

New Short-Term Rental Laws in Massachusetts Q&A

Massachusetts recently adopted a new law taxing and regulating the short-term rental market. The following information should help Realtors® navigate the short-term rental market under these new laws and regulations.

What does this new law require? The new law expands the state's hotel and motel tax to include the short-term rental of homes (condominiums, single family, multifamily, etc.). Massachusetts is one of the last states to adopt this type of tax. The tax applies to all rentals for a period of 31 days or less, regardless of whether the rental is for recreational, personal, or business use. At the insistence of MAR, the new law only applies to short-term rentals, meaning ordinary tenancies, such as an annual lease or a tenancy-at-will, are not covered by this bill. The tax will apply to all short-term rentals booked on or after January 1, 2019 for stays on or after July 1, 2019.

Tax Structure:

- State: 5.7%
- Local: up to 6% (Boston 6.5%)
- Cape Cod & Islands: includes additional 2.75% to fund Cape Cod and Islands Water Protection Fund
- A community impact fee of up to 3% may be assessed locally on professionally managed properties (Owners of two or more units in one town).

The law requires regulations to minimize the administrative burden on tax filings for those who only rent their unit five (5) months or less each year.

Are there any exemptions in the law? The tax imposed by the new law does not apply to properties rented for fewer than fourteen (14) days per calendar year. It is important to note that these properties are still subject to the other requirements of the law, such as insurance and registration.

When will this law take effect?

July 1, 2019

What about the 2019 rentals I already booked?

The law exempts from tax any 2019 rental that is booked on or before December 31, 2018. Rentals booked on or after January 1, 2019 for stays on or after July 1, 2019 will be subject to the tax. We anticipate that the Department of Revenue will issue guidance on how to handle the tax on bookings made on or after January 1, 2019.

Does this apply to the units I rent?

As stated above, the new law applies to all rentals for a period of 31 days or less. Ordinary rentals, such as an annual lease or a tenancy-at-will are not covered. The new law applies regardless of whether the owner rents the property themselves, hires a Realtor® to rent the property, or uses an online platform to facilitate the rental.

Do I need to collect the tax?

Most likely, yes. The law requires intermediaries (which includes Realtors® who post the property for rent online) who enter into a written agreement with the owner or operator to collect rent or facilitate the collection or payment of rent on behalf of the operator to collect and remit the tax. The Department of Revenue will issue regulations to clarify how often the tax should be remitted to the Department. This

also means that a Realtor® who does not collect or facilitate the collection of rent on behalf of the owner or operator does not need to collect and remit the tax.

Do I need to carry insurance for the listed properties?

No. Although part of earlier versions of the legislation, the final law does not include a requirement that Realtors® provide any liability insurance for listed properties. This requirement was removed due to the advocacy of MAR. Owners, however, are required to maintain \$1 million dollars in liability insurance to cover each short-term rental. Realtors® should be sure to confirm that any property they list for rent is properly insured by the owner. The coverage is required to defend and indemnify the owner or operator and any tenants in the building for bodily injury and property damage. Realtors® may elect to offer insurance coverage as part of their services but are not required to.

Before offering a property for short-term rentals, a hosting platform (including Realtors®) must provide notice to the owner or operator that standard homeowners or renters insurance may not cover property damage or bodily injury to a third-party arising from the short-term rental.

Do the properties need to be registered with the state or city/town?

Each rental unit will need to be listed with the state short-term rental registry. Additionally, each city and town is permitted to create a registration requirement for short term rentals. Check with your municipal government office for details.

Are there any inspections required?

Cities and towns may implement a health and safety inspection requirement and set the frequency of inspections. Short-term rental operators are required to cover the cost of inspections and will likely face a fee to cover registration costs as well.

What are some best practices I can apply as the new law gets implemented?

- Realtors® would be wise to disclose to prospective renters that any booking made on or after January 1, 2019 may be subject to a tax and that the tax rate may change before the rental period. Realtors® may want to postpone the collection of rent until the community tax rates are finalized.
- Develop a policy to verify the number of units owned by each client in a municipality and that those units are properly insured.

Courtesy of:

Justin Davidson
General Counsel & Director of Government Affairs
Massachusetts Association of Realtors®