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Vacation Subleasing

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Landlords in desirable tourist destinations benefit from the income opportunities of short-term rentals. Companies like Airbnb.com, HomeAway.com, CouchSurfing.com and VRBO offer the convenience of booking and reviewing vacation homes to tourists, and listing, marketing and securing electronic payment to landlords—with a variety of other features.

Vacation rentals can also offer longer-term tenants the opportunity to turn a quick profit by subleasing their unit during tourist season, leading to potential conflict with their landlords.

WHAT IS SUBLEASING?

A tenant “subleases” when they temporarily lease the entire premises to another party, or transfer or share a portion of the leased premises with another party. California allows tenants to sublease, unless the tenant’s lease agreement prohibits or limits subleasing.

Subtenants are bound by the original lease, and tenants cannot transfer rights to the subtenant not found in the lease agreement. If either the tenant or the subtenant violates the lease, and the landlord terminates the rental agreement, tenancy ends for both.

Because the sublease involves three parties (the landlord, tenant, and subtenant), and the original lease controls the rights and obligations in the sublease, subleases require care when drafting. An attorney can assist in drafting the sublease to avoid conflicts between the parties and the lease.

THE ONLINE VACATION RENTAL INDUSTRY

The internet hosts a spectrum of vacation rental websites:

- [Airbnb \(Airbnb.com\)](#): Offers a range of options, including room rentals.
- [HomeAway \(HomeAway.com/VRBO.com/VacationRentals.com\)](#) and [Tripadvisor \(FlipKey.com/VacationHomeRentals.com\)](#): Offer full unit and home rentals.
- [Couchsurfing \(Couchsurfing.com\)](#): Caters to travelers seeking free accommodations and the opportunity to stay with a local.
- [Craigslist](#): Has categories for sublets/temporary and vacation rentals.

It is extremely common for tenants to sublease their units in violation of their lease. In response, the California legislature passed [SB 761](#) which created new Business & Professions Code 22590. Effective September 1, 2015, it requires vacation rental hosting platforms to provide the following warning to people listing short term rental vacation properties:

“If you are a tenant who is listing a room, home, condominium, or apartment, please refer to your rental contract or lease, or contact your landlord, prior to listing the property to determine whether your lease or contract contains restrictions that would limit your ability to list your room, home, condominium, or apartment. Listing your room, home, condominium or apartment may be a violation of your lease or contract, and could result in legal action against you by your landlord, including possible eviction.”

However, because of the short-term nature of vacation rentals, tenants may ignore the warning, believing they can avoid the scrutiny of their landlord and turn a quick profit.

PROBLEMS WITH SUBLEASING

Subleasing poses several problems for landlords:

- **Ineffective Screening:** Subleasing tenants rarely share the landlord's level of diligence in screening applicants. One bad subtenant can create havoc in a residential community, and vacation rental subleasing only increases the likelihood of hosting the one bad visitor.
- **Short-term/vacation mindset:** Subtenants who aren't properly screened and are in the community for a short period have little incentive to maintain the landlord's property and act respectfully toward other members of the community—impacting the landlord's reputation. Vacation tenants want to party and have fun, which can be disruptive to neighbors. Vacation tenants are often paying top dollar, which may cause them to feel a sense of entitlement, even if they are acting disruptively. Longer term tenants have greater incentive to act with care toward neighbors.
- **Homeowners Association Violations:** Many homeowners associations prohibit short term rentals, but tenants may not know or care about the prohibition. Homeowners associations also impose regulations on behavior within the community. Because landlords ultimately bear the costs and penalties of non-compliance, tenants who sublease may not police their subtenants.
- **Demographic Challenges:** Websites like Couchsurfing.com market to a youthful international audience. The habits of these vacationers may not suit a community of long-term tenants.
- **Bedbugs:** The increase in traffic to the rental property also increases the potential for bed bug infestation. Extermination is costly, and often requires multiple treatments. Tenants frequently dispute causing the infestation and rarely agree to cover the costs, often lacking the means to pay for treatment.
- **Default:** Tenants who rely on income from subleasing to pay their rent, may pose a greater risk of default. Seasonal fluctuations in tourism create inconsistencies in payment and rental rates. A holdover subtenant could ultimately break the tenant's financial stability, and require landlord intervention to evict both the tenant and the subtenant.
- **Local Laws May Prohibit or Regulate Short Term Rentals:** Municipal laws may prohibit or regulate short term rentals. They vary significantly across the state, and may include:
 - **Transient Occupancy Taxes (TOT).** Most municipalities impose transient occupancy taxes on short-term rentals of 30 days or less. For information about transient occupancy taxes for any specific geographic area, Google "transient occupancy taxes" and the name of the city. Also Google "transient occupancy taxes" and the name of the county. (Sometimes transient occupancy taxes are assessed by cities, and sometimes they are assessed by counties). Some counties may pursue landlords for these TOT taxes if not paid by the tenant.
 - **Minimum rental periods.** Some municipalities impose minimum rental time periods (e.g. one-month or one-week tenancies).
 - **Zoning ordinances.** Some municipalities limit short-term vacation rentals to specific geographical areas, prohibit short term rental homes near other short term rentals, impose a maximum number of vacation rental days or vacation rental occupants, or otherwise regulate short-term rentals in single family residences and/or multi-family residences.
 - **Registration and Licensing.** Many municipalities require landlords obtain business licenses or other special licenses to operate short-term vacation rentals. The city or county's municipal code should be reviewed, or an attorney should be consulted to determine the local laws governing short-term rentals in

the community. AirBnB lists some city regulations at

<https://www.airbnb.com/help/responsible-hosting>.

- **Insurance:** Insurance policies (landlord, tenant or subtenant) may or may not provide coverage when a tenant subleases, depending on the terms of the policy, and whether subleasing of the property for short term rentals may trigger a homeowner policy coverage exclusion.

CURBING VACATION RENTAL SUBLEASING

While many residential lease agreements prohibit subleasing, tenants often try to avoid enforcement. Because of the short term nature of the sublease, tenants may claim the subtenants were merely their friends or family members. Even if the landlord serves a Three-day Notice to Perform Covenant or Quit on a tenant who subleases, the tenant could remove the subtenants within the three day period, while intending to sublease in the future. A landlord could ultimately evict the tenant for multiple violations, but this would require significant evidence gathering and patience.

Landlords seeking to avoid the issues with vacation rental subleasing should prohibit assignment and subleasing in their lease agreements, and also prohibit *advertisement* of the lease premises for assignment of sublease. Proving illegal advertisement is often easier than proving illegal subleasing. Landlords may consider using the following provision in their lease, modifying it to match the terminology used in their lease agreement:

NO ASSIGNMENT, SUBLETTING AND TRANSFER BY RESIDENT. Resident's interest in the unit and this Lease/Rental Agreement may not be assigned, sublet or otherwise transferred. Resident may not advertise the unit (or any portion of it) on HomeAway, VRBO, Airbnb, FlipKey, Couchsurfing, Craigslist, or any other advertisement or listing service. Any assignment, subletting or transfer (whether by voluntary act, operation of law, or otherwise), will be void, and a violation of this Lease/Rental Agreement.

SPOTTING A SUBLETTING TENANT

Lease provisions alone will not curtail illegal subleasing. Landlords seeking to reduce illegal subleasing in their communities should stay vigilant for the following signs:

- A repeat incidence of new faces coming and going from the leased premises during vacation season. Vacationers often come in groups, families or couples, as opposed to individual friends that may merely visit the tenant.
- Vacationers are on *vacation*—look for weekday late-night socializing and day-time occupancy, rental cars and taxis, and unknown occupants frequenting the unit.
- Regularly review popular vacation rental websites for listings and advertisements of the property. Tenants may not post the property address to avoid their landlord's detection, but may post photos or provide a description indicating the location. Keep printed or digital records of any illegal listings, and include the date on the record. Evidence of repeat violations will assist in enforcement action.

CONCLUSION

Vacation rentals benefit the vacationing consumer by offering a unique experience they could not find at a hotel or resort—and often at a lower nightly fare. Likewise, property owners and the community alike benefit from the additional income tourists bring to the community; tourists that otherwise may not have visited the destination. However, tenants who sublease can create problems for their landlord and the surrounding community. Landlords should include provisions in their leases to prohibit assignment, subleasing and advertising for assignment and subleasing. Landlords should also monitor who occupies their units in vacation destinations.

Questions related to this article can be directed to breginfo@kts-law.com or (800) 574-5587.

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