

Legally weird

Florida law allows residents to openly carry guns if they are “engaged in fishing, camping, or lawful hunting.” Thus, police in Miami Beach, FL, erred last year when detaining six men who openly carried handguns to a pier in a park at the south end of the city.

The men were handcuffed and their weapons taken away, but two hours later they were released and their weapons returned. The men said they planned to sue the city for false arrest and imprisonment, aggravated assault, and excessive force.

Although this incident had nothing to do with timeshare resorts, it was part of an ARDA World 2019 panel discussion in which four attorneys dealt with “strange and taboo topics” that may challenge timeshare managers and boards of directors.

Rules and reality

Ed Chansky, a shareholder in Greenberg Traurig, LLP, explained that hotels and resorts have a private property right not to allow guns on their premises no matter what local and state laws provide, but “however strict your rules are, you’re going to have guns on your property.”

Given this reality, “being reasonable is important.

Being consistent is also important,” said Kevin Shaugnessy, a partner in Baker & Hostetler LLP. If a gun issue arises, he said, the options are to confront the guest or to call in local law enforcement—but as the Miami Beach incident illustrates, the local authorities may not be familiar with the nuances of applicable laws.

Service and support animals

Service and support animals—a perennial topic at timeshare-industry conferences—engaged the panel at this one. Matthew Flower, a partner in Taylor English Duma LLP, explained that the Americans with Disabilities Act applies to service animals (dogs and miniature horses) that must be trained to perform a task related to its owner’s disability.

Timeshare resorts must allow owners and guests to bring their properly

trained service animals to the property. The resort can’t charge pet fees or cleaning fees, but can charge for damage caused by the animal. The ADA overrides local ordinances dealing with an animal’s weight and breed, even including a prohibition against pit bulls.

Emotional-support animals, on the other hand, constitute a different set of legal circumstances and a broader category of beasts, said Victor Copeland, a timeshare group attorney with Ballard Spahr LLC. They are covered under the Fair Housing Act Amendments, not the ADA.

Cats, ferrets, snakes, squirrels, and other creatures that provide emotional support need not be trained for a specific task. The emotional-support category applies to owners in their private residences. Thus, a timeshare resort must accommodate owners’ emotional-support animals, but is not legally required to accept the emotional-support animals of guests and renters.

Pot law and policy

Resorts with an all-encompassing no-smoking policy need to clarify their documents to include vaping and marijuana specifically as substances that may not be smoked on the premises. In Nevada, Chansky said, marijuana may be used only within a residence. “Is a timeshare a residence?” he asked.

A resort can bypass this question by allowing marijuana use in a designated smoking area – but the panelists noted that state laws governing medical and recreational marijuana are essentially meaningless because federal law still classifies marijuana use as a Class 1 felony. A resort manager and board who don’t prohibit marijuana use on the premises are violating federal law. When Jeff Sessions was attorney general, he said local U.S. attorneys could go after marijuana violators.



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A typical human trafficking sign in a hotel restroom. Credit: Staff photo.

“Guests who aren’t owners are subject to the same governing documents as owners—but it would be a good idea to make them aware of it. Give them a warning, and provide a written warning,” Copeland said.

Slaves on the staff

The panel also took up the issue of human slavery. How many slaves work at or for your resort?

“If you contract out the maintenance and lawn services, housekeepers, and other low-level employees, and you tell them what to do, you’re a joint employer,” Shaughnessy said. “If the contractor uses slave labor, you would be held responsible. They may have an I-9 [employment form] but be giving their money to a business pimp—a foreman or supervisor.”

Shaughnessy encouraged the audience to visit slaveryfootprint.org, a web-

site that estimates the total of human slaves in the world at 27 million—more than the combined population of Australia and New Zealand.

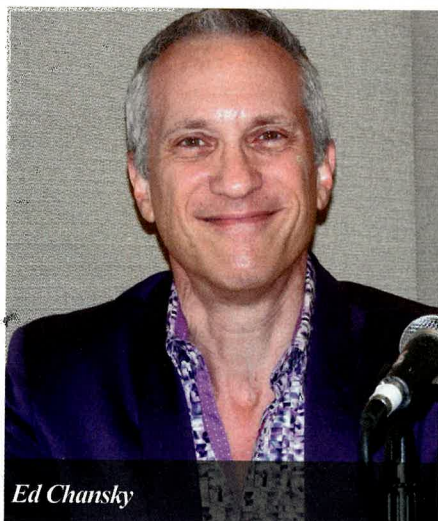
“It’s a prevalent issue,” he said. An estimated 14,500 to 17,500 people are trafficked into the U.S. each year. Fifty percent of them are children. Most of these people come from the East Asia/Pacific region. “China, India, Pakistan and Indonesia tend to have a lot of slaves,” he said.

Shaughnessy advised his audience to monitor any service providers, and to be good managers. “If people seem under stress, ask them what they’re doing. See if they have scars around their wrists. If you have strong suspicions, go to local law enforcement.”

He also advised resort managers and board members to “be sure your supply chain is legitimate” and avoid buying products from companies that have been identified as users of slave labor.



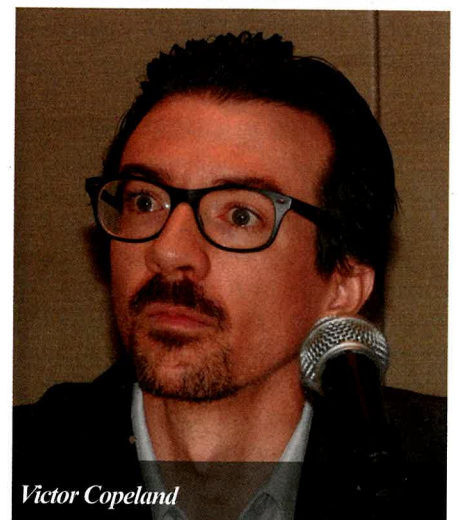
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