

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2015-2016 Regular Session

SB 1092 (Monning)
Version: March 28, 2016
Hearing Date: April 12, 2016
Fiscal: No
Urgency: No
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SUBJECT

Advertising: Internet Private Residence Rental Listings: Notice

DESCRIPTION

Existing law requires residential hosting platforms to provide notice to occupants listing a residence for short-term rental stating that if the occupant is a tenant, listing the residence may violate their lease or contract and could result in legal action by their landlord, including possible eviction.

This bill would additionally require residential hosting platforms to provide a notice disclosing information regarding the availability or unavailability of insurance coverage provided by the hosting platform, as specified, and would make other technical and conforming changes.

BACKGROUND

In recent years, California has seen a rise in what is known as the “sharing economy,” with the influx of ridesharing businesses such as “Lyft” and “Uber,” and homesharing businesses such as “Airbnb,” “FlipKey,” and “VRBO.” Generally speaking, homesharing consists of an agreement between two parties in which one party rents out all or part of his or her home to another party on a temporary, one-time basis. Service providers like “Airbnb,” “FlipKey,” and “VRBO,” advertise homes offered for temporary rental and facilitate connecting renters with offerors for a fee.

According to the National League of Cities, “[s]haring economy businesses have been growing in cities, and presenting a new set of challenges and opportunities for policy makers and city leaders. While the sharing economy represents new and exciting possibilities offered by technology platforms, cities are finding that these innovative services also present a new set of safety, taxing and business challenges.” (DuPuis and Rainwater, *The Sharing Economy: An Analysis of Current Sentiment Surrounding Homesharing and Ridesharing*, National League of Cities (2014) <<http://www.nlc.org/>

Documents/Find%20City%20Solutions/City-Solutions-and-Applied-Research/Sharing%20Economy%20Brief.pdf> [as of March 31, 2016].) Last year, the Legislature addressed a concern that tenants subletting their rented accommodations through a homesharing service provider could place themselves at risk of eviction if such activity violated their rental or lease agreement. SB 761 (Hall, Ch. 239, Stats. 2015) directed homesharing service providers – termed “hosting platforms” – to provide a specified notice to offerors that would make them aware of possible restrictions in their rental agreements and leases that could subject them to eviction should they offer their unit for short-term rental.

This bill would direct a hosting platform to provide a similar notice disclosing the availability or unavailability of insurance coverage provided by the hosting platform to offerors who chose to list their homes for short-term rental.

CHANGES TO EXISTING LAW

Existing law requires a hosting platform to provide the following notice to occupants listing a residence for short-term rental on a hosting platform:

If you are a tenant who is listing a room, home, condominium, or apartment, please refer to your rental contract or lease, or contact your landlord, prior to listing the property to determine whether your lease or contract contains restrictions that would limit your ability to list your room, home, condominium, or apartment. Listing your room, home, condominium, or apartment may be a violation of your lease or contract, and could result in legal action against you by your landlord, including possible eviction. (Bus. & Prof. Code Sec. 22592.)

Existing law states that the above notice shall be in a font size that is equal to or greater than 100 percent of the standard font size of the other paragraphs on the hosting platform’s Internet Web site or equal to the default font size on the hosting platform’s Internet Web site. Existing law specifies that the notice shall be provided immediately before the occupant lists each real property on the hosting platform’s Internet Web site, and shall require the occupant to interact with the hosting platform’s Internet Web site to affirmatively acknowledge he or she has read the notice. (Bus. & Prof. Code Sec. 22594.)

Existing law defines “hosting platform” to mean a marketplace that is created for the primary purpose of facilitating the rental of a residential unit offered for occupancy for tourist or transient use for compensation to the offeror of that unit, and the operator of the hosting platform derives revenues, including booking fees or advertising revenues, from providing or maintaining that marketplace. (Bus. & Prof. Code Sec. 22590.)

This bill requires a hosting platform to provide an offeror, prior to the offeror’s listing of a residential unit for short-term rental on the hosting platform, a notice disclosing

information regarding the availability or unavailability of insurance coverage provided by the hosting platform, as specified.

This bill specifies, for purposes of the above notice, that if the hosting platform provides primary insurance coverage for the offeror for any liabilities or property losses the offeror incurs as a result of activity related to the short-term rental, the hosting platform shall disclose the coverage limits for death, personal injury, and property damage, and shall explicitly explain to the offeror all of the following:

- that primary insurance means that the hosting platform’s insurance coverage shall be primary to all other insurance and first in line to cover liabilities or property losses;
- that the policy is not contingent on the offeror’s homeowners’ or renters’ insurance policy first denying a claim before the hosting platform’s primary insurance provides coverage; and
- that the offeror should review any restrictions on coverage under the offeror’s own homeowners’ or renters’ insurance policy related to short-term rental activities.

This bill specifies, for purposes of the above notice, that if the hosting platform provides only secondary or excess insurance or does not provide insurance, the hosting platform shall:

- disclose that the offeror’s homeowners’ or renters’ insurance policy may be primary and first in line to cover liabilities or property losses;
- explicitly request that the offeror review the offeror’s homeowners’ or renters’ insurance policy to ensure that there is appropriate insurance coverage in the event that a person sustains an injury or loss for which the offeror is responsible, a person damages or causes loss to the offeror’s personal or real property, or a claim or lawsuit is made against the offeror or otherwise arises out of activities related to the hosting platform; and
- disclose that the offeror’s homeowners’ or renters’ insurance may exclude coverage arising out of activities related to the hosting platform.

This bill makes other technical and conforming changes.

COMMENT

1. Stated need for the bill

The author writes:

Many homeowners and renters list their residences for short term rental on internet hosting platforms, such as Airbnb, HomeAway, and Vacation Rentals by Owner. Unfortunately, many are unaware of the insurance ramifications if damage to property or injury at the property occurs during the rental period. Some homeowners or renters policies may provide coverage when a “guest” is injured or

when the “guest” breaks or damages an item in the home or apartment. Many current insurance policies allow some period of limited commercial use, but the terms can vary significantly based on the insurance company. If the activity is explicitly excluded by the policy, the homeowner or tenant may be liable for injuries or property loss.

It is important for homeowners and renters who make their properties available through internet hosting platforms to understand their insurance coverage and whether it will protect them in the event that something unfortunate occurs during the short term rental of their property. SB 1092 requires internet hosting platforms to provide a disclosure to homeowners and renters that they should check their homeowners’ or rental insurance policies to find out if they are covered before engaging in home sharing activity.

2. Insurance coverage for homesharing activities

In 2014, the New York Times published an article describing the applicability of residential insurance policies to losses connected with homesharing activities. After surveying major insurance carriers, the Times concluded that most homeowner’s and renter’s insurance policies do not cover regular commercial activity in the home. According to a USAA representative quoted in the article, “[i]f you’re conducting a business, on a full- or part-time basis, by renting out your home or apartment (or a room in your home or apartment) as a way to earn money, your homeowner’s or renter’s insurance policy probably would not provide liability coverage.” (Ron Lieber, *A Liability Risk for Airbnb Hosts*, New York Times (Dec. 5, 2014) <<http://www.nytimes.com/2014/12/06/your-money/airbnb-offers-homeowner-liability-coverage-but-hosts-still-have-risks.html>> [as of March 31, 2016].) Unfortunately, many homesharing hosts may not realize that limitations in their insurance policies may exclude losses that occur while their property is being rented. According to the CSAA Insurance Group, who writes in support,

[M]any homeowners and renters who participate in hosting platform activities are unaware of their own insurance coverage and what may or may not be covered in the event of a loss while the home is being rented. In addition, they are often unaware of the coverage the hosting platform may have and how it would interact with the homeowner or renter’s insurance coverage. Simple questions like who pays and up to what amount are questions that should be answered prior to participating in hosting platform activities.

Some hosting platforms advise homeowners and renters who choose to offer their home for short-term rental that they do not provide insurance coverage for losses occurring in connection with the rental. VRBO, for example, states:

We do not provide liability insurance protection for owners, property managers, or travelers; regardless of whether a user obtains insurance coverage through one of our third party providers. Users are solely responsible for obtaining insurance coverage sufficient to protect their properties and guests or their trip, as applicable. Members agree that they have or will obtain the appropriate insurance coverage sufficient to cover the rental of the properties they list on the Site prior to the arrival of their first traveler and will maintain adequate insurance coverage through the departure date of any traveler they have obtained via one of our Sites. Further, Members agree to provide us with copies of relevant proof of coverage upon request. (See VRBO Terms and Conditions <<https://www.vrbo.com/info/termsandconditions>> [as of Apr. 1, 2016].)

Other hosting platforms advise offerors listing properties for rental to check their insurance coverage amounts and limitations. Airbnb, for example, states:

Airbnb recommends that Hosts obtain appropriate insurance for their Accommodations. Please review any insurance policy that you may have for your Accommodation carefully, and in particular please make sure that you are familiar with and understand any exclusions to, and any deductibles that may apply for, such insurance policy, including, but not limited to, whether or not your insurance policy will cover the actions or inactions of Guests (and the individuals the Guest invites to the Accommodation, if applicable) while at your Accommodation. (See Airbnb Terms of service <<https://www.airbnb.com/terms>> [as of Apr. 1, 2016].)

Additionally, some hosting platforms have begun offering insurance products to offerors either as part of the hosting agreement or as a supplementary product available from third-party insurers that can be purchased when a property is listed for short-term rental.

This bill would help ensure consumers are aware of the insurance coverage, or lack thereof, governing their homesharing activities by requiring hosting platforms to make specific disclosures before properties are listed for rent. Specifically, the bill requires hosting platforms to notify consumers immediately before listing a property whether the hosting platform provides primary, secondary, or excess insurance coverage to offerors, and what conditions or limitations, such as policy limits, govern that coverage. When no such insurance is offered, this bill requires hosting platforms to advise offerors that their own insurance might be first in line to cover liability or property losses arising out of their homesharing activities, and that they should check their insurance coverage to determine whether coverage is available and sufficient.

3. Technical changes to existing law

This bill makes several technical and clarifying changes to existing law to eliminate redundant statements concerning the font size of required notices, to correct spelling

errors, and to clarify that notices are to be made to all offerors, not just offerors that occupy a unit or house offered for short-term rental. During the course of making these technical changes, a requirement in existing law that notices be provided immediately before a property is listed on a hosting platform's Internet Web site was inadvertently eliminated. The requirement that specified notices be provided immediately before listing ensures that such notices are well-placed to capture the attention of the offeror, and that they do not become lost amongst other disclosures or terms presented to the offeror during the listing process. The author offers the following amendment to restore this requirement.

Author's Amendment:

On page 4, following line 6, insert: "The notices required by Sections 22592 and 22593 shall be provided immediately before the occupant lists each real property on the hosting platform's Internet Web site."

Support: California Apartment Association; CSAA Insurance Group; National Association of Mutual Insurance Companies; Pacific Association of Domestic Insurance Companies

Opposition: None Known

HISTORY

Source: Association of California Insurance Companies

Related Pending Legislation: AB 2881 (Cmte. on Judiciary, 2016) would add mobilehomes to the types of residences listed for short-term rental on a hosting platform that would be subject to existing notice and disclosure requirements.

Prior Legislation: SB 761 (Hall, Ch. 239, Stats. 2015) required hosting platforms, as defined, to provide a notice to hosts listing a residence for short-term rental stating that if the occupant is a tenant, listing the residence may violate their lease or contract and could result in legal action by their landlord, including possible eviction. This bill specified that the notice must be provided immediately before the occupant lists each real property on the online platform or Internet Web site, and must require the occupant to interact with the online platform Internet Web site to affirmatively acknowledge that he or she has read the notice.
