

Member Advisory:

NEW STATE LAW REGULATES SHORT-TERM RENTALS

A new law (Chapter 337 of the Acts of 2018) has been enacted to govern short-term rentals in Massachusetts. These are defined to include occupancy for a period of not more than 31 consecutive calendar days of accommodations normally used for sleeping and living purposes, including without limitation an apartment, house, cottage, condominium unit or furnished accommodation other than a hotel, motel, lodging house or bed-and-breakfast establishment (all of which are already subject to regulation). Traditional tenancies at will are not covered, nor is the law meant to legitimize short-term rentals by tenants in violation of their leases. The key provisions of the new statute can be summarized as follows:

Registration

The Executive Office of Housing and Economic Development, in consultation with the Executive Office of Technology Services and Security and the Department of Revenue, are to establish and maintain a registry for all operators of short-term rentals. Regulations are supposed to be promulgated later this year. In particular, procedures and protocols will be formulated in order to protect the confidentiality and security of an operator's personal information.

Excise Taxes

Thanks to a section of the statute amending Chapter 64G of the General Laws, short-term rentals established pursuant to contracts entered into on or after January 1, 2019 for occupancy commencing on or after July 1, 2019 will be subject to an array of new excise taxes unless an exemption is available. The exemptions relate to (1) federal, state or municipal institutions, (2) religious, charitable, educational and philanthropic institutions not generally open to the public, (3) convalescent homes, (4) religious or charitable homes for the aged, infirm, indigent or chronically ill, (5) summer camps for children up to 18 years of age or developmentally disabled individuals, (6) lodging accommodations provided to seasonal employees by their employers, (7) certified alcohol and drug-free housing, (8) time-shares, (9) occupancy by military personnel traveling on official orders (as substantiated by the operator) and (10) accommodations which are occupied as short-term rentals for not more than 14 days during a particular calendar year, as verified annually by the operator on a form to be made available by the Commissioner of Revenue. In addition, except in the case of community impact fees (discussed below), excise taxes cannot be charged in instances where a unit rents for less than \$15.00 per day.

Assuming that no exemption is applicable, the required excise taxes, calculated as a percentage of the rent, include, first and foremost, 5.7% payable to the Commonwealth. A city or town may elect to impose its own local excise tax not to exceed 6.5% in Boston and 6% elsewhere. Municipalities which are members of the Cape Cod and Islands Water Protection Fund may charge an additional 2.75%. The foregoing taxes are all payable to the state Department of Revenue, which will share the receipts with local communities who exact their own assessments. Cities and towns may also elect to impose a community impact fee of not more than 3% on a "professionally-managed unit", defined to mean one of two or more short-term rental units located in the same city or town, operated by same person and not located within a

single-family, two-family or three-family dwelling which includes the operator's primary residence.

Each applicable excise tax is to be paid by the occupant and must be listed in the rental agreement and charged separately from the rent. Because a local tax might be introduced after the agreement is signed, provision should be made for final calculation of the total amount due as of the time when occupancy is to commence.

If an "intermediary", defined to include a broker or other person facilitating the use of a short term rental unit, collects rent from the occupant, the intermediary will also be expected to take responsibility for collecting all applicable excise taxes and making sure that the operator is properly registered. The intermediary must notify the operator within a reasonable time that the taxes have been collected and remitted to the Department of Revenue.

Regulation

A city or town, by ordinance or by-law, is authorized to regulate short-term rentals, including additional local licensing, limitations on the number of days during which short-term rentals are permitted, requiring verification that properties are up to code, and establishing civil penalties and administrative fees. There must be posted within each short-term rental unit information regarding the location of any fire extinguishers, gas shut-off valves, fire exits and fire alarms in the unit as well as the building. Cities and town may publish their own public registries of short-term rental accommodations.

Insurance

Operators must maintain liability insurance of not less than \$1,000,000 to cover each short-term rental, defending and indemnifying the operator and any occupants for bodily injury and property damage. An exception applies if a short-term rental is being offered through a "hosting platform" which maintains equal or greater coverage. For this purpose, a "hosting platform" is defined to include a digital platform, website or other electronic process which allows an accommodation to be reserved and paid for. The hosting platform must be sure to notify the operator that standard homeowners or renter's insurance may not cover property damage or bodily injury to a third party arising from the short-term rental.

As usual, newly-enacted legislation is subject to ambiguities and interpretive issues which cannot yet be authoritatively addressed. Members are urged to consult their own attorneys.

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