



MASSACHUSETTS ASSOCIATION OF REALTORS®

Massachusetts Association of Realtors Comments on Proposed 830 CMR 64G.1.1:
Massachusetts Room Occupancy Excise

August 6, 2019

The Massachusetts Association of Realtors is a 95-year-old professional trade association with more than 25,000 members. Our members from around the state, including many from Cape Cod, Martha's Vineyard, and Nantucket where short-term rentals play a significant part of the economy, have worked hard to bring their practices into compliance with this new law. We appreciate the Department of Revenue's role in this process and note that many of the materials already provided by the Department have been extremely helpful. Thank you for the opportunity to comment and for your consideration. We hope these comments will spur further clarification of this law.

1. 830 CMR 64G.1.1(2) Definition of Hosting Platform – Hosting platform is defined as:

A service through a digital platform, third-party website, software, online-enabled application, mobile phone application or some other, similar electronic process that allows: (i) an operator to advertise, list, or offer the use of an accommodation subject to the excise under M.G.L. c. 64G in exchange for rent; (ii) an operator to collect the payment of rent on an accommodation; and (iii) a person to arrange, book, reserve or rent an accommodation.

We interpret this definition to include intermediaries who offer these same capabilities through unbundled online services. For example, an intermediary who: (1) permits occupants to book stays through a website, (2) sends occupants a contract to digitally sign through a second online vendor, and (3) collects their payment information through a third online vendor, should still be considered a hosting platform. This is because the term "service" refers to the capability to transact for a room occupancy digitally. It does not require all aspects of the transaction be accomplished through a single web interface. Likewise, a multi-step process would also be covered as a "similar electronic process." Interpreting the statute otherwise would give certain online vendors a significant and unfair competitive advantage.

Though we do not believe further clarification is required, it could be accomplished by making certain words plural. A more inclusive definition could state:

Services through digital platforms, third-party websites, software, online-enabled applications, mobile phone applications or other, similar electronic processes that allow: (i) an operator to advertise, list, or offer the use of an accommodation subject to the excise under M.G.L. c. 64G in exchange for rent; (ii) an operator to collect the payment of rent on an accommodation; and (iii) a person to arrange, book, reserve or rent an accommodation.

2. 830 CMR 64G.1.1(5) – The examples for this section do not follow the "Notification Requirements to Occupants" required by 830 CMR 64G.1.1(11)(e). The examples show booking fees including the dollar

amounts for: unit rental charge, unit booking fee, total rent, total tax, and the sum total due. They also include the total tax rate as well as a breakdown of tax percentages for the state, local (stating only “Local excise,” but not naming the city or town), and fees. They do not include the name of the city or town imposing the local excise or a dollar amount breakdown from each of the various taxes and fees, all of which are required by 830 CMR 64G.1.1(11)(e). The Department should clarify whether intermediaries should follow the examples contained in 830 CMR 64G.1.1(5) or the instructions as outlined in 830 CMR 64G.1.1(11)(e).

3. 830 CMR 64G.1.1(11)(a) Room Occupancy Excise Returns and Payments – Operator Registration with Commissioner. This section provides that “operators that offer accommodations for occupancy only on a seasonal basis may register on a seasonal basis....” Seasonal registration is contemplated in statute only for cities or towns, giving municipalities the option to implement ordinances or by-laws to issue seasonal licenses or registration permits to operators. It is unclear how seasonal registration would operate for the Department of Revenue and in the MassTaxConnect system, given that tax returns are only due for months in which tax is collected. This is the only suggestion in statute or regulation that operators may be required to register with the Department more than once. It is unclear whether an operator or intermediary may be required to re-register with the Department through MassTaxConnect based on a time threshold.
4. Insurance policy – The statute requires operators to “maintain liability insurance of not less than \$1,000,000 to cover each short-term rental, unless such short-term rental is offered through a hosting platform that maintains equal or greater coverage. Such coverage shall defend and indemnify the operator and any tenants or owners in the building for bodily injury and property damage arising from the short-term rental.” While we understand that interpreting this provision may be outside of the Department’s purview, we want to raise a couple issues for clarification because the draft regulations and FAQs do not address insurance.
 - a. Some operators are struggling to find policies fulfilling the insurance requirement, especially operators outside of single-family homes, such as condominium or apartment owners who, under the language of statute, need to indemnify all other tenants or owners in the building. How should those operators fulfill this requirement?
 - b. The statute requires this insurance be maintained either by operators or through a hosting platform. Does this exclude others from providing insurance, such as an intermediary real estate brokerage that does not operate as a hosting platform? If the goal of the statute is for all short-term rentals to be indemnified under this type of plan, it seems unfair to put a group of potential providers at a competitive disadvantage simply because they do not operate a digital platform that lists properties and permits online booking and rent collection.
5. Administrative burdens - The statute states that “the department of revenue shall promulgate regulations to minimize the administrative burden relative to filing returns under said subsection (g) on operators who offer their accommodations to the public for not less than 1 day in 5 separate months, or fewer, in the taxable year. The regulations may authorize an operator to file a return only for a month that the operator’s accommodation is offered to the public.” We support the draft regulation provision, 830 CMR 64G.1.1(11)(b), requiring operators to file returns only for the months in which taxes are due. We welcome any additional measures to minimize the administrative burdens on operators who offer accommodations for less than the aforementioned threshold.

6. Hosting platforms – MAR has taken several steps to educate and prepare our members to fully comply with the new short-term rental law and regulations including publishing multiple articles and updates on the issue and drafting new forms for Realtors® to use. We continue to monitor major hosting platforms, many of which persist in various levels of noncompliance with both law and draft regulations, as they have since the law took effect. We hope the Department will responsibly enforce this law and assure that everyone is held to the same standard of practice in this field.