

## CLIENT ALERT

### Does Recent Guidance from State Attorneys General on Consumer Losses Signal Future Enforcement Actions?

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While the vast majority of companies do not actively engage in price gouging or deceptive and false advertising, there is a growing concern that various typical best practices may not be enough in the eyes of State Attorneys General during the current COVID-19 crisis. State Attorneys General are starting to issue press releases that they expect businesses to bear the risk of losses from consumer cancellations due to COVID-19, and are thus urging them to give consumers refunds and credits. States are also asking companies to forgo collection efforts.

Arizona Attorney General Mark Brnovich has recently given a stern request to financial and lending institutions to furnish temporary relief to customers. Specifically, Attorney General Brnovich sent a letter to over 1,000 financial institutions conducting business in Arizona asking them to suspend foreclosures, repossessions, and evictions for at least 90 days. He also urged credit card companies and other lending institutions to waive default interest for late payments and late fees. The nature of his letter suggests a strong sense in his mind that failure to take appropriate measures could expose a company to an investigation. While using unfair and deceptive acts and practices statutes to take action against companies for their refusal to provide credit and refunds has not been tested, it may very well be that the current crisis opens the door to such an approach.

Colorado Attorney General Phil Weiser has also signaled his belief that businesses need to assume the risk of loss. He has encouraged businesses to provide “refunds or credits to consumers who will not be able to use their services, whether hotel reservations, airline travel, or other areas where accommodations can be made.” He also suggested that businesses that had not yet done so should act quickly, and warned that those that fail to deliver promised credits or refunds will be investigated. Similarly, Oregon Attorney General Ellen Rosenblum issued an analogous statement, emphasizing that businesses in Oregon can “act responsibly” by giving refunds or credits to consumers who will not be able to use their services as previously scheduled. Attorney General Rosenblum also pressed companies to act quickly and gave the same warning to businesses that fail to deliver on promises of a refund.

Although West Virginia Attorney General Patrick Morrisey has not requested that companies provide refunds, he did state that many vacation entities, airlines, and entertainment businesses are loosening cancellation policies and applauded these companies for doing so. He also told consumers that the West Virginia Attorney General’s office is ready to offer assistance if “any refusal of refunds or other accommodations violates consumer protection laws.”

At the moment, these statements asking businesses to issue refunds or similar relief are merely requests, though some are strongly worded. However, these “requests” may soon become mandates, and more State Attorneys General may follow suit. Furthermore, every state is different, and new developments emerge daily. It is therefore essential for companies to be aware of what the Attorney General in each state in which they operate is announcing about refunds or other ways in which companies are expected to absorb consumers’ COVID-19 related losses.

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For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Clayton S. Friedman**

Partner – Orange County  
Phone: +1 949.798.1316  
Email: [cfriedman@crowell.com](mailto:cfriedman@crowell.com)

**Michael Yaghi**

Partner – Orange County  
Phone: +1 949.798.1396  
Email: [myaghi@crowell.com](mailto:myaghi@crowell.com)

**Joselle Albracht**

Senior Counsel  
Phone: +1 949.798.1332  
Email: [jalbracht@crowell.com](mailto:jalbracht@crowell.com)

**Suzanne Trivette**

Associate – New York  
Phone: +1 212.895.4312  
Email: [strivette@crowell.com](mailto:strivette@crowell.com)