

Date of Hearing: June 30, 2015

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 761 (Hall) – As Amended May 19, 2015

SENATE VOTE: 35-3

SUBJECT: ADVERTISING: INTERNET PRIVATE RESIDENCE RENTAL LISTINGS:
NOTICE

KEY ISSUE: SHOULD THE OPERATOR OF AN ONLINE HOSTING PLATFORM ALLOWING PERSONS TO LIST THEIR RESIDENCES FOR SHORT-TERM RENTAL BE REQUIRED TO NOTIFY PERSONS SEEKING TO LIST THEIR RESIDENCES FOR RENT ON THE PLATFORM, IMMEDIATELY BEFORE THE ACT OF LISTING THEIR RESIDENCES FOR RENT, THAT IF THEY ARE TENANTS, THEY SHOULD CHECK THEIR RENTAL CONTRACTS TO DETERMINE WHETHER RENTING A RESIDENCE ON A SHORT-TERM BASIS IS A VIOLATION OF THE RENTAL CONTRACT?

SYNOPSIS

Internet-based companies such as AirBnb and VRBO have created popular online marketplaces that allow people to list their residential properties for rent on a short-term basis, primarily to travelers and tourists, and facilitate communication between the parties to make arrangements for short-term rental of the properties. 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. According to the bill's sponsor, the California Apartment Association (CAA), the majority of rental leases in California contain a prohibition against subletting, and under current law, landlords have the right to evict tenants for subletting in violation of a lease agreement. There is evidence that, in some cities, such as San Francisco for example, the number of evictions associated with Airbnb rentals is increasing.

Accordingly, this bill seeks to require operators of such websites ("hosting platforms") to provide a specified notice to tenants who use the platform, informing them that listing their residence for short-term rental may be a violation of their leases, and recommending that they check their lease before listing the property on the platform for short-term rental. According to the author, these hosting platforms are putting unsuspecting tenants in a position where they may be subject to eviction for violating their leases, and the bill is needed to protect and educate tenants about the risks of listing their rooms or units on short-term rental Web sites. In addition to CAA, the bill is supported by the California Realtors Association and the San Diego County Apartment Association. Prior to amendments taken in Senate Judiciary Committee, the bill was opposed by Airbnb. It is unknown whether Airbnb continues to remain in opposition to the current version of the bill. This bill was approved by the Senate by a 35-3 vote.

SUMMARY: Requires the operator of a hosting platform, as defined, to provide a specified notice to tenants using the platform that listing their residence for short-term rental may be a violation of their lease. Specifically, **this bill:**

- 1) Defines a "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. Provides that the act of “facilitating” includes, but is not limited to, allowing the offeror of the residential unit to offer or advertise the residential unit on the Internet Web site provided or maintained by the operator.

- 2) Requires a hosting platform to provide any person listing a residence for short-term rental on a hosting platform with the following notice:

"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 of contract contains restrictions that would limit your ability to list your room, home, condominium, or apartment. Listing your home may be a violation of your lease or contract, and could result in legal action against you by your landlord, including possible eviction."

- 3) Requires the above notice to appear 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) Requires the above notice to be provided immediately before the occupant lists each real property on the online platform or Internet Web site, and that the occupant interacts with the online platform Internet Web site to affirmatively acknowledge that he or she has read the notice.

EXISTING LAW:

- 1) Generally, 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. (Civil Code Sections 1940 to 1951.4.)
- 2) Provides that a tenant is guilty of unlawful detainer when, among other things, he or she continues in possession, in person or by subtenant, after a neglect or failure to perform certain conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet the premises. (Code of Civil Procedure Section 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 of Civil Procedure Section 1161(4).)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: In recent years, there has been an explosion in popularity of Internet-based companies that allow people to list a room or their entire residence for rental on a short-term basis. These companies, such as AirBnb, VRBO, and Homeaway, have created online

marketplaces which allow travelers and tourists to peruse listings for properties in a destination city, and then contact the listing party to make arrangements for short-term rental of the property. Typically, the companies hosting these online platforms make money through advertising and by charging a fee on each listing (in the case of Airbnb, typically a fee of 9% to 15% of the total amount paid for the rental.) These companies generally make no distinction with respect to who may list a property on the platform, allowing not only property owners, but also tenants, to list their residences for rent.

As the popularity of short-term rentals listed through Airbnb and similar marketplaces has increased, so has the concern of many landlords and property owners about safety and liability issues associated with unauthorized use of rental property by guests. According to the sponsor of the bill, the California Apartment Association, "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."

Accordingly, this bill seeks to require that operators of such websites ("hosting platforms") provide a specified notice to tenants who use the platform, informing them that listing their residences for short-term rental may be a violation of their leases, and recommending that they check their leases before listing their residences for rent.

Short-term rental of property to visitors by the tenant of the property typically violates the rental contract or lease between the tenant and landlord/owner. A "sublease" is a rental agreement between the original tenant and a subtenant to whom the original tenant rents all or part of the rental unit. 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. According to CAA, the majority of rental leases in California contain a prohibition against subletting. Under current law, landlords have the right to evict tenants for subletting in violation of the lease agreement. Despite these prohibitions, many tenants are apparently still incentivized to rent out their homes to short-term guests because of the potential windfall involved, particularly in rent-controlled jurisdictions. (See "Airbnb sublets in S.F. land some renters in the doghouse," S.F. Chronicle (March 18, 2014).)

The author contends that many tenants are unaware of these prohibitions on subletting and using rental property for commercial purposes, or have not reviewed their leases in detail because of their length and complexity. While the Committee does not have statewide data about the prevalence of eviction actions for illegal subletting associated with short-term rentals on sites like Airbnb, there is some evidence that the number of such evictions is on the rise, particularly in San Francisco. According to a recent article in the S.F. Examiner:

Bigger than the Ellis Act and more disruptive than condominium conversions, San Francisco-based Airbnb is playing a major role in city evictions. A total of 145 eviction notices filed with the Rent Board that specifically mention the short-term rental website or violations of The City's rules on short-term occupancy were filed over a 12-month period that ended in February, records show. Attorneys for tenants and landlords agree there could be many, many more Airbnb-related evictions that go unreported.

“There are hundreds of cases” that involve Airbnb, said tenant attorney Joseph Tobener, who has defended several individuals in Airbnb-related eviction cases. “It’s insane.” [According to] Daniel Bornstein, a prominent landlord attorney who handles hundreds of evictions every year, Airbnb “has emerged as a fundamental core of my law practice [within] the last 12 to 18 months.”

Tenants can be evicted for using Airbnb and other websites to rent out their units in a variety of ways under San Francisco's Rent Ordinance: for “illegal use,” breaching provisions of the lease that ban guests or subtenants or causing a “nuisance.” More than 1,100 just-cause eviction notices that cite one of the three reasons above were filed between March 1, 2014, and Feb. 28, 2015, according to the Rent Board. Overall, evictions filed with the Rent Board did increase 7 percent, from 1,977 to 2,120, from the previous 12-month period, records show. And it appears Airbnb played a role in that. While Ellis Act evictions dropped year over year, notices citing “illegal use of unit” and “breach of rental agreement” went up for the fifth straight year. (See "Airbnb-related Violations Cited More and More in SF Evictions," S.F. Examiner (April 23, 2015).)

In light of reports that Airbnb-related evictions are on the rise, the author states the need for the bill as follows:

Short-term rental Web sites provide little or no disclosure to prospective hosts 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. 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.

Factual notice warning of possible lease violations for listing property. This bill requires a specified notice to be provided by the hosting platform (as defined) to tenants seeking to list their residences on the platform for short-term rental. The notice reads as follows: “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 of contract contains restrictions that would limit your ability to list your room, home, condominium, or apartment. Listing your home may be a violation of your lease or contract, and could result in legal action against you by your landlord, including possible eviction.”

The notice consists of a statement urging those who are tenants to consult the rental contract for restrictions that would limit the tenant's ability to list the property, followed by a simple warning of possible consequences if the rental violates the contract. The notice does not presume that every rental contract prohibits subletting, nor that the response of every landlord to instances of unauthorized subletting would be to file for eviction. Instead, the required notice simply provides factually accurate information to the tenant and warns of potential consequences.

The bill requires that the notice is provided immediately before the person lists the property on the hosting platform's website, and also requires the person to interact with the website to affirmatively acknowledge reading the notice. According to the author, this interaction is intended to be accomplished by having the website ask the user to check a box before proceeding

further, similar to what many websites already do when they require users to check a box acknowledging having read and agreed to the terms of service for using the website or opening an account with the company.

ARGUMENTS IN OPPOSITION: The Committee did not receive any opposition letters to this bill subsequent to the bill being referred to this Committee on June 11, 2015. Nevertheless, the author did share with the Committee a copy of a letter, dated May 7, 2015, reflecting Airbnb's "Oppose Unless Amended" position when the bill was pending a hearing by the Senate Judiciary Committee. In that letter, Airbnb stated:

We understand [the author's] intentions with the proposed disclosure and have been working with his office to craft language that achieves his goal. We are concerned, however, that the currently proposed disclosure implies that all leases in California are constructed identically. Indeed, there is no standard lease language utilized across the State of California, and the proposed disclosure should clearly and adequately alert hosts, as Airbnb already does, of the importance of checking their lease and understanding their rights. Internet platforms like Airbnb cannot play the role of interpreting private contractual arrangements or mediating disputes that might arise between private parties.

According to the Senate Judiciary bill analysis, amendments were taken in that committee that largely addressed the objections and requests by Airbnb. It is unknown whether Airbnb continues to oppose the current version of the bill, or whether the amendments taken in Senate Judiciary were sufficient to address all of Airbnb's concerns.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association (CAA) (sponsor)
California Association of Realtors
San Diego County Apartment Association

Opposition (to previous version of the bill)

Airbnb

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