

# **KILL RESORT FEES WHITE PAPER**

Resort fees allow hotels to advertise one low rate yet charge a higher rate that the guest is forced to pay at the hotel. This is a clever way for the hotel to lure in more guests and make more money. Resort fees brought in \$2.47 billion to the hotel industry in 2015. <sup>1</sup>

## **What is a resort fee?**

A resort fee is a separate mandatory fee that a guest must pay to receive the key to his room. The fee is charged in addition to the room rate. The resort fee is also taxed. Being charged a resort fee is similar to paying a second hotel room rate.

Resort fees are unique concept to North America.<sup>2</sup> Though mostly found in tourist destinations in the United States, some resorts in Mexico and the Caribbean also charge resort fees. A handful of hotels in Canada have also recently taken up the practice.<sup>3</sup>

Most resort fees are charged separate from the room rate. That is, if a guest pays in advance with a credit card for a room online, he is paying the advertised room rate and all necessary taxes. A reasonable person would assume that is the final price of the hotel. When the guest arrives at a hotel with a resort fee; however, he will be forced to pay the additional resort fee / second room rate for his entire stay at the front desk when he checks in.

Sometimes this concept as referred to as drip pricing.<sup>4</sup> One price is advertised out front to lure in a customer but when the customer goes to book there are then mandatory unavoidable fees, taxes and other add-ons that incrementally drip and increase the original advertised price.

As the term “resort fee” has become tainted in the minds of some tourists, hotels are starting to use new terms for the same idea.<sup>5</sup> Sometimes the additional fee is called an amenity fee, a destination charge, a facility fee, or a resort charge. These are new names for the same resort fee concept.<sup>6</sup>

The worst part about these fees is that the information about the fee is usually obscured.<sup>7</sup> Some hotels do not mention the resort fee anywhere

online. Many hotels include it only in very small fine print. Some hotels list the fee as a tax.<sup>8</sup>

Resort fees / second room rates are always left out of online search tools like Hotel Tonight, Expedia and Priceline making it impossible to compare hotels when shopping online. Since these online tools are there to search for advertised rates, they do not apply to any secondary room rate / resort fees for the night.<sup>9</sup>

Resort fees also take profit away from travel agents. Travel agents earn their commission by booking the listed room rate for the hotel but they do not collection commission on taxes or fees. Travel agents have found it difficult to keep track of every hotels' advertised rate in addition to the resort fee. If a travel agent does not disclose both rates to a client before the point of purchase, she could be sued by the client.<sup>10</sup>

### **Why Do The Hotels Do This?**

As more and more guests search and book hotels online using search giants like Expedia, Priceline and Hotels Tonight, hotels receive less of a profit. Expedia (and their associated companies like Hotels.com, Hotwire, Orbitz, Travelocity, Trivago), Priceline (and their company Booking.com) and Hotel Tonight take a large chunk of the profit pie from each hotel reservation they make for a hotel. The hotel then is incentivized to somehow leave Expedia, Priceline and Hotel Tonight out of the process.<sup>11</sup> By advertising one rate that a guest pays for through Expedia, but then charging a second room rate / resort fee that a guest is forced to pay directly to the hotel ensures the hotel can regain some of its losses.

For example, say Bob's Hotel advertises a \$100 hotel on Expedia. Jane books Bob's Hotel in Niagara Falls, New York on Expedia and pays \$100 plus taxes to reserve her room. Expedia might take \$25 and then pass \$75 on to Bob's Hotel to secure Jane's reservation.<sup>12</sup> When Jane gets to the hotel, the front desk staff at Bob's Hotel tells her there is a \$25 resort fee / second room rate that she is forced to pay to be able to receive her key. Jane says she had no idea and thought she had already paid for the room in full on Expedia but the hotel staff says that this is a separate charge, it must be paid directly to the front desk and she cannot receive her room key until she pays the fee. The hotel receives

100% of this \$25 that Jane pays directly at the front desk of the hotel. The resort fee is how the hotel gets back to receiving \$100 per night for a room. Jane is upset and feels tricked but she is on vacation so she is unlikely to protest. She'll enjoy her vacation and never return to this hotel again. Bob's Hotel knows that thousands more people like Jane, who just want to see Niagara Falls once in their life, will stay at the hotel.

### **Doesn't The Resort Fee Cover Amenities?**

No. Since the resort fee is a mandatory fee, a guest is not paying for amenities. He is simply paying a second room rate to the hotel.

If the resort fee actually covered a service such as the use of the hotel pool, a guest would receive the service if she paid \$15 for the use of the pool. Resort fees, however, force a hotel guest to pay \$15 under the guise of being able to use the pool when in reality the guest is forced to pay \$15 even if she never used the pool because there was freezing rain. The resort fee is not providing a service. It is simply an additional mandatory hotel rate.

Hotels like The Andaz in Maui clearly list what the resort fee claims to offer online in bullet points. That is an exception. Most hotels that charge resort fees do not know what their resort fee claims to cover.

Usually what the resort fee allegedly covers is not listed online. If a potential customer calls a hotel to inquire about a fee, they might be transferred to the hotel's booking system which generally is thousands of miles away from the actual hotel. A booking agent in Nebraska is unlikely to know the details of the services provided in a hotel in the Napa Valley. If an inquiring potential guest is lucky, he could be transferred back to the hotel's front desk that might be able to answer the question of what is covered for the resort fee.

Most hotel front desk staff is uninformed and untrained in how to answer the question of what is provided by the resort fee. Front desk staff have said the resort fee is "a credit card processing fee," "a local tax," and "just a thing everyone does." None of these are correct in explain what is allegedly provided by the fee.

Though all of these answers are incorrect there is at least some hotel front desk staff that realize the absurdity of the resort fee situation. The Super 8 Hotel in Las Vegas responded to a query about what was provided with their \$14.60 per night resort fee by laughing.

### **How Do They Get Away With This?**

Hotels that charge resort fees are usually at hotels that either do not need repeat customers or they are in a location with resort fee collusion.

#### *One – No Loyalty Needed*

Hotels that charge mandatory fees in addition to the advertised rate insult their guests' intelligence. They can get away with this because these hotels do not care about repeat business. This means that hotels that charge such fees are in tourist areas such as The Florida Keys, Orlando and Miami, Florida; Las Vegas, Nevada; The Hawaiian Islands; Niagara Falls, New York, the Napa Valley in California, etc.<sup>13</sup> These hotels are taking advantage of unsophisticated travelers who do not have expense accounts and are unlikely to read the fine print. The hotels in these areas are also targeting tourists from other countries who are not familiar with US hotel billing practices and may not speak English.

For example, say Rakesh and his wife have been saving up for three years to take their kids to Orlando. On the big day, the family sets out at 6am to drive for 12 hours to reach Orlando. When they get to the front desk of the hotel, Rakesh finds out that they have to pay an additional \$300 in a resort fee to receive the key for their week stay in Orlando. Though Rakesh did not have any idea about the fee, he is exhausted. He does not know if this extra fee is a normal part of travel and he is ashamed to show his travel naivité. He has three anxious kids at his side and this is his only vacation in three years so he puts the charge on his credit card, feels tricked and takes his family to their room. The family saved up three years for this Orlando trip and three years later when they can travel again, they hope to go see something new. The family is unlikely to ever return to this hotel in Orlando.

#### *Two – Resort Fee Collusion*

Another way that hotels getaway with this is for hotels in an area to bundle together and all charge high resort fees. This leaves tourists with

no non-resort fee alternative. There is currently no hotel on the Las Vegas Strip that does not charge a resort fee / second room rate. From the Circus Circus' \$23.52 to the Bellagio's \$35.84, there is no alternative to these add-on fees. If you want to go to Las Vegas and stay on the Strip, you will be forced to pay an additional \$23.52 - \$35.84 per night and you have no other options.<sup>14</sup>

The only way to get out of paying a resort fee on the Las Vegas Strip is to not stay in one of the 62,000 hotel rooms. The alternative to being charged a second room rate on the Las Vegas Strip is to book a condo or rent a person's home through Airbnb, VRBO or HomeAway.

### **How Do Hotels Justify Resort Fees?**

#### *Excuse One) Increasing Cost of Hotel Facilities*

Hotels justify resort fees by saying that the fee pays for the increasingly lavish costs of the hotel facilities. They argue that the room rate a guest pays only pays for his hotel room. The resort fee covers the use of the rest of the hotel – the pool, the gym, the wifi, etc. That'd be valid if it was possible to opt out of the resort fee, yet resort fees are almost always mandatory. If a guest truly does only want to use the hotel to sleep in her bed and nothing else, she would still be forced to pay the resort fee to receive the key to her room.

Furthermore, the argument that a resort fee pays for the parts of the resort might be valid if it only existed at resorts. The Super 8 in Las Vegas has a resort fee as does the two-star Hotel Pennsylvania in New York City and the Days Inn in Miami.<sup>15</sup>

Under this same line of inquiry, one has to wonder what the Moana Surfrider, A Westin Hotel in Hawaii, is doing charging \$1,530 per night as their advertised room rate yet what on earth is not covered that the hotel still has an additional mandatory resort fee of \$31.41 per night.<sup>16</sup> With this logic, that is one very luxurious hotel room and one very not so exciting resort.

Fifteen hotels in New York City now charge resort fees. Though one generally does not associate New York City with resort-like relaxation, the city has never been known as a place to shy away from an extra dollar. The fifteen hotels in New York that charge resort fees do not

offer any sort of sprawling luxury pool area but they do charge a resort fee of up to \$32.66 per night for the pleasure of sleeping in a bed in New York City.<sup>17</sup>

Resort fees do not pay for resort services and amenities as they exist at thousands of hotels that do not even have a pool.

*Excuse Two) The fees are clearly labeled and the purchaser should have known*

Another way that hotel operators justify resort fees is that they say they are clearly labeled on their hotel websites and customers should read the fine print. Katherine Lugar, President and CEO of the American Hotel and Lodging Association said “throughout the booking process, hotels are transparent about costs, fees and taxes.”<sup>18</sup>

Sometimes this is true and hotels do note in the checkout part of the site in small print that resort fees will be applied. This is not always true; however, and some hotels leave any mention of a resort fee off of their website.

Usually the hotels prefer to mention their resort fee somewhere likely never to be seen by a potential purchaser. The DoubleTree by Hilton Hotel Grand Key Resort in Key West, Florida mentions their pet deposit of 75 dollars on their front page but there is no mention of the \$25 resort fee. To see the resort fee, a potential guest will need to put specific dates in the calendar and then the advertised prices are listed in large, bold 21 font size with a variety of price options. The resort fee is mentioned only once above the multiple advertised prices in 7.5 font size.<sup>19</sup>

Though all hotels that mention resort fees seem to put them in small font, some shift the attention even further to the taxes section of the page.<sup>20</sup> If a guest directly books a hotel on the hotel’s website, the resort fee is often listed in taxes. This is a page that is likely never to be questioned by a tourist. A resort fee is not a tax.

The Arizona Grand Hotel in Phoenix, Arizona has on their purchase page a summary that lists only the “subtotal” and the “taxes.” Only if you click on a further link for details do you see that the taxes include a \$49.00 resort fee.<sup>21</sup> Arizona has no resort fee tax.

Even if a hotel, like the Intercontinental in Miami, clearly labels that a \$15 resort fee will apply on their own website, that means nothing if a guest makes the booking on a comparison booking site like Expedia where all of the resort fees are left off. Since only the advertised room rate is shown on Expedia, Priceline and Hotel Tonight, there is no way to figure out which hotels have resort fees or what the resort fee is when comparing hotels.<sup>22</sup>

*Excuse Three) This is no different than the airline industry or any other industry fees.*

Another defense of the hotel industry is that resort fees are no different than all of the fees that people seem to have gotten used to with other purchases. Rosanna Maietta, spokeswoman for the American Hotel & Lodging Association, said “service fees are common practice in retail and commerce, from banking and mobile fees to extra charges for event tickets.”<sup>23</sup>

This too is incorrect because resort fees are not payment for a service. The airline equivalent of the resort fee would be a flight attendant standing at the front of the boarding gate demanding an extra \$35 to board the plane.

The New York Times reported about the “Barrage of Fees is Starting to Follow Fliers to the Hotel” on August 12, 2013. In the article, Bjorn Hanson of New York University said “the airline industry has created great cover that has emboldened the hotel industry.”<sup>24</sup>

*Excuse Four) Eliminates “Nickel-and-Diming”*

A very common claim by those charging resort fees is that guests love that all sorts of amenities are bundled together. MGM Resorts International Senior Vice President Alan Feldman said “we have heard negative feedback from guests but we’ve also heard positive feedback from guests who are happy they are no longer paying a la carte for different services. They don’t feel nickeled and dimed.”<sup>25</sup>

These hotel executives are referencing back to a day when a luxury resort hotel may charge \$10 to enter the pool or \$2 for a thirty second local call. Today, however, the MGM Grand in Las Vegas charges \$33.60 per day in addition to their room rate under the guise of providing

“property-wide high speed internet access, unlimited local and toll free calls, airline boarding pass printing, notary service and fitness center access for guests 18+.”<sup>26</sup> Local and toll free calls and boarding pass printing are obsolete services that the MGM Grand executives are claiming guests were asking to pay for in response to “nickel and diming.”

Though hotel executives love to claim customers asked for a resort fee instead of being nickel and dimed, all one needs to do is search for tourists talking about resort fees online. All are negative. There seems to be no praise of resort fees from any tourist anywhere online. A quick search of Twitter returns thousands of tweets about peoples frustration with resort fees. There does not seem to be one hotel customer who is advocating for resort fees yet there are thousands of people who complain about being forced to pay \$33.60 a day in the name of toll free local calls.

### **How Is This Legal?**

Resort fees are only legal in the United States because they are currently not illegal. Not shockingly, the hotel industry works to get as much money as possible from tourists at a faster rate than the US government can respond to laws making their dubious second room rate charges illegal.

Currently Senator McCaskill has introduced a bill in the US Senate that would allow for the Federal Trade Commission (FTC) to regulate and go after hotels that charge two rates for one night / resort fees.<sup>27</sup> The Federal Trade Commission is the government organization that is tasked to regulate the hotel industry.

The Federal Trade Commission has currently done little to protect consumers against hotels charging two room rates for one night. In 2012, they sent a warning letter to 22 hotels charging resort fees.<sup>28</sup> No further action has been taking by the FTC on resort fees.

In comparison, the Department of Transportation (DOT) has the authority to regulate the airline industry. They have gone after airlines for bogus fees like variable fuel charges. The DOT rule from January 26, 2012 (14 CFR 399.84(a)) requires that any advertisement for air travel



must include all taxes, government-imposed fees, and all mandatory airline and ticket-agent imposed fees.<sup>29</sup> This is why if a tourist buys a plane ticket on Expedia from Detroit to Buffalo, he can walk onto the plane and enjoy his plane ride from Detroit to Buffalo with that ticket.

The Federal Trade Commission has argued that they do not have enough authority to go after hotels that charge two rates for one night. FTC Chairwoman Ramirez has called on Congress to draft new legislation to protect consumers from resort fees / two room charges for one night. Punting to Congress, Chairwoman Ramirez wrote to legislators interested in resort fee legislation. She said “in my view...the most efficient and effective means to mandate the type of industry-wide requirement you propose would be through legislation.”<sup>30</sup>

Senator McCaskill introduced the Truth in Hotel Advertising Act of 2016 on February 25, 2016. It is currently sitting in the Committee on Commerce, Science and Transportation. The bill “prohibits certain entities that are subject to the enforcement authority of the Federal Trade Commission (FTC) from advertising a rate for a hotel room that does not include all required fees other than taxes and fees imposed by a government.”<sup>31</sup>

Though this resort fee scheme is currently practiced in the United States because it is not specifically illegal, that is not the case in the rest of the world. The European Union requires all mandatory fees to be included in advertised prices.<sup>32</sup> This makes the advertising of one rate plus resort fees in Europe verboten. The JW Marriott Marquis in Miami has a \$15 resort fee. The “destination fee” is listed separate from the room rate when viewing the website from the United States in English and from the German version of the site from Germany. There is no difference between the ways the JW Marriott Marquis in Miami is advertising their website in Europe even though the practice is in violation of European Union law (see directive 2011/83/EU of the European Parliament).<sup>33</sup>

### **What are the consequences?**

Resort fees annoy tourists and they do not earn hotels repeat customers yet there are even more serious consequences to the practice of charging two room rates for one night.

*A Taxing Issue*

Hotels that charge one advertised rate and one resort fee instead of charging just one total hotel price are depriving state and local taxing authorities from revenue.<sup>34</sup>

The Row Hotel in New York City advertises a \$223.65 hotel room on their website. The hotel has a \$25 facility fee. So a pre-tax hotel room at The Row costs \$248.65. That is the amount that The Row should be taxed at to calculate the New York City occupancy tax and the New York City Javits Center tax. Yet, because \$25 is missing from the total cost of the hotel, the entire price of the room is not subject to the occupancy tax or the New York City Javits Center tax. The resort fee at The Row in NYC is only being charged the New York City sales tax and the New York state sales tax. The facility fee / resort fee/ second room rate at The Row Hotel is only subject to 8.875% taxation. The advertised room rate is subject to a 16.3% tax rate.<sup>35</sup>

### *Free Nights Are Not So Free*

When a hotel has a resort fee, the hotel can advertise free nights within their loyalty programs yet still collect a hefty amount of money for that “free night.” Casino hotels are particularly big on this practice. By charging resort fees, they can comp a room (give a room to a guest “for free”) to a guest for a week but still collect \$150 in room fees for a “free five day stay.” This makes a “free night” not so free.<sup>36</sup>

### *Elimination of Trust*

Of course the worst cost to all of this is the total lack of trust between the hotel operator and the guest. If a hotel hides fees and demands more money for a guest to receive their key, where does it end? What hidden fees are next? Many guests have reported paying for a mandatory “safe charge.” That is, a fee to use the safe in the room whether they use it or not.<sup>37</sup> How is a traveler to know where the mandatory add on fees end? There is no way to know what a guest has to pay for a hotel room until a customer knows the advertised price means something.

### **When Does It End?**

Resort fees have gone up both by the amount charged by the hotels for the fee and the number of hotels that are charging resort fees. The average mandatory resort fee in October 2015 was \$24.93, an increase

of 30 percent over the \$19.20 average resort fee of hotels the year prior. The number of hotels with resort fees grew from 1,191 hotels in December 2014 to 1,671 hotels in October 2015. This is an increase of 40.3 percent.<sup>38</sup>

Currently many hotels advertise a room rate that is less expensive than the resort fee. The Excalibur in Las Vegas advertised a room rate of \$28.00 per night for a one night stay for May 31, 2016. The resort fee for that room is \$29.12 per night.<sup>39</sup> The resort fee costs more than the cost of the hotel room. An actual one night stay at the Excalibur then would actually be \$60.48. There is nothing stopping these hotels from advertising a \$1 hotel and then having a \$100 resort fee.

Without a change to the law, there is unlikely to be an end to these second room rates.

### **How Can You Avoid Paying Resort Fees?**

#### *Step One – Ask to speak to the manager*

When you are at the front desk and the hotel staff is demanding an additional \$35 a night for you to receive your key, politely ask the manager if you can decline all of the amenities the hotel is allegedly providing with the resort fee. Say you are not interested in the pool as it is freezing out. See if you can get a nice manager to remove the resort fee. If you are at a hotel where you have loyalty status, politely remind the manager of your status and ask for the fee to be waived.<sup>40</sup>

#### *Step Two –Dispute the charge*

If speaking with the manager does not work, pay with your credit card and make sure to get documentation from the front desk that shows that you were forced to pay an additional second rate / resort fee for you to receive your room key. After you stay at the hotel, make sure to talk to your credit card company about how you were forced to pay an additional \$35 per night that was not advertised, it was not part of the room rate and you used none of the services allegedly provided. Ask for the credit card company to dispute the claim and return the \$35 per day charge back to your credit card. They will investigate and the credit card company will likely refund you.<sup>41</sup>

### *Step Three - Small Claims Court*

If you paid your resort fee with cash, there is still one last effort you can take to get your resort fee / second room rate back. Make sure to get a receipt. A one week stay in a hotel with a resort fee can easily be \$250 that one did not expect to spend. If you booked the original room rate online sitting on your couch at home, you have jurisdiction to sue the hotel in your home district's small claims court. Small claims court allows you to fill out a piece of paper or two and pay a small claims court fee. The small claims court will send a notice to the hotel that you are requesting the return of the \$250 fee. No lawyer is needed for small claims court and the court is specifically set up to be as accessible as possible to anyone who feels like they have been wronged. Small claims court is an excellent way to get justice.

### **In addition to personally challenging one resort fee, what steps can be taken to end resort fees now?**

- 1) Search giants like Google and Bing should promote sites that display the true price of the hotels.
- 2) Companies like AAA that rate hotels should continue their policy of removing points from the hotels' evaluation score at hotels that charge resort fees.<sup>42</sup> Travel guides and hotel ratings should not encourage guests to stay in hotels that charge two rates for one night.
- 3) Call your member of Congress and tell them that you would like to see an end to resort fees / two room rates for one night.

### **Summary**

Resort fees are a way for hotels to advertise one low price but charge another higher price when the guest gets to the hotel. This brings in billions of dollars to the hotels. Often these hotels are in locations that are preying upon unsophisticated tourists. The Federal Trade Commission is tasked with regulating the hotel industry. So far the FTC has done little to protect tourists from double room rates at resort fee hotels. Without a law making the charging of two rates for one night / resort fees illegal, it is unlikely that this practice will change. The advertised hotel room rate should be the final price of the hotel.

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