



Selling Travel in the United States

Presented by:

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Considering Selling Travel in the US?

- Less government regulation
 - No package travel laws
 - Few federal government regulations
- If you are considering forming a business in the US that is also relatively easy (C-Corp or LLC).
- Freedom to contract provides the ability to waive responsibility in many cases
- Seller of Travel registration



Seller of Travel: Regulations

- Worried about fraud and dishonesty
- Four States:
 - California
 - Florida
 - Washington
 - Hawaii
- *Remember these laws only apply when selling to the residents of these states!*



Seller of Travel: California

- California Section 17550.1(a) defines the term “Seller of Travel” as:
 - A person who sells, provides, furnishes, contracts for, arranges, or advertises that he or she can or may arrange, or has arranged, wholesale or retail, either of the following:
 - (1) Air or sea transportation either separately or in conjunction with other travel services.
 - (2) Land or water vessel transportation, other than sea carriage, either separately or in conjunction with other travel services if the total charge to the passenger exceeds three hundred dollars (\$300).



Seller of Travel: Hawaii

- Hawaii has two separate travel registries, one for travel agents and one for charter tour operators. Under Hawaii statute "travel agency" means:
 - “any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services. “
- "Travel services" includes transportation by air, sea, or rail; related ground transportation; hotel accommodations; or package tours whether offered on a wholesale or retail basis. This does not apply to any hotel as defined under section 486K-1, HRS or air carrier as defined by the Federal Aviation Act of 1958 (49 USCS Appx. chapter 1301) as amended, for travel services for which the hotel or air carrier does not accept: 1. Consumer moneys for services other than their own; or 2. Commissions or any other form [for] consideration.
- Hawaii also requires registration for “Charter Tour Operators.”
- "Charter tour operator" means any person who sells or offers for sale charter tours, whether offered on a wholesale or retail basis, excluding any direct air carrier as defined by Title 14, Code of Federal Regulations, section 380.2, as amended, or any other person to whom the provisions of chapter 468L, Hawaii Revised Statutes do not apply.
- "Charter tour" means any travel services in which a travel agency contracts with an air carrier and offers for sale a charter, with or without related ground transportation or hotel accommodations.



Seller of Travel: Florida

- The 2016 Florida Statutes Title 33 Chapter 559 contains the Florida Seller of Travel Law. Under the statute:
- “Seller of travel” means any resident or nonresident person, firm, corporation, or business entity that offers, directly or indirectly, prearranged travel or tourist-related services for individuals or groups, including, but not limited to, vacation packages, or vacation certificates in exchange for a fee, commission, or other valuable consideration. The term includes such person, firm, corporation, or business entity who sells a vacation certificate to third-party merchants for a fee, or in exchange for a commission, or who offers such certificates to consumers in exchange for attendance at sales presentations. The term also includes any business entity offering membership in a travel club or travel services for an advance fee or payment, even if no travel contracts or certificates or vacation or tour packages are sold by the business entity. The term does not include third parties who may offer prearranged travel or tourist-related services, but do not participate in travel fulfillment or vacation certificate redemption.
- “Prearranged travel or tourist-related services” includes, but is not limited to, car rentals, lodging, transfers, and all other such services that are reasonably related to air, sea, rail, motor coach, or other medium of transportation, or accommodations for which a purchaser receives a premium or contracts or pays before or after departure. This term also includes services for which a purchaser, whose legal residence is outside the United States, contracts or pays before departure, and any arrangement by which a purchaser prepays for, receives a reservation or any other commitment to provide services before departure for, or otherwise arranges for travel directly to a terrorist state and which originates in Florida.
- However, exemptions exist in Florida for employees of a seller of travel, a direct common carrier, an intrastate common carrier, hotels, motels, or other places of public accommodation, persons involved in rental, leasing or sale of residential property or transportation vehicles, or a seller of travel who has contracted with ARC for the most recent consecutive 3 years, shall be exempt from registration and security requirements, provided they file an affidavit of exemption with the Department. Under this exemption, if more than rental or leasing occur, registration would be required.



Seller of Travel: Washington

- The Revised Code of Washington Title 19, Section 19.138 contains the Washington Seller of Travel Law. Under this law:
- "Seller of travel" means a person, firm, or corporation both inside and outside the state of Washington, who transacts business with Washington consumers.
- "Seller of travel" includes a travel agent and any person who is an independent contractor or outside agent for a travel agency or other seller of travel whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations in the conduct or administration of its business. If a seller of travel is employed by a seller of travel who is registered under this chapter, the employee need not also be registered.
- "Seller of travel" does not include:...(vii) A hotel or other lodging accommodation;



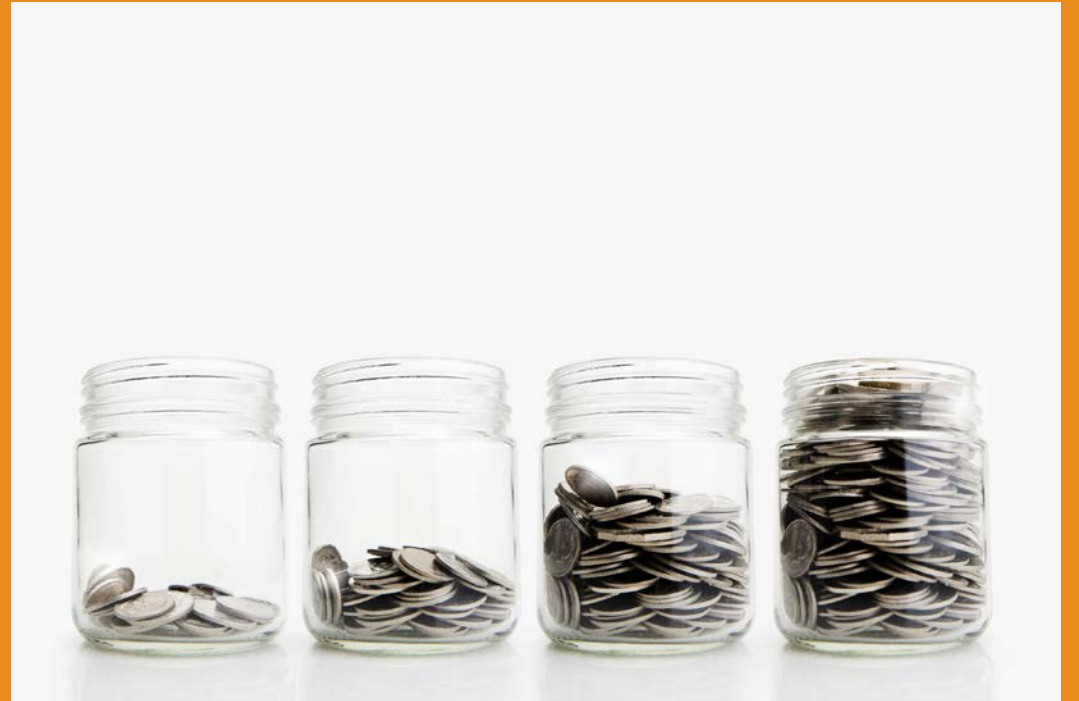
Seller of Travel: Requirements

- Register as an entity in the state
- Obtain a bank account or bond
 - Can be challenging at times for foreign entities
- Register as a Seller of Travel
- Disclosure Requirements



Seller of Travel: Bank Account

- Business checking account
- All funds from the state's residents must first be deposited in this account before being dispersed
- The gold standard is that you wait until the guest travels and then remove your commission
- It can be difficult to open a US bank account from overseas.



Seller of Travel: Penalties for Non-Compliance by State

Hawaii:

- 1) Any violations by a travel agency or charter tour operator of any law or rule relating to client trust accounts shall constitute a prima facie showing of fraud on the part of the travel agency or charter tour operator and shall be punishable by a suspension or restrictions on the registration of the travel agency or charter tour and the director may order a freeze of the bank or deposit accounts of the travel agency or charter tour operator; and, may be fined not more than \$1,000 for each violation; provided that a charter tour operator also shall be assessed an administrative fine pursuant to section 468L-27 for any violation of that section.
- 2) Any registered travel agency engaged in the business of a charter tour operator which fails to file any report required to be filed under chapter 468L or which files a report indicating that the charter tour operator is not in compliance with the provisions of chapter 468L, shall be deemed not to be in substantial compliance with the requirements of this chapter, in which, the director may cause a citation to be issued with respect to a registered travel agency engaged in the business of a charter tour operator that has not acted or is not acting in compliance with chapter 468L, which a violation of chapter 468L will find the tour operator being assessed with an administrative fine of up to: (a) \$25,000 for the first violation; (b) \$50,000 for the second violation; and (c) \$75,000 for any subsequent violations.
- 3) Whenever a travel agency or charter tour operator fails to establish or maintain a client trust account, the director may file an action in circuit court to obtain an injunction or other appropriate order or judgment.
- 4) Any person who engages in an act or practice that violates any provision of this chapter or rules adopted pursuant hereto may be ordered by a court of proper jurisdiction to make restitution to all persons injured by the act or practice.
- 5) Without limitation to any other remedies or penalties that may be applicable, any person who knowingly accepts monies for charter tours without being registered as a travel agency in compliance with this chapter, or any charter tour operator that knowingly is not in compliance with the provisions of this chapter and continues to accept monies for charter tours, shall be guilty of a misdemeanor.

Seller of Travel: Penalties for Non-Compliance by State

California:

- 1) A misdemeanor by fine of not more than \$10,000, by imprisonment in a county jail for not more than one year, or by both fine and imprisonment for each violation.
- 2) Where money or real or personal property received or obtained by a seller of travel for transportation or travel services from any and all persons aggregates \$2,350 or more in any consecutive 12-month period, or the payment or payments by or on behalf of any one passenger exceeds in the aggregate \$950 in any 12-month period and a violation has occurred under the Seller of Travel law, is punishable either as a misdemeanor or as a felony by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or two or three years, by a fine of not more than \$25,000, or by both that fine and imprisonment for each violation for each individual violation.
- 3) Any intentional use for any purpose of a false seller of travel registration number, with intent to defraud, by an unregistered seller of travel is punishable as a misdemeanor or felony.
- 4) The law allows the Attorney General to suspend the registration of a seller of travel who has been convicted of a felony under Section 17550.195.
- 5) Sellers of travel, in addition, must comply with Sections 17537, 17537.1, and 17537.2 of the Business and Professions Code and all other applicable California laws.

Seller of Travel: Penalties for Non-Compliance

COUNT 1 -SELLER OF TRAVEL - FAILURE TO DEPOSIT FUNDS GREATER THAN \$950

On or about and between March 29, 2019 and May 4, 2020, [REDACTED] being a seller of travel, did unlawfully encumber the corpus of a trust account containing monies received for travel and transportation services from passengers, as specified in Business and Professions Code section 17550.15, to wit: [REDACTED] STUDENTS --ATTACHMENT 1 for [REDACTED] STUDENTS EAST COAST TRIP 2020, and further The money received and obtained by defendant for transportation and travel services from any and all persons aggregated exceeded two thousand three hundred fifty dollars (\$2,350) in a consecutive 12-month period., in violation of Business and Professions Code sections 17500.15(c) and 17550.19(6).in violation of BUSINESS AND PROFESSIONS CODE SECTION 17550.15(c).



Seller of Travel: Penalties for Non-Compliance

COUNT 2 - SELLER OF TRAVEL - FAILURE TO RETURN FUNDS >\$950

On or about and between April 4, 2020 and December 20, 2020, [REDACTED], being a seller of travel, and having received from a passenger moneys for air and sea transportation and travel services, did unlawfully fail to provide the transportation and services purchased and to make a refund to the passenger within the periods specified by Business and Professions Code Section 17550.14, and further, the money, real, and personal property received and obtained by the defendant for transportation and travel services from any and all persons aggregated exceeded two thousand three hundred fifty dollars (\$2,350) in a consecutive 12-month period, to wit: PARENTS OF [REDACTED] STUDENTS -- ATTACHMENT 1 in violation of BUSINESS AND PROFESSIONS CODE SECTIONS 17550.19(b) AND 17550.14.



Seller of Travel: Penalties for Non-Compliance

COUNT 3 - GRAND THEFT OF PERSONAL PROPERTY

On or about and between March 29, 2019 and December 20, 2020, [REDACTED] did unlawfully take and steal money and personal property of [REDACTED] STUDENTS -- ATTACHMENT 1, of a value in excess of Nine Hundred Fifty Dollars (\$950), in violation of PENAL CODE SECTION 487(a).



Liability in the US

What is your
responsibility to
the client?



Fling v. Hollywood Travel and Tours

- Vacationers shot and robbed near their hotel failed to prove special circumstances showing that travel agent which made hotel arrangements could have foreseen criminal attack.
- Under Ohio law, duties agent owes his principal are duty of good faith and obedience, duty of loyalty, duty of skill, care, and diligence and duty to disclose certain information to his principal; however, duty of agent is shaped by scope of agency.
- The tour operator and defendant prevailed on a Motion for Summary Judgment.



Fling v. Hollywood Travel and Tours

- Defendants have presented undisputed evidence that they sent more than 5000 people to the Emerald Star Hotel prior to the incident at issue and 15,000 people subsequently without another report of a threat to a vacationer's safety. Defendants did not own, operate, or manage the Emerald Star Hotel. Defendants arranged the accommodations; ***they did not in their publications or by oral promise warrant the plaintiffs' safety while at the hotel*** or while within the proximity of the hotel.

Fling v. Hollywood Travel & Tours, 765 F. Supp. 1302, 1306 (N.D. Ohio 1990), aff'd, 933 F.2d 1008 (6th Cir. 1991)



Fling v. Hollywood Travel and Tours

In this case, plaintiffs have failed to provide evidence of “special circumstances” to show that defendants knew or should have known of the foreseeability of a criminal attack necessary to create a duty to issue a warning to the plaintiffs. The decision in this case is made difficult by the serious injuries the plaintiffs have suffered. However, the Court finds that defendants did not owe plaintiffs a duty to warn of the likelihood of an attack by criminals in the area of the hotel. Plaintiffs cite no direct authority recognizing such a duty absent knowledge, and this court declines to impose one on the facts presented here. Accordingly, defendants' motion for summary judgment is granted.

Fling v. Hollywood Travel & Tours, 765 F. Supp. 1302, 1308 (N.D. Ohio 1990), aff'd, 933 F.2d 1008 (6th Cir. 1991)

Terms and Waivers

How to Limit
your Liability



Covid Waiver

By booking any trip at this time, you acknowledge the highly contagious nature of COVID-19 and voluntarily assume the risk for yourself and any minors traveling with you, that you or they may be exposed to or infected by COVID-19 by traveling and that such exposure or infection may result in personal injury, illness, permanent disability, and death even if such injuries or losses occur in a manner that is not foreseeable at the time you book your trip. You acknowledge that exposure to such viruses or disease is an inherent risk of traveling, that cannot be controlled or eliminated by TO.

You acknowledge that due to the uncertainty of travel at this time, your tour may be postponed or cancelled, or changes may be made to itineraries due to closures of certain sites or activities, for which there may be no refund. Some locations may require you to have a vaccination or proof of negative testing. Stopover countries requirements will also apply. On your return home, additional testing, requirements, or documentation may be required. You are responsible for understanding these requirements and must not rely on TO to provide these details. You understand that you may become sick before, during, or after the tour and may not be able to travel and such cancellation or interruption will be subject to our cancellation terms below, for which we will not be liable.

You, for yourself, and any minors traveling with you, and on behalf of your and their heirs, assigns, personal representatives and next of kin (The Releasers), HEREBY RELEASE, AND HOLD HARMLESS TO, its members, officers, agents, and/or employees, and suppliers (RELEASEES), of from and against any and all claims, damages, demands, losses, and liability arising out of or related in any way, in whole or in part to any POSTPONEMENT, CANCELLATION, CHANGES, INJURY, DISABILITY, DEATH OR ANY OTHER LOSS you may suffer due to exposure, infection, spread, closure, and travel restrictions related to COVID- 19, WHETHER ARISING FROM THE NEGLIGENCE OF THE RELEASEES OR OTHERWISE, to the fullest extent permitted by law. The terms of this HOLD HARMLESS AND RELEASE OF ALL LIABILITY paragraph, shall survive any termination or cancellation of this Contract, whether by operation of law or otherwise.

Release of Liability

TO, and its employees, shareholders, agents, and representatives use third party suppliers to arrange tours, transportation, sightseeing, lodging, and all other services related to any trip you book through us. TO is an independent contractor and is not an employee, agent, or representative of any of these suppliers. TO does not own, manage, operate, supervise, or control any transportation, vehicle, airplane, hotel or restaurants, or any other entity that supplies services related to your tour. All suppliers are independent contractors and are not agents or employees or representatives of TO. All tickets, receipts, coupons, and vouchers are issued subject to the terms and conditions specified by each supplier, and by accepting the coupons, vouchers, and tickets, or utilizing the services, all travelers agree that neither TO, nor its employees, agents, or representatives are or may be liable for any loss, injury, or damage to any tour traveler or their belongings, or otherwise, in connection with any service supplied or not supplied resulting directly or indirectly from any occurrence beyond the control of TO. TO assumes no responsibility or liability for any delay, change in schedule, loss, injury or damage or loss of any traveler that may result from any act or omission on the part of others; TO assumes no responsibility or liability for personal property.

Assumption of Risk

Traveler is aware that travel such area as traveler is undertaking on the trip may involve inherent risks, some in remote areas of the world. Inherent risks include, but are not limited to, risk of injury or death from: motor vehicles collisions, animals, roadway hazards, slips, and falls, criminal or terrorist acts, government actions, consumption of alcoholic beverages, tainted food, or non-potable water; exposure to the elements, including heat, cold, sun, water, and wind; your own negligence and/or the negligence of others, including tour guides, other travelers, TO and its employees, agents and/or representatives; attack by or encounter with insects, reptiles, and/or animals; accidents or illness occurring in remote places where there are no available medical services; fatigue, chill, overheating, and/or dizziness;; known or unknown medical conditions, physical excursion for which you are not prepared or other such accidents; the negligence or lack of adequate training of any third-party providers who seek to assist with medical or other help either before or after injuries have occurred; accident or illness without access to means of rapid evacuation or availability of medical supplies or services; and the adequacy of medical attention once provided.

Traveler understands the description of these risks, is not complete and that unknown or unanticipated risks may result in injury, illness, or death. In order to partake of the enjoyment and excitement of this trip, traveler is willing to accept the risks and uncertainty involved as being an integral part of travel, including the risk of infection, illness, and death. Traveler hereby accepts and assumes full responsibility for any and all risks of illness, injury or death and of the negligence of TO and agrees to and shall hold harmless and fully release TO its owners, members, agents and assigns (together TO) from any and all claims associated with the trip, including any claims of third party negligence and/or the negligence of TO and traveler hereby covenant not to sue TO for any such claims or join any lawsuit or action that is suing TO. This agreement also binds your heirs, legal representatives, and assigns. The terms of this HOLD HARMLESS AND RELEASE OF ALL LIABILITY paragraph, shall survive any termination or cancellation of this Contract, whether by operation of law or otherwise.

Assumption of Risk

Traveler agrees to and shall indemnify and hold harmless TO, and each of our officers, directors, employees and agents (collectively “TO”), from any expenses, losses, liabilities, damages, judgments, settlements and costs (collectively, “damages”) involved with or incurred by TO (including, without limitation, reasonable attorneys’ fees and the advancement of same) with respect to any claims, law suits, arbitrations, or other causes of action, which result, directly or indirectly, from: (i) traveler’s breach or violation, or threatened breach or violation, of this Agreement, (ii) Any damage caused by traveler while on a TO trip, or (iii) your violation of any law or the rights of a third party.

New Proposed DOT Rulemaking:

Requires travel agent or whoever issued the ticket to refund the airfare if the flight is cancelled and Created to strengthen protections for consumers, but creates a potential huge financial strain on Travel Advisors and Tour Operators

Importantly, the proposal would place the obligation of issuing refunds on the entity that “sold” the ticket, i.e., the entity identified in the consumer’s ticket purchase financial statement. The proposed rule would apply to retail ticket agents of all sizes (including tour operators) when selling tickets directly to consumers for scheduled passenger service to, from, or within the United States.

DOT maintains in the proposal that it is merely “clarifying” this requirement as applied to ticket agents. Approximately 17% of the 105,327 refund complaints DOT received between January 1, 2020 and June 30, 2021 were against travel agents and tour operators. DOT views this volume of refund complaints as indicating a need for strengthened protections for consumers purchasing from ticket agents.



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As proposed, the requirement would place tour operators and other ticket agents that serve as the merchant of record (for example) in the role of *de facto* insurers, requiring them to guaranty payments to consumers regardless of how long it may take the supplier to remit the funds to the agent – assuming the supplier even approves the refund.

Service and Processing Fees: Ticket agents would be permitted to retain a service fee (for booking the travel or processing a refund or a non-expiring travel credit/voucher) as long as the fee is on a per passenger basis and its existence and amount were clearly and prominently disclosed to consumers when they purchased the airfare.





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