



## The Role Attorneys General Play in Our Industry

While Congress debates what additional federal regulations or agencies are needed to protect consumers in the wake of the worst financial crisis since the Great Depression, there is an existing regulator that timeshare developers and managers would be well-served to remember: state attorneys general. Whether it is the proper disclosure of fees, the offer of prizes that are difficult to redeem, proper notice to the consumer of rights of rescission, marketing practices, resolution of consumer complaints or many other aspects of your business—each is under increasing scrutiny by state attorneys general.

Through consumer protection laws or timeshare-specific laws, most state attorneys general interact with the industry at some level. Part of the attorney general's duties in the consumer protection realm is fielding complaints. Often, many play a more direct role in regulating the timeshare industry in their state; in some states, like Missouri, the attorney general holds the primary enforcement role.

We are all familiar with many of the wide-ranging effects the current economic troubles have had on consumers, including timeshare buyers and owners. As household budgets have tightened, some owners have sought to sell or even give away their timeshares, and attorneys

general have become increasingly involved in two ways. First, some owners are looking for a way out of their commitment and have filed complaints on a variety of issues, hoping the threat of government action will pressure the developer into voiding the contract. While some complaints have merit, most can easily be resolved. Which leads to the second most common interaction point—unfortunately, the need to “unload” their timeshare has made some owners vulnerable to fraud, as disreputable parties make promises of help they can't fulfill. In both cases, attorneys general are taking a greater interest in the timeshare industry, as a limited number of bad actors chip away at the reputation ARDA and its members have worked to build over several decades.

It is important to remember that virtually all state attorneys general are elected officials. Inevitably, politics plays some role in how their office/agency functions, based on the individual attorney general (AG). Many of them aspire to be governor or some other form of political office, while others want to make a name for themselves in support of their reelection. That combination of ambition and regulatory power can be a potent force to deal with, should your company be the subject of an AG investigation. (See the sidebar on p. 39 about tips for what to do.) Moreover, it is not uncommon for state AGs to publicize actions being taken against companies, so other businesses and the general public are aware of the priority issue and the particular business/industry under investigation. The “bully pulpit” can be the most effective tool in the arsenal of an attorney general for enforcement and for winning political points. The sidebar also provides critical resources for you to engage the AG and to resolve the matter quickly and effectively. **D**

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## Steps for Action

When a state attorney general (AG) sets his sights set on your company, what should you do? First, take the inquiry seriously. There are a variety of ways an AG may initiate an investigation. You may first receive a letter of inquiry—this will seem innocuous and typically will reference a consumer's complaint about your company. Such letters, however, may not reference a consumer complaint. Instead, the letter may only ask for information pertaining to certain business practices. In either case, the inquiry should be treated seriously and not ignored. Likewise, you should take seriously any subpoena or "civil investigative demand," requesting copies of company documents issued by an AG.

While the typical reaction to such inquires might be to "go to the bunker" and treat it like the run-of-the-mill litigation matter, a company may be well-served by taking a different approach to resolve an issue and protect its public image. Often, an AG's office is willing to meet to discuss the parameters of the request. Such a meeting is also a good opportunity to learn more about the specific concerns regarding customer complaints or business practices. These types of meetings also work to establish a working relationship; then, within that professional framework, you can negotiate the scope of the request or resolution of

the situation in such a way as to minimize exposure to your company.

The key point is to seek out assistance in some form when such an inquiry comes to you. The worst thing you can do is ignore the request. Another unwise option is to immediately begin your interactions with the attorney general's office in a hostile fashion. Of course, not every issue can be resolved through negotiation to a company or the regulator's satisfaction. In those cases, litigation may be merited, but before heading down that road, determine whether there is a way to address the attorney general's concern while still maintaining your right to conduct business.

ARDA can also be a resource in such situations, as it has sought to actively engage state attorneys general on timeshare issues and educate them on the practices and benefits of the industry. Feel free to contact your ARDA state affairs team representative when such a situation arises, so that you can have the benefit of past knowledge of similar circumstances. From there, you and your legal counsel can make the best decision for your company.

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