

# Mandatory Renovations for Marriott Franchisees

One of the significant uncertainties hotel franchisees face is the cost of renovations mandated by the franchisor. All hotels must periodically face expenses associated with refreshes and renovations, but compared to franchisees, independent owners may be better able to control the costs, timing and frequency of such updates.

## Costs

Independent owners have more power to contain certain costs because of their freedom to choose among multiple vendors for supplies, systems, furniture, and so forth based on cost, durability and other factors. Marriott franchisees may have only one or a limited number of suppliers they are allowed to use.

## Timing and Frequency

Marriott franchise agreements address the circumstances under which franchisees must perform renovations. For example, under a recent Marriott franchise agreement for Residence Inn, franchisees must bring their hotels into conformity with whatever standards Marriott sets. They must do so any time Marriott sets new standards for their brand, which it has the unlimited power to do. Franchisees who signed with Marriott before its merger with Starwood may now face a situation they did not anticipate. Marriott and Starwood previously developed brands that competed with each other for market share. The merged company – with 30 brands – must now reverse course and figure out how to differentiate those brands from one another. Although Marriott representatives have stated that they intend to keep all 30 brands,<sup>1</sup> the company may choose to eliminate some; what that would mean for those franchisees is uncertain.

## Q&A about Mandatory Renovations

Given the above concerns, franchisees may have some questions about their obligations. Franchisees should check their franchise agreement and franchise disclosure documents. The following questions and answers are based on Marriott's Residence Inn Franchise Disclosure Documents for 2017 ("FDDs") (emphasis added in all quotes):

**Q: How could the Marriott-Starwood merger cause me to spend money on renovations?**

**A:** From Residence Inn FDD for 2017, pg. 8: "We are in the process of integrating Marriott and Starwood, and identifying synergies in operating the combined company (the "Integration Process"). As part of the Integration Process, we are reviewing and evaluating certain system standards for each Company Brand, including certain programs and services offered by us and our affiliates and subsidiaries to Company Brand franchisees, and certain products and services approved for use by Company Brand Hotels. Consequently, we may add to, merge, modify, or discontinue the standards, programs, products, and services described in this disclosure document, in whole or in part, at any time. For example, we currently anticipate that there will be changes to the rewards and loyalty programs, reservation systems, computer and technology systems, supplier arrangements, and training programs. As the Integration Process is ongoing, we are unable to provide you with a complete description of the changes, a timeline for their implementation, or a meaningful estimate of the cost of such changes. You must comply with any changes we implement."

**Q: Will Marriott experiment with my brand’s standards? What will franchisees be required to do?**

A: From Residence Inn FDD for 2017, pg. 61: “As discussed above, **our standards are subject to change at any time**, including in connection with the Integration Process described in Item 1.”

Under the template franchise agreement attached as an exhibit to the same FDD, “Franchisee agrees that conformity with all aspects of the System and the Standards is essential to maintain the uniform quality and guest service of System Hotels. **Franchisee will comply at all times with the Standards** and operate the Hotel in compliance with the System and the Marriott Agreements.” – Template Franchise Agreement attached to Residence Inn FDD for 2017, pg. 10 (pg. 168 of FDD).

**Q: Who pays for Marriott’s brand experiments?**

A: Marriott states: “As part of the Integration Process described in Item 1, the standards, purchasing requirements, and purchasing arrangements with suppliers (including the rebates and allowances associated with the purchasing arrangements) described in this Item 8 may be merged, modified, or discontinued, in whole or in part, at any time. **You must comply with these changes at your expense.**” - Residence Inn FDD for 2017, pg. 55

Further, “Franchisor may allocate the costs of System modifications among System Hotels or any Category of System Hotels, and such allocation will be on a fair and consistent basis. Such costs **may include development costs and the reimbursement of capital invested in the development of such System modifications, together with costs incurred by Franchisor to finance such capital.**” – Template Franchise Agreement attached to Residence Inn FDD for 2017, pg. 9 (pg. 167 of FDD).

**Q: What if I offer a popular, profitable service as part of my hotel operation, and Marriott decides it doesn’t fit with the standards it imposes at any given time?**

A: “You must offer all of the goods and services that we designate. Furthermore, **you may offer only those goods and services that we require or specifically allow.**” - Residence Inn FDD for 2017, pg. 85

**Q: Is it possible that I will have to pay for my hotel to meet standards that other hotels within the same brand do not have to meet?**

A: “We can change the operating requirements for Residence Inn hotels, including the types of goods and services required to be offered. **Such changes may not apply uniformly to all Residence Inn hotels** if we judge that the market area or the special physical characteristics of a hotel makes an exception appropriate.” – Residence Inn FDD for 2017, pg. 85.

**Q: If I am investing money in keeping up with Marriott’s brand standards, what is Marriott’s commitment to me?**

**A:** **“The franchise agreement is not renewable, and you should not have any expectation that you will be granted any right to operate the hotel under our brand after the expiration of the term.”** Furthermore, “After the expiration of the term, we may in **our sole discretion** agree to enter into a new franchise agreement with you **on our then-current form**. That agreement may contain materially different terms and conditions than the franchise agreement attached as Exhibit B (including the franchise fees and the duration).” – Residence Inn FDD for 2017, pgs. 87 & 91.

In fact, during a recent investor call, Marriott CEO Arne Sorenson said, “In terms of the deletions, each one is its own story. I think I’ve looked through every individual hotel that left the system in first quarter of 2018. It’s never a surprise to see that many of those hotels are not contributing much in fees, in part **because they are either near — at the end of their contract life** and not necessarily competing as well **or participating in markets that are under a bit more pressure**, or to some extent, because they weren’t contributing sort of their fair share, **we were less interested in having them stay in the system.**”<sup>2</sup>

## What Franchisees Can Do

When it comes to mandatory renovations, Marriott’s power over franchisees is clear. There are, however, a few things franchisees can do:

1. Send us a copy of the franchise agreement, so that UNITE HERE can provide timely and useful information to you and other franchisees;
2. Franchisees can ask their own attorneys to take a critical look at their franchise agreements and franchise disclosure documents to see that Marriott has met both state and federal standards of transparency, including the FTC’s Franchise Rule, 16 C.F.R. Part 436;
3. Franchisees can explore with their own attorneys whether clearly delineated advanced notice, time extensions, or exceptions to the standards are possible under their franchise agreement or through negotiation with Marriott.
4. Those who may be contemplating entering into future deals with Marriott should compare Marriott’s policies and fee schedules with those of competing franchisors.

## Endnotes

<sup>1</sup> “Skift Forum Europe Preview: Marriott Exec on the Luxury Evolution,” Skift, 3/26/18.

<sup>2</sup> Marriott 1Q 2018 Earnings Conference Call Transcript, pg. 11.