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THIRD READING

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Bill No: SB 761  
Author: Hall (D)  
Amended: 5/19/15  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 4-1, 5/12/15  
AYES: Jackson, Moorlach, Leno, Monning  
NOES: Anderson  
NO VOTE RECORDED: Hertzberg, Wieckowski

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**SUBJECT:** Advertising: Internet private residence rental listings: notice

**SOURCE:** California Apartment Association

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**DIGEST:** This bill requires a hosting platform to provide a specific notice to individuals listing a residence for short-term rental on the platform, as specified. This bill states that the notice must be provided immediately before an individual lists real property on the hosting platform, and requires the individual listing the property to interact with the hosting platform to affirmatively acknowledge that he or she has read the notice.

**ANALYSIS:**

Existing law:

- 1) Defines the rights and duties of landlord and tenants, including presumptions regarding the terms of the hiring, the lawful means of terminating a lease or rental agreements, and the remedies available to the respective parties in the event of a breach of a lease or rental agreement, including remedies in the event of a tenant's wrongful assignment or sublet of a lease. Generally, the landlord may elect either to continue the lease in effect or to terminate it and collect damages. (Civ. Code Secs. 1940 et seq., 1951.4)

- 2) Provides that a tenant of real property, for a term less than life, or the executor or administrator of his or her estate, is guilty of unlawful detainer if he or she engages in certain activity. (Code Civ. Proc. Sec. 1161.) Existing law defines an unlawful detainer to include, among other things, a situation where a tenant continues in possession, in person or by subtenant, after a neglect or failure to perform conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet. Existing law provides that upon service of three days' notice requiring the performance of such conditions or covenants, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease and thereby save the lease from forfeiture, except as provided. (Code Civ. Proc. Sec. 1161(3).)
- 3) Provides that a tenant who assigns, sublets, or commits waste upon the premises contrary to the conditions or covenants of the lease, or maintains, commits, or permits the maintenance or commission of a nuisance upon the premises, or uses the premises for an unlawful purpose, is guilty of an unlawful detainer and may, upon service of three days' notice to quit, be evicted from the premises by the landlord. (Code Civ. Proc. Sec. 1161(4).)
- 4) Requires an operator of a commercial Internet Web site or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit its commercial Internet Web site or online service to conspicuously post its privacy policy on its Internet Web site. (Bus. & Prof. Code Sec. 22575 et seq.) Existing law also limits advertising by an operator of an Internet Web site, online service, online application, or mobile application directed to minors, as provided. (Bus. & Prof. Code Sec. 22580 et seq.) Existing law also provides provisions that protect the privacy of student's online personal information. (Bus. & Prof. Code Sec. 22584 et seq.)

This bill:

- 1) 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.

- 2) 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.

- 3) Specifies 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.

- 4) Provides that the above notice shall be provided immediately before the occupant lists each real property on the hosting platform's Internet Web site, and requires the occupant to interact with the hosting platform's Internet Web site to affirmatively acknowledge he or she has read the notice.

## **Background**

It is not uncommon for a tenant with a lease to need to move out before the lease ends, or require assistance in paying their rent. In these situations, the tenant may want to sublease their rental unit or assign the lease to another tenant; however, the tenant cannot sublease a rental unit or assign the lease unless the terms of the lease allow the tenant to do so. A "sublease" is a separate rental agreement between the original tenant and a new tenant to whom the original tenant rents all or part of the rental unit. In contrast, an "assignment" is a transfer of person's rights as a tenant to someone else. The tenant might use an assignment if he or she has a lease and needs to move permanently before the lease ends. Many rental agreements, however, specifically forbid the tenant from subletting all or any part of the premises without landlord approval, or using the premises for any commercial purpose.

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, homesharing is recognized as 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 (i.e. Airbnb and HomeAway)." (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 May 7, 2015].)

With the increasing popularity of short-term vacation rentals made available through Internet Web sites such as Airbnb and VRBO, among others, however, questions have arisen as to whether tenants (as opposed to homeowners) of rentals are in violation of their rental agreements if they list their rental unit on these platforms for short-term rent. According to some, “[w]ith an Airbnb rental, the tenant is using the premises for an illegal commercial purpose, and is often creating a nuisance and substantial interference with the comfort, safety or enjoyment of the other building occupants by allowing strangers access who have not been screened by the landlord. These are grounds for terminating tenancy.” (See San Francisco Apartment Association, *SF Apartment: August 2014, Legal Q&A* <[http://www.sfaa.org/aug2014/1408\\_legalqa.shtml](http://www.sfaa.org/aug2014/1408_legalqa.shtml)> [as of May 7, 2015].) Moreover, while the tenant could be subject to eviction for those activities, there is debate over whether the tenant must first be offered a three day right to cure. “Short-term rental, like other forms of subletting, falls into a gray area. Some argue that it is curable simply by stopping any future subletting. Others argue that the subletting, having already occurred, is no longer curable.” (*Id.*)

While questions may linger, it is clear that a tenant could be at risk of eviction if not careful, and that many are not even aware of the possibility of this risk as they participate in this relatively new economy. This bill requires hosting platforms that facilitate short-term rentals to provide a specified notice to listing tenants that would make them aware of the potential restrictions in their rental agreement that could subject them to eviction.

## **Comments**

According to the author:

Over the past few years, there has been significant growth in online Web site companies that allow people to rent a room or their entire unit on a short-term basis. These companies include AirBnb, VRBO, Homeaway, Flipkey, and others. They allow not only property owners to list, but tenants who rent apartments as well. Unlike homeowners, however, tenants who list their rooms or units, create a host of potential problems for the property owner and neighboring tenants, while at the same time, they jeopardize their own tenancy.

In California, the majority of rental leases contain a prohibition against subletting. Under current law, landlords have the right to evict tenants for subletting and for violating the rental agreement. Unfortunately, many tenants are not aware of these prohibitions. Standard leases include many legally required disclosures that can make the lease as long as 25 pages and many tenants may not have reviewed their lease in years.

Short-term rental Web sites provide little or no disclosure to prospective tenants who list their rooms or units for rent. By providing no information to prospective tenants, short-term rental websites are putting unsuspecting tenants in a position where they can face eviction. Short-term rental websites are great and valuable tools, but they must be used responsibly in accordance with existing laws and contractual agreements. Tenants in apartments who list with short-term rental Web sites can create significant safety issues for their neighbors and the community. Short-term guests have had no screening or background checks, and keys or gate codes are given by the listing tenant to the short term guests. The risk of liability is significant for both tenants and owners.

SB 761 is intended to protect and educate tenants about the risks of listing their room or unit on short-term rental Web sites. It will simply require short-term rental companies to disclose very clearly and openly that listing a room or unit may be a violation of the lease and may subject the tenant to eviction.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified 5/27/15)

California Apartment Association (source)  
California Association of Realtors  
San Diego County Apartment Association

**OPPOSITION:** (Verified 5/12/15)

Airbnb

Prepared by: Tobias Halvarson/ JUD. / (916) 651-4113  
5/27/15 13:05:03

\*\*\*\* END \*\*\*\*