

940 CMR 15.00: THE SALE OF TRAVEL SERVICES

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The Attorney General promulgates 940 CMR 15.00 pursuant to M.G.L. c. 93A, § 2(c) for the purpose of defining and outlawing certain unfair or deceptive practices in the sale of travel services to the public.

15.01: General

- (1) Violation of any provision of 940 CMR 15.00 shall be an unfair or deceptive act or practice, under M.G.L. c. 93A, § 2(a).
- (2) The provisions of 940 CMR 15.00 shall not apply where preempted by federal law.
- (3) The effective date of 940 CMR 15.00 shall be July 1, 1996.

15.02: Definitions

As used in 940 CMR 15.00, the following words shall have the following meanings:

Seller of Travel Services: a person, business entity, or other legal entity that sells, provides, contracts for, or arranges travel services, or that represents that it sells, provides, contracts for, or arranges travel services, including but not limited to travel agents, tour operators, ocean cruise companies, charter companies, providers of travel certificates, and operators of vacation clubs. However, the definition of seller of travel services does not include any person, business entity or other legal entity whose business is limited to providing railway service, taxi cab service, non-charter bus service, non-charter water ferry service, commuter transportation, or local sightseeing service; nor does it include any person or entity whose business is limited to renting, leasing or selling transportation vehicles; nor does it include any governmental entity.

Ticket or Voucher: a writing or combination of writings sufficient to obtain the travel services for which a consumer has contracted or paid.

Tour Operator: a seller of travel services that creates and sells travel packages, either directly to the public or indirectly to the public through any other seller of travel services.

Travel Agent: a seller of travel services selling directly to the public, acting with or without any prior agreement as a formal or informal agent, booking agent, broker, sales representative, marketer or retailer of a travel package assembled by any other seller of travel services, or acting as a retailer of individual travel services.

Travel Certificate: any writing or computerized document the terms of which entitle the holder to obtain travel services.

Travel Package: any combination of travel services offered for sale as a unit, including ocean cruise services.

Travel Services: the provision of transportation by air, sea, or land, or the provision of other goods or services related to recreational, cultural or educational travel, including but not limited to lodging, food, guided tours, or instruction. For the purpose of 940 CMR 15.00 the definition of travel services does not include services provided to a business traveler on a business trip.

15.02: continued

Vacation Club: any membership organization the primary purpose of which is to sell, arrange, or otherwise provide travel services to its members.

15.03: Misrepresentations Prohibited

(1) No seller of travel services may represent in any manner, either directly to the public, or through any type of marketing, or through another seller of travel services, that it can sell, provide, contract for, or arrange any particular travel service to consumers, where the seller knows or has reason to know that:

- (a) the particular travel service is not available, or
- (b) the seller is not in a position to sell, provide, contract for or arrange the travel service as represented.

(2) No seller of travel services may make any representation, either directly to the public, or through any type of marketing, or through any other seller of travel services, about any travel service it offers to sell, provide, contract for, or arrange, either directly or by implication, that has the capacity or tendency to deceive or mislead a consumer, or that has the effect of deceiving or misleading a consumer, in any material respect, including but not limited to the total price of any travel services; the scheduled date, time or location of any departure or arrival; the planned mode(s) of transportation; the planned provider(s) of transportation; the name, location, or amenities of any lodging; the terms of any substitution policy of any seller of travel services that may apply to a consumer's purchase of travel services; the terms of any insurance policy offered by or through the seller of travel services; the terms of any cancellation or refund policy of any seller of travel services that may apply to a consumer's purchase of travel services; or the billing practices of any seller of travel services that may apply to a consumer's purchase of travel services.

15.04: Disclosures Required

(1) No seller of travel services may fail to disclose information about a travel service it offers to sell, provide, contract for, or arrange, where such failure has the capacity or tendency to deceive or mislead a consumer, or has the effect of deceiving or misleading a consumer in any material respect; nor may a seller of travel services fail to disclose to a consumer any fact the disclosure of which may have influenced the consumer not to enter into a transaction.

(2) No seller of travel services may accept any payment in any form, either directly or indirectly, from a consumer for travel services, including but not limited to payment by cash, check, money order, credit card, debit card, charge card, or authorization for electronic funds transfer or credit card charge, unless and until the seller of travel services has provided the consumer, either directly or through another seller of travel services, with the following information:

- (a) the name, complete street business address and telephone number of the seller of travel services selling directly to the consumer, including the name of the owner(s) if the seller is a business entity; and
- (b) the name, complete street business address and telephone number of the provider(s) of any travel package being purchased, if any such provider is not the seller of travel services from whom the consumer is purchasing directly, including but not limited to any tour operator, ocean cruise company, charter company, provider of travel certificates, or vacation club; and
- (c) the total amount to be paid, the date(s) of payment, a complete, detailed, itemized statement of the travel services purchased with the payment, and an itemized statement of any balance due; and
- (d) the complete terms of any substitution policy of any seller of travel services that may apply to the consumer's purchase of travel services; provided, however, that whenever for the purpose of a particular transaction the seller of travel services dealing directly with the consumer is a travel agent, the travel agent's failure to disclose the complete terms will not violate 940 CMR 15.04 if the travel agent has made diligent efforts to obtain the complete information from the tour operator or other relevant seller of travel services, and the travel agent neither knows nor has reason to know that the information the travel agent is disclosing to the consumer is incomplete; and

15.04: continued

- (e) the complete terms of any cancellation or refund policy of any seller of travel services that may apply to the consumer's purchase of travel services; provided, however, that whenever for the purpose of a particular transaction the seller of travel services dealing directly with the consumer is a travel agent, the travel agent's failure to disclose the complete terms will not violate 940 CMR 15.04 if the travel agent has made diligent efforts to obtain the complete information from the tour operator or other relevant seller of travel services, and the travel agent neither knows nor has reason to know that the information the travel agent is disclosing to the consumer is incomplete; and
- (f) the complete terms of any trip cancellation insurance policy offered by or through the seller of travel services, including but not limited to the specific extent of each policy's coverage, exclusions, limitations, and benefits payable; provided, however, that whenever for the purpose of a particular transaction the seller of travel services dealing directly with the consumer is a travel agent, the travel agent's failure to disclose the complete terms will not violate 940 CMR 15.04 if the travel agent has made diligent efforts to obtain the complete information from the tour operator or other relevant seller of travel services, and the travel agent neither knows nor has reason to know that the information the travel agent is disclosing to the consumer is incomplete.

If the consumer is purchasing travel services in person, the seller of travel services must provide the information required in 940 CMR 15.04 (1) and (2) both orally and in writing before requesting or accepting any payment. If the consumer is purchasing travel services in a voice conversation over the telephone, the seller of travel services must provide this information orally before requesting, accepting, or arranging to receive any payment; and must also provide this information in writing within seven days of the conversation or prior to departure, whichever occurs earliest. If the consumer is purchasing travel services by electronic mail, or by using a telecommunication device for the deaf (TTY or TDD), or by any other mode of telecommunication not involving voice conversation, the seller of travel services must provide this information in writing or in a computer document capable of being printed out in hard copy by the consumer before requesting, accepting or arranging to receive payment. No seller of travel services may request, accept, or arrange to receive payment from a consumer where the only communication between the two parties is by mail or courier service, unless and until the seller provides this information in written form, and the consumer receives same.

- (4) Where a seller of travel services violates any provision of 940 CMR 15.04, the consumer may cancel its purchase of travel services; furthermore, where the consumer cancels its purchase of travel services, the seller in violation must return all payments received in connection with that purchase, within 30 days.

15.05: Delivery of Tickets, Vouchers, Itineraries

- (1) A seller of travel services must deliver to a consumer all tickets, vouchers, and itineraries related to the consumer's purchase of travel services, or contracts or other proofs of purchase replacing such tickets or vouchers, no later than seven days prior to the consumer's scheduled departure date, where the consumer has made full payment of the agreed upon price for the travel services at least 14 days prior to the departure date. Such delivery must be made no later than three days prior to departure where payment is made at least ten days prior to departure. Such delivery must be made prior to departure where payment is made less than three days prior to departure. For the purpose of 940 CMR 15.05(1), the date of delivery of payment by a consumer is the date on which the seller receives the payment or the consumer authorizes the seller to arrange to receive payment. For the purpose of 940 CMR 15.05(1) the date of delivery of a ticket or voucher or itinerary by a seller of travel services is the date on which the consumer receives it.
- (2) Whenever for the purpose of a particular transaction the seller dealing directly with the consumer is a travel agent, and the travel agent has not received a particular ticket, voucher, or itinerary or other proof of purchase in time to comply with the requirements of 940 CMR 15.05(1), the travel agent must contact the consumer immediately to report this fact and must make a diligent effort to obtain the undelivered document(s) as quickly as possible.

15.06: Seller of Travel Services Acting as Tour Operator

Whenever for the purpose of a particular transaction a seller of travel services is acting as a tour operator, and the seller fails to provide any of the travel services that a consumer has purchased directly or indirectly from the seller, the seller must offer the consumer the following three options, and must honor the consumer's choice:

- (1) the seller will refund to the consumer in cash an amount equal to the fair market retail value of any undelivered, purchased travel service, such cash refund not to exceed the total amount paid by the consumer for the travel package, and such cash refund to be delivered within 30 days of the consumer's selection of this option; or
- (2) the seller will provide a specifically identified substitution travel service of equal or greater fair market retail value for any undelivered, purchased travel service, at no additional cost to the consumer; or
- (3) the seller will provide a specifically identified substitute travel service of lower fair market retail value for any undelivered, purchased travel service, and refund to the consumer in cash an amount equal to the difference in the fair market retail prices of the purchased and the substitute travel services, such cash refund to be delivered within 30 days of the consumer's selection of this option.

15.07: Seller of Travel Services Acting as Travel Agent

Whenever for the purpose of a particular transaction a seller of travel services is acting as a travel agent, the seller must:

- (1) disclose to the consumer, at the time the consumer makes an initial payment for travel services, the manner in which the seller will forward to the provider(s) of the services purchased the consumer's payment, and the date by which the seller anticipates forwarding each such payment; and
- (2) forward all consumer payments received in the manner and by the date(s) represented to the consumer; and
- (3) provide the consumer with written verification that the seller has forwarded each consumer payment received to the appropriate provider(s) of the travel services purchased, within five days of forwarding any such payment; and
- (4) provide the consumer with written confirmation of any reservation made by the seller on the consumer's behalf within two days of making any such reservation, regardless of whether any prior payment for such reservation has been made.

15.08: Severability

- (1) If any provision of 940 CMR 15.00 is held invalid, it shall not affect the validity of any other provision of 940 CMR 15.00.
- (2) If the application of any provision of 940 CMR 15.00 to any person or under any particular circumstance is held invalid, it shall not affect the validity of the application of the provision to any other person or under any other circumstance.

REGULATORY AUTHORITY

940 CMR 15.00: M.G.L. c. 93A, § 2(c).