



Destination Wedding & Honeymoon Specialists Association
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“The Legal Environment for U.S. and Canadian Agents Selling Destination Weddings and Honeymoons”

WEBINAR TAKEAWAYS

Question # 1: Agent-Principal Relationship

For many years, travel agents have enjoyed a significant degree of legal protection through their status as the legal “agents” who simply serve as the conduit for bookings going from the agents’ clients to the travel suppliers that actually operate the purchased services (e.g., flights, hotel stays, cruises). Since the agents typically have no control over the principals (the suppliers) in operating and providing those travel services, then the agents could not be held liable in many instances when things go wrong!

However, Al and Doug mentioned in the webinar that this longstanding protection is changing, because more agents have become involved in planning trips using supplier components and have begun charging service fees for their expertise.

The bottom line? **The more “hands on” you are in planning and operating a trip for your clients, the more legally liable you may be if mistakes are made or things go wrong.** Agents selling off-the-shelf DW and honeymoon packages offered by wholesalers, for example, may be less liable than agents who assemble wedding trips and honeymoons from scratch using supplier components (e.g., the airfares from one supplier, the lodging from another).

Also, **you may have more legal exposure if you charge service fees and promote yourself as an expert in this niche.** That doesn’t mean you shouldn’t do these things! But, if you do, you should be aware that you must protect yourself with errors and omissions/general liability insurance, with travel

insurance policies offered to your clients (or their signed waivers if they don't wish to buy them), and with disclaimer/disclosure notices.

Doug also recommended that you take a hard look at what you're promising, especially in "marketing language" that may appear on your web site, in your brochures, etc. If you promise "we'll take care of everything for you," then a litigious bride may hold you to that some day in court! Consider including (in the fine print of your client agreement, your "plan to go" fee sheets, the itineraries, etc.) a list of specific things that you are not responsible for (e.g., visa advice).

Question # 2: Disclaimer/Disclosure Notices For Clients

U.S.-based agents should definitely consider using consumer disclosure/disclaimer notices with clients, so that they know in writing the things for which you are not responsible.

See Al's excellent sample consumer disclosure notice here:

<http://www.travellaw.com/page/consumer-disclosure-notice-0>

You're welcome to use this sample "as is" with no changes, or you may reword it to fit your business needs.

(Canadian agents are welcome to use Al's form as a sample to work from in drafting your own disclosure notice.)

While Al and Doug agreed that the best protection is having your clients sign this notice (and you give them a copy of the signed notice for their records), they also suggested the next best option: **Include the disclosure notice language in your web site terms and conditions, on the backs of invoices and itineraries, and anywhere else you can** so that, down the road, you could prove that your clients received the disclosure language. Electronic signatures (e.g., your clients click on an online form that includes the disclosure terms) also work well, if your computer system or web site supports this type of signature.

Question # 3: State/provincial "seller of travel" regulations

Doug mentioned the three primary provinces in Canada that enforce such rules:

- Ontario – www.tico.ca
- British Columbia – www.consumerprotection.bc (go to the "Travel" section)
- Quebec – www.opc.gouv.qc.ca

Al mentioned several U.S. states that still have seller of travel laws – here's a list from his web site:

<http://www.travellaw.com/page/travel-law-faq>

(Note: Nevada has suspended its rules for the time being.)

Among these states, California is by far the most aggressive in enforcing its rules. So, if you're based in California or if your clients are mostly based in California, you should register as a seller of travel there.

What if you're an outside agent – doesn't the host agency bear the responsibility for registering the host agency itself as the seller of travel, so that you don't have to register separately? AI explained that he succeeded in pushing through this exemption in California several years ago for large host agencies. So, if you're based in California or if you sell a lot of travel to California residents, you should confirm with your host agency that it has a CA seller of travel number.

Generally, if you live in a state or province that has seller of travel regulations, you must register within that state or province. Technically, some jurisdictions also require on paper that you register if you sell to residents in those jurisdictions – but, Doug and AI noted that those rules are rarely enforced (except for California, which has a history of aggressive enforcement).

Question # 4: Preventing Your Clients From Buying Future Trips From Suppliers

AI suggested that, if possible, you add the following sentence to any agreements you have with suppliers:

"Supplier agrees not to bypass booking agent without agreeing to pay agent for bookings of passengers."

This may work with smaller suppliers – but, in the case of larger suppliers, you can try adding this on the back of checks sent in for payments, etc.

Also, DWHS is finalizing sample language/letters you can use with clients to dissuade them from booking future trips with suppliers while they're on their current trips (this material should be ready by mid-April 2013).

BONUS: Disclosure of fees

Due to new U.S. Transportation Department regulations requiring agents to disclose all airline fees and taxes, **AI recommended that you adopt the practice of always disclosing all fees and taxes in detail and in writing to clients** – not just airline fees, but resort fees and other add-on expenses the clients might pay. You can break this out in detail in your quotes or in your booking forms – the more detail, the better!