

What the Final New Airbnb Legislation Means for You, Your Tenants and Your Liabilities

This article provides a summary of the final approved legislation allowing short-term rentals through Airbnb and similar platforms. The legislation, first introduced by San Francisco Supervisor David Chiu on April 15, 2014, was approved by the Board of Supervisors on October 7, 2014. It is expected that the Mayor will sign and that the law will be effective in February 2015. [An article on this subject was first published in our Hanson Bridgett Newsletter on April 24, 2014.](#)

The new law allows local residents (tenants or owners) to rent their "primary residence" on a limited basis for a period of less than 30 days to overnight guests. Tenants or landlords who wish to become "hosts" for these guests would need to register with the City and prove they occupy the unit 75% of the year (or a smaller portion of the year under certain circumstances).

To qualify to be a host, tenants or owners who rent out their units would need to meet the following requirements:

1. Maintain liability insurance for at least \$500,000.
2. If no such insurance is obtained, use a hosting platform that provides liability insurance covering short-term rentals in a unit in an amount not less than \$500,000.
3. Prove that they have lived in the unit for at least 275 days a year (or 75% of the days they have rented or owned the unit if not rented or owned for the full preceding calendar year).
4. Prove that they have lived in their unit for at least 60 days before renting out the unit.
5. Occupy the unit as a "primary residence" as documented by a car's registration, a driver's license, voter registration, a utility bill, a homeowner's tax exemption or similar evidence.
6. Be a natural person and not a business entity.
7. Maintain records for at least two years demonstrating compliance with the rules.
8. For units subject to rent control, charge no more rent than the rent the primary resident is paying to his or her landlord.
9. Pay the same transient occupancy tax paid by City hotels, namely 14% of the amount paid for the stay. In the case of a hosting platform, the hosting platform may collect and pay the transient occupancy tax to the City.



by Kurt A. Franklin

At its last several hearings, the Supervisors added additional provisions, including the following:

1. A proposed City-run registry will track the number of nights a unit has been rented, based on a report provided by the host to the City on at least a yearly basis.
2. Even if the unit is not rented, one is subject to a notice of violation and a penalty if there is a posting on a short-term rental site without first registering with the City.
3. The Planning Department will be the enforcement agency for short-term rentals.
4. "Hosted" rentals (those where the legal unit occupant continues to occupy the unit while renting to a paying guest) may rent an unlimited number of nights per year while a unit may be rented as a non-hosted rental only 90 days per year.
5. Single-family homes will be subject to the same rules as multiunit buildings.
6. In tenant-occupied units, a tenant must get the property owner's consent or the Planning Department will need to give a 30-day notification to the landlord prior to a tenant's listing of space for rent.
7. Single-room-occupancy rentals, below-market rate units and income-restricted units under any city, state or federal law will be prohibited from being used as short-term rentals.
8. Units with outstanding Planning Code or Building Code violations will be prohibited from being listed on the short-term rental registry until those violations have been abated.
9. Landlords will not be allowed to recover possession of a rental unit for a first violation of the short-term rental ordinance as long as the violation is cured within 30 days of written notice to the tenant.

The legislation will now also regulate the "hosting platforms" themselves, including Airbnb and VRBO (Vacation Rentals by Owner). These hosting platforms will have to notify hosts about the City's regulations, and will have to remove a listing when a host is in violation of the City requirements. The units that are registered with the City as short-term rentals will be noted on the Planning Department's website. There will be an application and renewal fee for the registry. The registry will be available for public review to the extent not prohibited by privacy laws.

Upon a violation, the Planning Department would require the violation to be corrected within a certain timeframe. If there is no correction, the Department may prohibit an owner or lessee from listing his or her residential unit on any hosting platform for one year. A failure to correct within a certain timeframe will also give the City, building owner and tenants, nonprofit housing organizations and homeowners' associations associated with the unit the right to file a civil action in court to enforce the law and recover penalties.

The civil action against an owner, tenant or business entity can include injunctive and monetary relief, and defendants may be liable for a civil penalty of up to \$1,000 per day, including attorneys' fees up to the amount of the monetary award. It will also be a misdemeanor.

Finally, the legislation makes it clear that it does not confer a right to lease, sublease or otherwise offer a residential unit for short-term residential use where such use is not otherwise allowed by: a homeowners' association agreement; a law; any applicable covenant, condition, and restriction; a rental agreement; or any other enforceable agreement.

Legislation will be voted on (at a later date) dealing with prohibitions on short-term rentals in units where tenants have been evicted under the Ellis Act, and also dealing with whether non-profit housing organizations may sue violators who live in rent control units or owners of units who have done an Ellis Act eviction.

Risks for Landlords: Complying with Discrimination Laws

As residential subletting moves away from traditional roommates who stay a month or more and into a "host" (either a landlord or tenant) acting as a micro-hotelier providing short-term rentals for travelers, landlords should be aware of the potential applicability of anti-discrimination laws, including but not limited to the Unruh Act, the Americans with Disabilities Act and the California Disabled Persons Act. The Unruh Act is especially broad and covers all businesses, including hotels, motels and housing accommodations. It provides for three times actual damages or \$4,000, whichever is greater, in addition to attorney's fees.

At this time, there is uncertainty in how those laws will apply. In a court case involving roommate.com, the Ninth Circuit Court of Appeals held that the anti-discrimination provisions of the Fair Employment and Housing Act do not apply to roommate situations. However, the court in that case also acknowledged that a business transaction would be a different scenario.

These Airbnb-type uses do in fact appear to constitute a business transaction, and the place of stay is a hybrid between a private home and a place of lodging. Most of the time, private homes are not covered by the ADA, but once rented to travelers they may lose this exemption. The ADA applies to "places of lodging," which include inns, hotels, motels and places that are used for short-term stays. In fact, the United States Department of Justice has found other temporary short-term dwellings to be "places of lodging" under the ADA, including homeless shelters and timeshares. Amenities like reservation numbers, housekeeping services and laundry service push timeshares to be covered by the ADA.

Both landlords and tenants who permit these short-term visitor stays take on risk of liability as both landlords and tenants are joint and severally liable for damages, attorneys' fees and costs under most discrimination laws. For landlords, the operation of these short-term rentals risks triggering expensive accessibility upgrades to both common areas and rented units. It is also possible that landlords with many dwellings in the building being used for short-term stays may be required to make a certain number of units accessible. These accessibility issues should be a topic of discussions among these platforms and landlords who allow tenants to have short-term guests and landlords renting units directly for short-term use through Airbnb, VRBO or a similar platform.

Potential Insurance Issues

Landlords may have good reason to be concerned that their insurance policies will not cover personal injury and property damage that a short-term renter causes to the rented unit when a tenant rents to the short-term renter. During the last year or two, a number of insurance companies and two insurance programs that actively write policies for landlords have indicated that they would fail to renew such policies if they became aware that Airbnb rentals are occurring at a location that they already insure. While Airbnb has insurance covering a "host" (the renter who is allowing short-term rentals), such insurance does not cover any apartment owned in whole or in part by anyone but the renter who is the host.

The information within this article is general in nature. Consult an attorney for any specific problem. M. Brett Gladstone is a partner in the San Francisco law firm of Hanson Bridgett, LLP and Chair of its land use law section. Kurt Franklin is also a partner in the San Francisco office of Hanson Bridgett and specializes in disability law and employment counseling and litigation. They can be contacted at 415-777-3200.

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