convention & visitors bureaus, hotels, venues, colleges & universities, and transportations companies. His services include the following types of matters:

- Contract negotiations and preparation for all types of meetings.
- Dispute resolution matters.
- GDPR compliance disclosures for meeting hosts, venues, planners, and other organizations.
- In-house training and seminars on meeting contracts and negotiation techniques.

Mr. Grimes is a member of the APEX Contracts Panel, and he served on the Board of Directors of the Academy of Hospitality Industry Attorneys. He was selected as a "Pennsylvania Super Lawyer", and recently designated a "Legal Leader" by ALM Media.

Mr. Grimes is one of the association and meeting industries' most prominent speakers. In addition to speaking regularly for leading organizations such as MPI and PCMA, he conducts in-house training programs for corporate and association executives. Mr. Grimes also a frequent contributor for meeting and association industry publications and websites.

Mr. Grimes has appeared before industry professionals throughout the United States, and in Europe, the Middle East, Canada, and Mexico. He is a member of the Bars of New Jersey, Pennsylvania, and Washington, D.C.



**CUTTING EDGE  
LEGAL ISSUES:**  
*NEW CHALLENGES, UPDATED SOLUTIONS*

**JOSHUA L. GRIMES, ESQ.**  
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This presentation is for informational purposes only and does not constitute legal advice. The sample contract clauses are for illustrative and educational purposes only. Those seeking legal assistance are directed to seek advice from a competent attorney of their choosing.

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**WHAT'S DRIVING THE MEETINGS  
INDUSTRY'S LEGAL CONCERNS?**

- Continuing Domestic & International Uncertainty.
- More Attention to Security Issues.
- Strong Economy Keeps Demand High.
- Increasing Risks from Computers & Social Media.

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**SEXUAL HARASSMENT & EVENT CONDUCT**

- Sexual Harassment a Major Issue in the News.
- Not Unique to Meetings Industry, But Meetings Offer Opportunities for Abusive Behaviors.
- Possible Liability to Meeting Host, Employer & Others From Inappropriate/Wrongful Behavior.
- Accusations May Be as Harmful as Proven Bad Conduct.

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**SEXUAL HARASSMENT – RESPONSIVE STEPS**

- Minimize Opportunities for Harassment – Enforcement of Liquor Laws, Adequate & Trained Security, etc.
- Set Up Clear Procedures to Report Allegations & Publicize as Needed.
- Implement Least Intrusive but Effective Means to Protect Complainant & Alleged Harasser During Investigation.
- Impose Sanction According to Policy When Warranted.
- Document All Reported Incidents, Investigations & Results.
- Retain Records.

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**GUNS IN MEETINGS**

**The Issue:**

- Many States Now Allow Guns in Public Places, Including Convention Centers, Hotels & Restaurants.
- Guns May Not Fit Meeting, Particularly When Alcohol Served.
- Every State Different – Need to Check Local Laws in Meeting Location.

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## GUNS IN MEETINGS

### Recommended Steps:

- Review “Carry” Laws With Counsel.
- If Desired, Create Written Firearms Policy, Including Requiring Gun Checks & Appropriate Restrictions.
- Distribute Policy in Advance to Make Attendees Aware.
- Engage Security to Enforce Rules, Particularly if Alcohol Served.
- Check For Insurance Policy Issues.

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THE NEW YORK TIMES, 9/3/2018

TRENDING

## Cannabis on the Menu at Your Next Hotel Restaurant or Spa?

As states continue to legalize, cannabis-based edibles and spa treatments are ready and waiting for you on your next visit to a luxury hotel or resort.



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## MARIJUANA & EVENTS

- Marijuana Now Legal in Canada and 10 States: Washington, Oregon, California, Colorado, Nevada, Alaska, Maine.
- Available to Meeting Attendees; Use Common for Some Groups.
- Check State Laws & Regulations for Legal Parameters.
  - Common Restrictions:
    - Less than 1 Ounce for Personal Use;
    - Users 21 & Older;

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## MARIJUANA & EVENTS

- No Use in Public Places;
- Must Purchase from Authorized Seller.
- State Laws Often Differ.
- **Legal Standards For Use & Possession Not Fully Developed.**
- **Consider that Residents of a “Legal” State May Not Appreciate Different Laws in Other States – Anticipate Confusion.**
- **Consider Notice to Attendees Meeting in “Legal” State vs. “De-Criminalized” State.**

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## MARIJUANA & EVENTS

- **“Common Sense” Guidelines:**
  - Treat Weed Usage Like Alcohol at Meetings.
  - Check Distributors for Licenses & Insurance.
  - Check Group’s Insurance for Coverage.
  - Limit Opportunities for Attendees to Cause Damages or Injuries.
  - Inform Attendees of Parameters for Responsible Use.

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## CODE OF CONDUCT

- **Important to Address Proper Behavior at Meetings/Events.**
- **Not Just Sexual Harassment; Other Topics May Include:**
  - Verbal Comments (Racist, Anti-LGBTQ, etc)
  - Social Media Postings
  - Proper Attire
  - Suitcasing
  - Smoking
  - Alcohol Consumption
  - Firearms
- **Written Procedures to Investigate Allegations.**

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## EVENT SECURITY

- Recent High-Profile Emergencies Highlight Need for Security Planning, but Really Nothing New.
- Evaluate the Risks of Each Meeting Location & Activity – Civil Unrest, Terrorism, Theft, Floods, Earthquakes, Fires, etc.
- Know if Your Group Attracts Attention or Controversy.
  - Controversial Meeting Purpose.
  - VIPs in Attendance.
  - Hi-Profile Activities.
- Perception of Attendee Security Nearly as Important.

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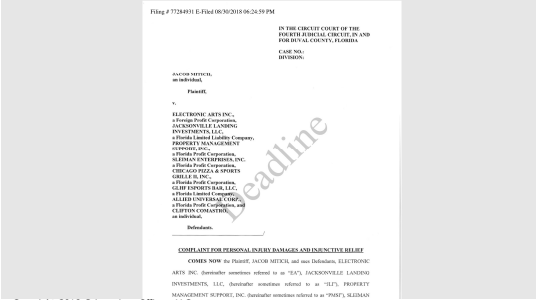
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## GAMING TOURNAMENT COMPLAINT



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## USING RFP'S TO IDENTIFY SECURITY ISSUES

Ask For Pertinent Information:

- Emergency Procedures Summary.
- Extra Security Costs.
- Ability to Keep Non-Attendees Out of Meeting Areas.
- Record of Criminal Incidents.
- Cyber-Security Measures Available to Protect Attendees & Staff From Hacking.
- Firearms Policies.

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**SITE VISITS – THINGS TO CONSIDER**

- Venue Security From Outside Intrusion.
- General Upkeep of Meeting Venues & Hotels.
- Ability to Secure Meeting Space Within Venue.
- Security Issues Outside Meeting Venue, Including Routes to Hotels.
- Likelihood Guests Will Take Part in Unsafe Diversions.
- Civil Unrest, General Feeling of Safety in Surrounding Community.

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**EVENT SECURITY – STEPS TO TAKE AFTER VENUE SELECTED**

- Check Venue, Hotels and Meeting City for Prior Issues.
- Ask Hotels & Venue for their Emergency Plans, & Adapt Them as Appropriate.
- Create Plan for Security, ID Verification of Attendees, Crisis Communications.
- Engage Security Personnel if Appropriate; Cost Likely Absorbed by Meeting Group.

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**DATA BREACHES – STEPS TO MINIMIZE & MITIGATE RISK**

- Secure Computers by Running Antivirus Software, Changing Passwords Regularly, and Educating Personnel on Avoiding Risky Websites.
- Give Attendees' Personal Information Only to Businesses That Provide Demonstrable Assurances on Protecting Data and Securing Their Networks.

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**DATA BREACHES – MORE STEPS TO MINIMIZE RISK**

- In Written Contracts, Include Indemnification from Damages Caused to Your Organization and Your Customers if a Contractor’s Computers are Hacked.
- Secure a Cyber-Insurance Policy For Your Organization to Help Mitigate the Financial Effects of a Cyber-Security Breach.
- If Your Organization and/or Your Customers are Covered by GDPR, Make Sure that Everyone Receiving Personal Data of Attendees, Exhibitors and Others is GDPR-Compliant in Terms of Disclosure and Data Handling.

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**EVENT INSURANCE**

- Insurance Necessary for ANY Risks, Even Seemingly Small Ones.
- If an Incident Occurs, You Will Never Have Taken Sufficient Precautions to Avoid Lawsuit – “Hindsight is 20/20”.
- Event Host, Venue, & Contractors Should All Have Their Own Insurance – Protection for Event and Themselves.
- Do Not Mislead Your Insurance Carrier About Nature of Event; Could Lead to Denial of Coverage.

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**WORLD CRISES & MEETING ATTENDANCE**

- The Issue: 24-Hour News Cycle Creates Crises Affecting Meeting Attendance.
- Force Majeure Basics:
  - Definition: Unanticipated Events Outside a Party’s Control.
  - Traditional F.M.: Cancel if Performance “Illegal” or “Impossible”.
  - Now “Inadvisable” Added to Handle Today’s Issues.
  - Cancel Without Liability to Either Party.

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**FORCE MAJEURE – 2018 VERSION**

Are These Events “Force Majeure” Occurrences?

- Terrorism – Threatened or Actual? In Meeting Location or Elsewhere?
- Travel Bans.
- Aggressive Panhandling & Dirty Streets.
- Hurricanes – Cabo San Lucas?

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**FORCE MAJEURE – 2018 VERSION**

Standard F.M. Clause = Adequate Protection?

- Think: What Would Protect the Group?
- Does Adding “Inadvisable” or “Impractical” Help?
- Would Right to Cancel be Different if the Problem Was Already Known at Time of Contracting?
- Impact of World Health Organization (WHO) Advisory on Diseases.

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**DISEASES & OTHER HEALTH ISSUES**

- Err on the Side of Allowing Affected Attendees to Cancel.
- If Cancellation of Event is Appropriate, Contract Should Allow Either, at Group’s Option:
  1. Cancellation of Event Without Liability; or
  2. Proceed With Event Attrition Waived.
- FM Clause Should Not Have “Notify Within 10 Days of Occurrence” Requirement.

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**SAMPLE FORCE MAJEURE /  
EXCUSE OF PERFORMANCE CLAUSE**

“Should events beyond the reasonable control of either Hotel or Group occur, including, but not limited to acts of God, war, strikes/labor disputes/labor unrest (except those involving Hotel employees, contractors or agents), governmental regulation, civil disturbance, terrorism, disaster, fire, earthquakes, hurricanes, unreasonable extreme inclement weather, curtailment of transportation facilities, public utility failure, declaration of a “Severe” risk of terrorist attack by the U.S. Department of Homeland Security, issuance of a travel advisory for the region in which Hotel is located by the World Health Organization,

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**SAMPLE FORCE MAJEURE /  
EXCUSE OF PERFORMANCE CLAUSE**

or any other comparable condition, making it inadvisable, illegal or impossible for either Hotel or Group to perform their obligations hereunder, the affected party may cancel this Agreement without liability for any one or more of such reasons upon written notice to the other. In addition, all deposits and pre-payments made by Group or its guests shall be promptly refunded.” A party seeking to cancel because performance has become “inadvisable” must provide reasonable evidence that events outside its control and reasonable anticipation caused at least 30% of expected attendees (based on meeting history) not to register for the Event, or registered attendees to cancel their registrations.

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**POLITICAL & MORALS ISSUES**

**Events in the News:**

- Religious Freedom Laws.
- Bathroom Laws / Other Legislation Considered Anti-LGBTQ.
- Confederate Flag Controversies.
- Immigration Policies.
- Anti-Civil Rights Laws.
- Opposition to Politician’s Policies.

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**POLITICAL & MORAL ISSUE CHALLENGES**

- Difficult to Anticipate.
- Hard to Identify in Advance.
- Don't Fit as Force Majeure Occurrences.
- Attendees Don't Care About Monetary Losses.
- Dilemma: Stick to Principles vs. Paying Cancellation Fees.

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**POLITICAL / MORAL SOLUTIONS**

- Consider at Start of Contract Negotiations: Is This an Issue For My Group?
- Address Up-Front With Hotels, Venues & Suppliers.
- Craft a "Morals" Clause to Address Concerns Without an Automatic Out:
  - Identify a True Issue.
  - Allow Hotel / Vendors to Respond.
  - Require Actual Proof of Adverse Effects.
  - Remedies: Attrition Waiver / Reduced Block/ Cancellation.

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**GDPR – GENERAL DATA PROTECTION REGULATIONS**

- Designed to Protect Personal Data of EU Citizens & Residents.
- Covers Information Such as Attendee Names, Photos, Email Addresses, Social Networking Posts, IP Addresses.
- Applies to Organizations Anywhere in the World:
  - Those in EU Countries.
  - Those Anywhere Else Handling Personal Data of EU Citizens / Residents.

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## GDPR

### Critical GDPR Issues:

- What Data Does Your Organization Collect on Attendees, Speakers, Sponsors, Exhibitors & Others?
- How Are You Keeping that Data Secure? Have You Thoroughly Checked Out Your Data Storing Methods?
- How Would You Detect and Investigate a Data Breach? Could You Respond Quickly & Effectively?

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## GDPR

### GDPR Things to Do:

- Data Collection Opt-in Forms – Requires Affirmative Consent.
- Privacy Consent Notice Information Must Include:
  - List of Data You Collect.
  - How Long Will You Store It.
  - Right to Complain to Authorities – for EU Citizens & Residents.
- Implement Response System for Data Access Requests – Respond Within 30 Days.
- Develop Process to Detect & Investigate Data Breaches.

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## GENERAL QUESTIONS FOR 3<sup>RD</sup> PARTY DATA USE

- What Information Do You Collect from Our Members & Attendees?
- How Will You Use the Information?
- Will You Sell, Give or Transfer the Information to Others?
- How Will You Protect the Data?
- What Disclosures Will You Make?
- How Does Someone Opt Out from Others Using Their Information?

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## HOME-STAY ACCOMMODATIONS

- **Growing % of Meeting Market – Lower Rates & More Space.**
- **Should be No Liability For Planner/Meeting Host.**
  - But Attendees Look to Organizers if Something Goes Wrong.
  - Creates Unfavorable Impression for Meeting.
  - Possible Lawsuits For Not Taking Action Under “Knew or Should Have Known” Theory.

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## HOME-STAY ISSUES

- **Location & Safety.**
- **Are Fire Codes & Health Laws Met?**
- **Is Rental Legal? Risk of Cancellation.**
- **Quality & Level of Accommodations Vary.**
- **Hidden Fees: Cleaning / Security Deposit / Booking Fee.**
- **Effect on Hotel Meeting Space.**

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## STEPS TO TAKE

- **Anticipate if Your Attendees Will Use Home-Sharing.**
- **Adjust Room Blocks to Account for Fewer Hotel Rooms.**
- **Consolidate Hotel Blocks to Retain Comped Function Space.**
- **Utilize Overflow Hotels With No Attrition.**
- **Disclaimer in Meeting Registration Materials: Clearly Set Out Group’s Responsibility:**
  - No Responsibility – Guests on Their Own & Proceed at Own Risk.

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### **STEPS TO TAKE**

- Check With CVBs or DMCs for Legality of Home-Stay Rentals & “Endorsed” Properties.
- Create a List of “Endorsed” Properties; Ask them to Hold Rooms.
- Check “Endorsed” Properties for Licenses & Hotel Tax Payment.
- Ask “Endorsed” Properties to Pay Hotel Rebates in Exchange for Marketing.

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### **RIDESHARE SERVICES**

- Uber / Lyft Increasing Markets; Targeting Meetings.
- Alternatives to Taxis, Private Ground Transportation, Public Transportation.
- Offer Promo Codes & Online Vouchers for Meeting Guests.
- Guests Hail Rides Using Apps on Own Devices.
- Guests Pay for Excess Charges, Rides Outside Authorized Group Areas.
- Benefits: Familiarity to Guests, Efficient Billing to Group.

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### **RIDESHARE ISSUES / UNCERTAINTIES**

- Driver Background Checks.
- Legality of Service in Meeting City / Restrictions on Pickups.
- Insurance Coverage: \$1 million / Incident (Not per person). Enough?
- Group Can’t Select Drivers, Confirm Routes.
- Will Group Be Held Liable for Guest Injury or Loss?
- “Surge Pricing” Can Make Budgeting Difficult.

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**RIDESHARES: HOW TO MINIMIZE RISK**

- Check for Legality & Restrictions in Place of Meeting.
- Check for Current & Prior Litigation against Service.
- Meeting Client & Planner Should Confirm that Insurance Will Cover.
- Cover Possible Gaps in Driver/Service Insurance Coverage.
- Cap Costs and/or Distance Per Ride for Guests Using Voucher or Promo Code.

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**RIDESHARES: HOW TO MINIMIZE RISK**

- In Statements Offering Coupons or Promo Codes to Attendees, Avoid Endorsements and Embellishing Statements, & Consider Disclaimer Absolving Liability to Group/Planner.
- Make Options Available to Persons With Disabilities, to Avoid ADA Suits.
- Discourage Use of Self-Driving Vehicles.
- Avoid Lesser-Known Car-Sharing Services, Such as Peer-to-Peer Rentals.

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**PROTECTING GUESTS' PERSONAL INFORMATION**

**The Issues:**

- Hotels & Vendors Wish to Use Guests' Names, Addresses, and Other Personal Information for Marketing Programs.
- Sometimes Sell or Share Personal Information with Other Hotels & Vendors.
- Cyber-Crime is On the Rise Through Hacking into Computer Systems & "Pirate" Wireless Hotspots.
- Vendors Fail to Install & Maintain Antivirus Programs on Computer Terminals.

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**PROTECTING GUESTS' PERSONAL INFORMATION**

**Solutions:**

- Carefully Review Consent Clauses in Group Contracts.
- Limit Ability to Seek Consent from Guests (if Appropriate).
- Vendor Warranties re: Network Security & Anti-Virus / Anti-Hacking Protections.

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**PROTECTING GUESTS' PERSONAL INFORMATION**

**Sample Clause:**

A. Hotel is specifically prohibited from using, or allowing others to use, lists of Group's guests and attendees, or personal information about Group's guests and attendees, for reasons not directly related to providing accommodations and facilities for Group's event. Except as specifically consented to by Group or an individual attendee in writing, Hotel represents and warrants to Group that it shall not use, directly or indirectly, information obtained from Group or its guests or attendees for marketing or promotional purposes.

B. Hotel shall take all reasonable and necessary measures to keep confidential and protect personal information of Group's guests, including their names, addresses, telephone numbers, email addresses, and credit card information (collectively, "Personal Information").

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**PROTECTING GUESTS' PERSONAL INFORMATION**

C. Hotel shall not provide any Personal Information to any suppliers, vendors, partners, affiliates, or any other entity, except as necessary and appropriate for performance of Hotel's duties under this Agreement, or except as authorized by Group in writing. Further, any person or entity receiving Personal Information from Hotel shall agree to keep the Personal Information confidential.

D. Hotel represents and warrants that it will install, maintain, and update appropriate anti-virus and other software on Hotel's computers, and implement other measures in accordance with the industry standard of care, to prevent the unauthorized dissemination of Personal Information from Hotel's computer systems and wireless networks.

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## QUESTIONS & ANSWERS

**JOSHUA L. GRIMES, ESQUIRE**

**(215) 529-8700**

**E-Mail: [GrimesJ@GrimesLaw.org](mailto:GrimesJ@GrimesLaw.org)**

**Web: [www.GrimesLaw.org](http://www.GrimesLaw.org)**



**@JoshuaGrimes**



**Joshua Grimes**



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## **JOSHUA L. GRIMES**

Admitted in DC, NJ, PA

E-Mail: [GrimesJ@GrimesLaw.org](mailto:GrimesJ@GrimesLaw.org)

# CUTTING EDGE LEGAL ISSUES

## SAMPLE CONTRACT CLAUSES

### **SAMPLE FORCE MAJEURE / EXCUSE OF PERFORMANCE CLAUSE**

Should events beyond the reasonable control of either Hotel or Group occur, including, but not limited to acts of God, war, strikes/labor disputes/labor unrest (except those involving Hotel employees, contractors or agents), governmental regulation, civil disturbance, terrorism, disaster, fire, earthquakes, hurricanes, unreasonable extreme inclement weather, curtailment of transportation facilities, public utility failure, declaration of a “Severe” risk of terrorist attack by the U.S. Department of Homeland Security, issuance of a travel advisory for the region in which Hotel is located by the World Health Organization, or any other comparable condition, making it inadvisable, illegal or impossible for either Hotel or Group to perform their obligations hereunder, the affected party may cancel this Agreement without liability for any one or more or such reasons upon written notice to the other. In addition, all deposits and pre-payments made by Group or its guests shall be promptly refunded.

A party seeking to cancel because performance has become “inadvisable” must provide reasonable evidence that events outside its control and reasonable anticipation caused at least 30% of expected attendees (based on meeting history) not to register for the Event, or at least 30% of registered attendees to cancel their registrations.

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## **SAMPLE CLAUSE FOR PROTECTING GUESTS' PERSONAL INFORMATION**

A. Hotel is specifically prohibited from using, or allowing others to use, lists of Group's guests and attendees, or personal information about Group's guests and attendees, for reasons not directly related to providing accommodations and facilities for Group's event. Except as specifically consented to by Group or an individual attendee in writing, Hotel represents and warrants to Group that it shall not use, directly or indirectly, information obtained from Group or its guests or attendees for marketing or promotional purposes.

B. Hotel shall take all reasonable and necessary measures to keep confidential and protect personal information of Group's guests, including their names, addresses, telephone numbers, email addresses, and credit card information (collectively, "Personal Information").

C. Hotel shall not provide any Personal Information to any suppliers, vendors, partners, affiliates, or any other entity, except as necessary and appropriate for performance of Hotel's duties under this Agreement, or except as authorized by Group in writing. Further, any person or entity receiving Personal Information from Hotel shall agree to keep the Personal Information confidential.

D. Hotel represents and warrants that it will install, maintain, and update appropriate anti-virus and other software on Hotel's computers, and implement other measures in accordance with the industry standard of care, to prevent the unauthorized dissemination of Personal Information from Hotel's computer systems.

