

Position Statement – Elliott Beach Rentals

There are three bills currently residing in House and Senate subcommittees. Two of these bills (S. 953 and H. 3253) are heavily influenced by Airbnb for their own benefit to the detriment of licensed South Carolina vacation rental management companies that have built our state's #1 industry (tourism). The South Carolina Realtors Association supported this proposed legislation, but short-term rental management companies and their licensed realtors were not a part of these discussions.

Bills S. 953 and H. 3253 should never see the light of day from their respective subcommittees. This is a concerted effort by Airbnb to avoid regulation while ostensibly allowing South Carolina to collect more taxes. These proposed bills will cost South Carolina millions of dollars. The legislation requires all OTAs such as Airbnb to collect and remit all taxes. What some legislators do not understand is that the majority of OTAs do not act as “merchants of record,” unlike Airbnb. South Carolina vacation rental management companies are required to hold funds in trust in banks doing business in the state. These funds include advanced deposits, commissions, taxes, etc. They are available for audit by the Department of Revenue. This ensures tax collection from licensed parties and provides consumer protection for visitors to this state.

These two bills (S. 953 and H. 3253) will cause millions and millions of South Carolina tourism dollars representing all aspects of a rental transaction to be taken out of state and out of the country. South Carolina will lose total control of these funds. There are hundreds of these OTAs, and there would be no way for the Department of Revenue to travel the world and determine compliance through the requirements of holding monies in trust through licensed property managers, as is the current law in SC.

These proposed bills require OTAs to become the “merchant of record” by making them collect and remit funds in a vacation rental transaction. If they become the merchant of record, they would have to have individuals become licensed property managers-in-charge in our state. The definition of a “rental management company” under Section 27-50-230(2) means a licensed property manager-in-charge or broker-in-charge and their associates and employees who manage vacation rentals. Airbnb, because of the control they would exert over all facets of a vacation rental transaction, would in fact become short term rental management companies requiring licensure of individuals within their organization. Because they should be considered a rental management company, they have crossed the line from being an OTA and potentially lose the protection they hide behind under Section 230 of the Decency Act which protects them from liability if they are a true OTA. Bills S. 953 and H. 3253 are bad business for our state and threaten our largest industry, tourism.

House bill H. 4464 is the third bill in subcommittee. It is nowhere near as onerous and reckless as are S. 953 and H. 3253. However, this bill needs some modification and additions, including:

1. If an OTA becomes the “merchant of record,” then they have to have an individual(s) licensed under South Carolina real estate law as a property manager in charge or a broker in charge in order to comply with Code Section 40-57-20;
2. If any individual or investment group, REIT, etc. that own and self-manage three (3) or more vacation rental properties, they would be required to have a property manager-in-charge, a broker-in-charge, or hire a rental management company with the requisite licenses.

In summary, S. 953 and H. 3253 are bad for South Carolina in terms of tax collection, regulatory and trust accounts, compliance, and consumer protection. They need to die in subcommittees. H. 4464 has promise but can be improved.