Leisure Law Insider - Vol. 10 (May 2026)

Navigating Construction Contract Risks in Hotel Repositioning Projects

May 26, 2026
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***Key Takeaway**: Hotel development is now dominated by renovations and brand conversions, far exceeding new construction activity. This shift fundamentally changes the risk profile and contract needs of projects.*

Hotel development in the United States is increasingly centering on renovations and brand conversions, rather than new, ground-up construction. Developers are repositioning existing assets to capture brand premiums, comply with property improvement plans (PIPs), or renovate aging properties in competitive markets. Industry data illustrates the scale of this shift: Lodging Econometrics reported that in Q2 2025, new project announcements totaled 27,101 rooms. On the other hand, renovations and brand conversion announcements totaled 259,495 rooms in the same quarter.

For hotel owners and developers, this shift raises a set of construction law issues that may differ materially from ground-up development. Renovation and conversion work often occurs in occupied properties, must comply with strict brand standards and deadlines, and frequently involves significant uncertainty about existing building conditions. These realities require careful drafting of construction agreements — particularly when using standard form contracts such as those in the American Institute of Architects (AIA) suite of documents.[1]

Below are several key contract provisions developers should evaluate when structuring hotel renovation and conversion projects.

1. Defining Scope and Allowances for Unforeseen Conditions

Hotel renovation projects frequently encounter unknown conditions behind walls, under floors, or within building systems — especially in older assets undergoing reflagging or repositioning.

The AIA A201–2017 General Conditions, which forms an integral part of numerous common AIA construction agreements, addresses this risk through Section 3.7.4 (Concealed or Unknown Conditions). Under this provision, if the contractor encounters conditions that differ materially from those indicated in the contract documents or that are ordinarily unknown, the contractor may be entitled to an equitable adjustment in the contract sum and/or time.

In practice, however, renovation projects can cause disputes about whether a condition was truly "unforeseen." Developers should consider enhancing the contract's preconstruction (and pre-contract execution) requirements for inspections of the property, in an effort to discover and limit truly unforeseen conditions. It is typically less costly and more time efficient if an unforeseen condition is discovered before construction commences.

For when unforeseen conditions cannot be mitigated in advance, developers should consider supplementing standard AIA language with explicit allowances, contingency structures, or investigation requirements. In many hotel renovation projects, owners can negotiate contractual frameworks that allocate a portion of the contingency to address concealed conditions while requiring prompt documentation and pricing of the resulting change order.

2. Managing Change Orders in Brand-Driven Renovations

Hotel conversions often involve brand-mandated changes, particularly when a property is transitioning to a new flag or undergoing a required property improvement plan.

The AIA A201 change order process (Article 7) governs how adjustments to the work, contract sum, and schedule are implemented. While the mechanism is straightforward in theory, it provides little protection to owners and developers. Consider modifying the standard AIA requirements so that contractors must provide prompt written notice of needed changes as they are discovered, along with cost and schedule impacts. And, of course, seek to require that all changes be in writing by the owner before they are performed; otherwise unapproved changes may be deemed accepted by the owner through conduct (or lack of objection).

In addition, hotel projects frequently face two practical complications that lead to change orders:

1. Late-stage brand directives altering finishes, furniture packages, or public space layouts; and
2. Design development during construction, particularly when owners are balancing renovation costs with operational goals.

Including well-defined allowances in the contract, and timelines for allowance decisions in the schedule, may alleviate some change order impacts caused by these scenarios.

3. Scheduling and Phasing in Occupied Hotels

Unlike new construction, many hotel renovation projects must occur while the property remains operational. Owners may close floors sequentially or phase work around occupancy levels to maintain revenue. This operational constraint has major implications for the project schedule.

The AIA A201 schedule provisions (Article 8) require the contractor to prepare and maintain a construction schedule showing the sequence and timing of activities. However, consider supplementing the AIA schedule requirements to include the specific phasing or activity details that are important to you. In hotel renovations, the schedule should often incorporate:

- Floor-by-floor or wing-by-wing phasing;
- Guest relocation logistics;
- Quiet-hour restrictions to avoid disrupting guests; and
- Coordination with hotel operations and FF&E installation.

Failure to address these in the schedule requirements, and the schedule itself, can lead to costly delay claims from the contractor.

Additionally, contractor delays can cause issues with the anticipated operational schedule of the hotel. While not a bulletproof solution, developers frequently encourage timely completion of specific milestones and overall completion through liquidated damages and timely/early completion bonuses. These incentive structures may help avoid a delayed opening or phasing shift.

4. Termination and Reflagging Risk

Finally, renovation and conversion projects often occur as part of broader asset repositioning strategies, which can introduce termination risk if the project's economics change or a potential new flag is lost.

Under the AIA A201 § 14.4, owners have the right to terminate the contract for convenience, subject to payment for work performed and reasonable termination costs. This provision may become relevant where:

- Financing collapses during a renovation;
- Market conditions change materially;
- Ownership changes during a repositioning strategy; or
- A brand is lost.

Developers should evaluate whether termination provisions appropriately address partially completed renovation work, stored materials, and subcontractor claims — issues that frequently arise after terminations in hotel repositioning projects.

Conclusion

The hospitality sector's development cycle is increasingly defined by renovation and brand conversion activity, with many more renovations and brand conversion announcements than new construction plans.

While standard form contracts like the AIA suite of documents remain widely used, hotel renovations present unique business and contractual risks compared to ground-up development. Unforeseen conditions, brand-driven scope changes, operational phasing, and strict phasing deadlines all create pressures that require careful contract structuring.

For developers and owners, the key takeaway is that hospitality renovation projects should not simply rely on unmodified standard construction contracts.

Instead, owners should work with experienced construction counsel to tailor provisions governing the unique risks presented. Doing so can help a renovation or conversion project — often central to a hotel's repositioning strategy — remain both financially sound and within risk tolerances.

[1] This article focuses on the AIA suite of documents because of its common use in the industry, but most of these suggestions apply to any contract used.