

Short-Term Rental Working Group Update

Background on 2016 Short-Term Rental Legislation

- Legislation was considered by the 2016 General Assembly (GA) – SB 416 (Vogel) and HB 812 (Peace) – that would have established a state law governing short-term rentals in residential areas through hosting platforms such as Airbnb, FlipKey and other websites.
- The proponents of the bills presented them as being helpful to local governments by allowing for state collection and remittance to localities of local transient occupancy taxes on short-term rentals; however, the bills would not have required companies like Airbnb to collect and remit such taxes (they would have simply authorized it).
- Though the bills would have allowed the state Department of Taxation some authority to audit such rental units, they also would have prohibited the Department from sharing any information about the transactions with localities.
- The anonymity of which locations were being used as short-term rentals and who was actually staying in such short-term rentals and for what period of time, would have made any enforcement of local ordinances impossible.
- The bills considered by the GA would have prevented local governments from being able to ensure that the commercial use of residential property would not have an adverse effect on neighborhoods and surrounding communities.
- SB 416 and HB 812 would not have simply allowed a person to rent out a room in his or her primary residence – the bills would have allowed one person to own multiple “primary residences” if a tenant lived in each one and used it as their primary residence.

Issues for Fairfax County

- As allowed by current state law, Fairfax County places reasonable restrictions on the short-term rental of residential dwelling units.
- Under the County’s Zoning Ordinance, the transient occupancy of a dwelling unit for short-term rental (less than 30 days) is permitted only when the Board of Supervisors has approved a special exception allowing the dwelling to be used as a bed and breakfast (which can only occur in a single-family, detached dwelling in one of the following zoning districts: R-1, R-2, R-E, R-C, R-P, PRC, and PDH). Otherwise, transient occupancy in residences is prohibited.

Overview of Short-Term Rental Working Group

- Because the bills would have preempted local taxation and land use ordinances governing such rentals, local governments throughout the state, including Fairfax County, were united in their opposition.
- Ultimately, the issue was sent for study to the Virginia Housing Commission (similar to the statewide study done in 2014 relating to Uber/Lyft and other transportation network companies).
- The working group includes representatives from the hotel industry, hosting platform providers like Airbnb, local governments, state and local tax officials, common interest communities, and other interested parties to explore issues related to registration, land use, taxation, and other items of public interest tied to short-term rentals.
 - Two Fairfax County legislators, Senator George Barker and Delegate David Bulova, are members of the working group.
- The working group has a December 1, 2016, deadline to complete its work (with the goal of developing recommendations and draft legislation for the 2017 session).

Update on Short-Term Rental Working Group Meeting on November 7, 2016

- The short-term rental working group held what is likely its final meeting on November 7.
- During the meeting, the working group discussed a matrix of issues to be addressed in possible legislation (put together by staff from the Department of Legislative Services (DLS)), including:
 - Whether or not legislation is necessary – *other than local government representatives, most members of the working group felt there should be state legislation;*

- Whether legislation should include only primary residences – *the consensus of the group was to include all residential units in any legislative proposal*;
- Whether or not local land use authority should be preempted – *there was not a great deal of discussion on this topic, though local government representatives argued for retaining local land use authority and Airbnb’s representative argued for preemption*.
- Whether or not the Business Professional Occupational License (BPOL) language should be clarified, as the bills during the session would have prohibited the imposition of BPOL on property rentals; however, there are approximately 24 localities in the state (including Fairfax County) that may impose BPOL on a person renting their property due to a grandfather provision passed by the GA in 1974 – *there was not a great deal of discussion on this topic, but having DLS staff highlight this issue for the working group was very helpful*.
- Whether or not legislation should apply to contractual relationships (for example, superseding HOA covenants that prohibit property rentals) – *there was general consensus that legislation should not supersede such contracts*.
- Whether or not localities should be allowed to require registration for people offering short-term rentals – *there was general consensus that allowing localities to require “ministerial” registration was important to code enforcement and tax collection efforts*.
- Whether or not hosting platforms (the companies that offer short-term rentals, such as Airbnb, FlipKey, etc.) should be able to collect and remit state and local taxes centrally to the Virginia Department of Taxation – *though local government representatives suggested this was unnecessary and raised concerns about these taxes being collected by the state, the group in general was comfortable with centralized tax collection*.
- It was expected that the group would use this matrix to begin to make progress on consensus legislation, but after lengthy discussion, the group was not able to reach consensus on a final bill at that meeting.
- However, before the meeting ended Senator Barker recommended, and the study group agreed to, a series of assumptions to be addressed in potential legislation for consideration by the full Virginia Housing Commission:
 - Any legislation would apply to all types of residential property (including primary residences, rental properties, vacation homes, etc.);
 - A tiered system could be developed, with some short-term rentals having fewer restrictions than others, depending on how many days per year they are rented;
 - A system for the collection of taxes (likely by the Commonwealth) and the disbursement of these tax revenues to the appropriate localities;
 - A “ministerial” system of registration (i.e., registration solely so that a locality would know where the short-term rentals are located).
- Delegate Bulova urged that consideration be given to developing legislation without preempting local land use authority over short-term rentals, so DLS staff is expected to keep that possibility in mind as they craft legislation.

Next Steps

- DLS staff will work on a proposal that includes the elements suggested by Senator Barker and approved by the working group, for consideration by the full Virginia Housing Commission on December 14.
- If the Housing Commission can agree to support a legislative proposal, such an endorsement will carry significant weight at the GA.
- If the Housing Commission cannot agree on a particular legislative proposal related to short-term rentals, it is likely that bills to create a statewide framework for short-term rentals will nevertheless be considered by the 2017 GA; however, without a recommendation from the Housing Commission such legislation is likely to face more significant hurdles.