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ScareBnb: An Analysis of Maryland's Efforts to Curb the Long-Term Housing Effects of Short-Term Rentals

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SCAREBNB: AN ANALYSIS OF MARYLAND’S EFFORTS TO
CURB THE LONG-TERM HOUSING EFFECTS OF SHORT-
TERM RENTALS

*Devyn King**

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I. INTRODUCTION

There is no state in the country where a minimum wage worker can afford a two-bedroom rental home.¹ The need for affordable housing has been a major problem across the United States.² Between 2000 and 2019, housing costs skyrocketed, representing the above-inflation growth of housing costs.³ In particular, housing price increases that outpaced overall price increases indicated a long-term housing shortage.⁴ In early 2022, rent prices rose faster than in previous decades across the country, accounting for an average increase of 11.3% since the prior year.⁵ A lack of available housing units primarily drives these steep cost increases, and low-income households disproportionately feel its effects.⁶ While several factors could contribute to housing shortages, rapidly increasing costs makes any phenomenon that depletes the long-term housing stock much more damaging.⁷ The Airbnb phenomenon fits that mold as traditional housing units are converted to transient use.⁸

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1. *Out of Reach: The High Cost of Housing*, NAT'L LOW INCOME HOUS. COAL. 3 (2023), <https://nlihc.org/oor> [<https://perma.cc/G4NS-CU53>].

2. Josh Bivens, *The Economic Costs and Benefits of Airbnb: No Reason for Local Policymakers to Let Airbnb Bypass Tax or Regulatory Obligations*, ECON. POL'Y INST., <https://www.epi.org/publication/the-economic-costs-and-benefits-of-airbnb-no-reason-for-local-policymakers-to-let-airbnb-bypass-tax-or-regulatory-obligations/> [<https://perma.cc/437M-QV8X>] (Mar. 26, 2019).

3. *Id.*

4. *Id.*

5. Abha Bhattarai et al., *Rents Are Rising Everywhere. See How Much Prices Are Up In Your Area*, WASH. POST (Apr. 21, 2022), <https://www.washingtonpost.com/business/interactive/2022/rising-rent-prices/> [<https://perma.cc/J739-HSUN>].

6. *Id.*

7. See Bivens, *supra* note 2.

8. See *infra* notes 22–33 and accompanying text.

The issue is no different in Maryland.⁹ The Department of Housing and Community Development formulated a ten-year strategic plan in 2020 to address unmet housing needs, noting that the current housing market critically underserves low-income households—which account for roughly half of new households in Maryland.¹⁰ The assessment emphasized a shortage of affordable housing units, finding a deficit of 85,000 units for extremely low-income residents and estimating that only thirty-three units were available for every one-hundred low-income households.¹¹ Median rent across the state rose by 34% between 2000 and 2017,¹² and some cities have seen rent increase at double-digit rates since the beginning of the COVID-19 pandemic.¹³ Purchase prices of homes have also seen significant increases amidst a decreasing stock.¹⁴ In 2021, the average sales price increased by 11.2%, while the active inventory (total units available on the market) decreased by nearly 4,000 units.¹⁵ As of November 2022, average sales prices increased by 3.1%, and active inventory decreased by almost 1,000 units since 2021.¹⁶

Maryland has established an Affordable Housing Trust (Trust) within the Department of Housing and Community Development, which aims to improve the availability of affordable housing

9. See NAT'L CTR. FOR SMART GROWTH & ENTER. CMTY, PARTNERS, INC., MARYLAND HOUSING NEEDS ASSESSMENT & 10-YEAR STRATEGIC PLAN 7 (2020), <https://dhcd.maryland.gov/Documents/Other%20Publications/Report.pdf> [<https://perma.cc/TM3S-H33Z>].
10. *Id.* “New” households are added as Maryland’s population and economy grows, and more people look to live within the state. See *id.* at 6.
11. *Id.* at 9.
12. *Id.* at 16.
13. See Sohpie Kasakove, *With Renters Squeezed By High Prices, Maryland Cities Consider Rent Stabilization*, BALT. BANNER (Nov. 14, 2022, 6:00 AM), <https://www.thebaltimorebanner.com/community/housing/with-renters-squeezed-by-high-prices-maryland-cities-consider-rent-stabilization-VV5XQZALGJCIZF2W5KCRBNELK4/> [<https://perma.cc/MB9A-L2V2>]. The city of Laurel has seen an increase of nearly 17% in median rents since early 2020. *Id.*
14. See *Housing Statistics: 2021*, MD. REALTORS, <https://www.mdrealtor.org/Portals/22/adam/Page%20Elements/ThMcDfFKWkKDs1ijfvm-Jg/YearEnd/2021%20Annual%20Stats-2.pdf> [<https://perma.cc/R9TG-4PPZ>] (Jan. 6, 2022).
15. *Id.*
16. *Housing Statistics: November 2022*, MD. REALTORS, https://www.mdrealtor.org/Portals/22/adam/Page%20Elements/QaMZsDTVo0qdkm_f5tQd9w/November/November%202022%20Housing%20Stats.pdf [<https://perma.cc/8QUJ-296Z>] (Dec. 6, 2022).

throughout the state.¹⁷ The Trust uses a designated fund to help government agencies, public housing authorities, or nonprofits acquire, develop, and maintain affordable housing targeted at households earning below 30% of the area median income.¹⁸ It receives funding from public and private grants, interest earned on escrow accounts held by title insurers, investment earnings, and repayments on the principal or interest of loans from the Trust.¹⁹ While the fund once received over \$5 million in revenue in fiscal year 2007,²⁰ it has received significantly less in recent years.²¹

Though numerous factors contribute to the current housing market conditions, short-term rentals such as Airbnb exacerbate the affordability issue, primarily through the reallocation of housing stock.²² Landlords may convert long-term rental properties, such as apartments, to short-term rentals to turn a larger profit.²³ Buyers increasingly purchase houses solely for use as vacation properties, which decreases the number of houses on the market for purchase by potential owner-occupiers.²⁴ The increasingly popular tendency of

17. *Maryland Affordable Housing Trust*, MD. DEP'T OF HOUS. & CMTY. DEV., <https://dhcd.maryland.gov/housingdevelopment/pages/maht/default.aspx> [<https://perma.cc/M4B2-SZKV?type=image>]; MD. CODE ANN., HOUS. & CMTY. DEV. § 10-102(a), (c) (West 2023).
18. MD. CODE ANN., HOUS. & CMTY. DEV. § 10-202 (West 2023); *see* MD. DEP'T OF HOUS. & CMTY. DEV., MD. AFFORDABLE HOUSING TRUST PROGRAM GUIDELINES: FORTY-EIGHT FUNDING ROUND (SFY24), at ii (2023), <https://dhcd.maryland.gov/HousingDevelopment/Documents/maht/ProgramGuidelines.pdf> [<https://perma.cc/294D-N3BA>].
19. MD. CODE ANN., HOUS. & CMTY. DEV. § 10-204 (West 2023).
20. Kimberly Burnett et al., *Case Study: Maryland Affordable Housing Trust*, NAT'L ASS'N. OF HOME BUILDERS 210 (2008), <https://www.nahb.org/-/media/NAHB/advocacy/docs/top-priorities/housing-affordability/case-study-maryland.pdf> [<https://perma.cc/6LMF-CLUM>].
21. *See* MD. DEP'T OF BUDGET & MGMT., FY 2021 STATEMENT OF DEDICATED SPECIAL FUNDS 5 (2021), <https://dbm.maryland.gov/budget/StatementofDedicatedSpecialFunds/FY21-StatementofDedicatedSpecialFunds.pdf> [<https://perma.cc/UBC6-NLEW>]. The Fund had a revenue of just over \$1.5 million in fiscal year 2021. *Id.*
22. Kyle Barron et al., *The Effect of Home-Sharing on House Prices and Rents: Evidence from Airbnb*, 40 MKTG. SCI. 23, 39 (2021).
23. *See id.* at 27; *see also* Steven Hill, *Evictions and Conversions: The Dark Side of Airbnb*, AM. PROSPECT (Oct. 19, 2015), <https://prospect.org/economy/evictions-conversions-dark-side-airbnb/> [<https://perma.cc/N6ED-PXBX>] (documenting instances of private landlords evicting tenants in order to convert the units to Airbnb property renting at prices far higher than what the former tenants paid during their long-term rental).
24. *See* Ilyce Glink & Samuel J. Tamkin, *How Your Neighbor's Airbnb Rental Can Affect Your Property Values*, WASH. POST (Sept. 7, 2016, 7:30 AM),

Airbnb hosts purchasing numerous properties solely for listing on Airbnb blurs the line between small-scale hosts seeking to supplement their income by renting out a spare room or vacation home, and real estate investors operating unregulated hotels.²⁵

However, the popularity of Airbnb has not led to an increase in residential construction to accommodate its demand; rather, it has depleted the already limited housing stock—particularly by those who can afford second, third, fourth, or even additional homes for use as short-term rentals.²⁶ An increase in Airbnb listings positively correlates with the number of properties vacant for solely seasonal or recreational use, and negatively correlates with the number of homes available for long-term use.²⁷ In other words, as more units are available for short-term rentals, fewer housing units are available for long-term renting or purchasing by those who intend to live in the homes.²⁸

As the availability of housing decreases, housing prices increase. A recent study indicated that “a 1% increase in Airbnb listings leads to a 0.018% increase in rents and a 0.026% increase in house prices”²⁹ While these percentages seem small at first glance, the effects of Airbnb on housing costs become much more significant within the context of the company’s listings growing at a median annual rate of 28%.³⁰ The same study estimates that Airbnb alone—excluding other short-term rental platforms—contributes to one-fifth of the average annual increase in rent prices and one-seventh of the average annual increase in housing costs in the United States.³¹ Other studies have

<https://www.washingtonpost.com/news/where-we-live/wp/2016/09/07/how-your-neighbors-airbnb-rental-can-affect-your-property-values/> [https://perma.cc/K9CP-8BXJ]. Additionally, homes with “‘rentable’ features” sell at higher prices, which may price potential owner-occupiers out of purchase. *Id.*

25. See Elaine S. Povich, *Why Most States Are Struggling to Regulate Airbnb*, STATELINE (May 7, 2018, 12:00 AM), <https://stateline.org/2018/05/07/why-most-states-are-struggling-to-regulate-airbnb/> [https://perma.cc/95C4-YEKE].

26. See Bivens, *supra* note 2.

27. See Barron et al., *supra* note 22, at 43–44.

28. See Bivens, *supra* note 2; see also Hill, *supra* note 23. A case study of San Francisco found that between 925 and 1,920 rental units across the city were permanently converted to Airbnbs, accounting for up to one-fourth of available units removed from the long-term housing market. *Id.* Certain neighborhoods were affected more than others, with short-term rentals taking over up to one third of available units. *Id.* The study estimated over 4,500 people in San Francisco lost access to housing due to an increase in Airbnb listings. *Id.*

29. See Barron et al., *supra* note 22, at 42.

30. *Id.*

31. *Id.*

also found a causal relationship between Airbnb listings and rising housing costs across various cities.³²

Maryland's lack of affordable housing likely results, in part, from a similar trend of a diminished housing stock and fewer owner-occupied properties,³³ but it is particularly plagued by the presence of large-scale investors with multiple properties. Of the 1,791 active rentals in Baltimore City as of February 2023, 67% are entire home rentals.³⁴ The top five Airbnb hosts in Baltimore own between seventeen and forty-two properties each, and 34% are available full-time, meaning they are available to rent for more than 181 days in the year.³⁵ Other cities in Maryland face similar situations; in Annapolis, for example, 88% of listings are entire home rentals, 45% are available full-time, and its top host maintains forty-three listings.³⁶

Part II of this paper presents a brief overview of Maryland's regulation of hotels and other lodging establishments and how these regulations fail to capture short-term rentals.³⁷ Part III discusses several methods jurisdictions have used to regulate short-term rentals to mitigate the effects of Airbnb on the housing market.³⁸ Part IV reviews Maryland's generally unsuccessful legislative efforts to regulate short-term rentals in recent years, from simple taxation efforts to broad regulatory and licensure requirements.³⁹ Finally, Part V presents three recommendations for future Maryland legislative efforts that seek to curb Airbnb's detrimental effects on the housing market: (1) funnel tax revenues collected from short-term rentals into the Affordable Housing Trust Fund; (2) set a maximum number of properties an owner may rent as short-term rentals; and (3)

32. Bivens, *supra* note 2. A 2016 report by Merante and Horn indicated each additional twelve Airbnb listings per census tract led to a 0.4% increase in rent prices in Boston. *Id.* A 2018 report by Sheppard and Udell estimated a doubling of Airbnb units within a particular geographic zone surrounding a home for sale contributes to a 6 to 11% increase in the sale price in New York City. *Id.* Finally, a 2018 report by Wachsmuth found that Airbnb's expansion in New York City led to a 1.4% increase in rent costs from 2015 to 2017, implicating an annual rent increase of \$384 for a median renter. *Id.*

33. See Barron et al., *supra* note 22, at 25.

34. *Market Performance Details: Baltimore*, AIRDNA, <https://www.airdna.co/vacation-rental-data/app/us/maryland/baltimore/overview> [https://perma.cc/5BB8-BHN5?type=image].

35. *Id.*

36. *Market Overview: Annapolis*, AIRDNA, <https://www.airdna.co/vacation-rental-data/app/us/maryland/annapolis/overview> [https://perma.cc/YSM2-CSR8?type=image].

37. See *infra* Part II.

38. See *infra* Part III.

39. See *infra* Part IV.

incorporate anti-preemption provisions which expressly preserve local authority to impose stricter regulations.⁴⁰

II. BACKGROUND

Airbnb began as “AirBedAndBreakfast.com” in October 2007 as a platform for homeowners—including the founders themselves—to rent out spare rooms.⁴¹ In August 2008, the company expanded to eighty bookings for the Democratic National Convention.⁴² The company officially changed its name to Airbnb and began facilitating the rental of whole homes in March 2009.⁴³ Airbnb faced rapid growth, appealing to travelers who wished to “live as locals do”—in quieter residential areas while still near restaurants, bars, and attractions—at an affordable price.⁴⁴ It also appealed to property owners who wished to supplement their income by renting out a spare room or second home.⁴⁵ Between 2010 and 2015, the number of American travelers using “private accommodations” like Airbnb, as opposed to traditional hotels, quadrupled.⁴⁶ As of March 1, 2022, Airbnb listed over six million rentals for four million hosts across the globe, and a typical host in the United States made \$13,800 per year.⁴⁷ While Airbnb is the largest short-term rental platform, similar companies exist.⁴⁸

Much of Maryland’s statutes pertaining to hotels, inns, and other forms of lodging for transient guests are found in Title 15 of the Business Regulation Article of the Code of Maryland. The Code defines innkeeper as “the owner, operator, manager, or keeper of a

40. See *infra* Part V.

41. *About Us*, AIRBNB NEWSROOM, <https://news.airbnb.com/about-us/> [<https://perma.cc/CZJ9-MG46>].

42. *Id.*

43. *Id.*

44. See Derek Thompson, *Airbnb and the Unintended Consequences of ‘Disruption’*, ATL. (Feb. 17, 2018), <https://www.theatlantic.com/business/archive/2018/02/airbnb-hotels-disruption/553556/> [<https://perma.cc/3U4D-K5TZ>].

45. *Id.*

46. *Id.*

47. David Curry, *Airbnb Revenue and Usage Statistics (2024)*, BUS. OF APPS, <https://www.businessofapps.com/data/airbnb-statistics/> [<https://perma.cc/4NQD-Q4NU>] (last updated Feb. 20, 2024); *While Inflation in the US Rises, New Hosts Grow in Q2 2022*, AIRBNB NEWSROOM (Aug. 10, 2022), <https://news.airbnb.com/while-inflation-in-the-us-rises-new-hosts-grow-in-q2-2022/> [<https://perma.cc/GC8D-9FZZ>].

48. See, e.g., VRBO, <https://www.vrbo.com/> [<https://perma.cc/NPW5-VK8Q>]; FLIPKEY, <https://www.flipkey.com/> [<https://perma.cc/R6MX-V78A>]; HOMESTAY, <https://www.homestay.com/> [<https://perma.cc/NK9W-7FA2>].

lodging establishment, or the agent of an owner, operator, manager, or keeper of a lodging establishment.”⁴⁹ Lodging establishment is defined as “an inn, hotel, motel, or other establishment that has at least four rooms available for a fee to transient guests for lodging or sleeping purposes.”⁵⁰ However, definitions for “hotel” and “lodging” are found in the Public Safety Article.⁵¹

Other titles of the Code impose additional duties on innkeepers, such as the prohibition on discrimination of guests,⁵² compliance with the Americans With Disabilities Act,⁵³ and the required installation of sprinkler systems.⁵⁴ Most businesses, including hotels and lodging establishments, must register with the State Department of Assessments and Taxations to conduct business within the state.⁵⁵ Places of accommodation are subject to Maryland’s sales and use tax of 6%.⁵⁶ In addition to the state sales and use tax, each local jurisdiction levies its own hotel rental tax, which ranges from 3% to 8%, on lodging.⁵⁷

Because many hosts rent less than four individual rooms or rent out full residences, it is unclear whether the “lodging establishment” definition applies to short-term rentals.⁵⁸ Prior to 2015, online hosting platforms avoided Maryland’s sales and use tax, as the statutes had not yet accounted for the technological development.⁵⁹ This allowed Airbnb hosts to operate large-scale lodging operations

49. MD. CODE ANN., BUS. REG. § 15-201(b) (West 2023).

50. *Id.* § 15-201(c).

51. Hotel is defined as “a building or group of buildings that: (i) is under the same management; (ii) contains more than 16 sleeping accommodations for hire; and (iii) is used primarily by transients who are lodged with or without meals” and “includes an inn, motel, club, and apartment hotel.” MD. CODE ANN., PUB. SAFETY § 9-201(d) (West 2023). Lodging or rooming house is defined as “a building: (i) in which separate sleeping rooms are rented; and (ii) that provides sleeping accommodations: 1. for 16 or fewer individuals; 2. on either a transient or permanent basis; and 3. with or without meals, but without individual cooking facilities” and “includes an inn, club, and bed and breakfast establishment.” *Id.* § 9-201(e). Interestingly, bed and breakfast is defined in the General Health Article as “a lodging or rooming house as defined in § 9-201 of the Public Safety Article having eight rooms or fewer for rent.” MD. CODE ANN., HEALTH-GEN. § 21-323.1(a) (West 2023).

52. *See* MD. CODE ANN., BUS. REG. § 15-202 (West 2023); *see also* MD. CODE ANN., STATE GOV’T §§ 20-301 to -306 (West 2023).

53. MD. CODE ANN., BUS. REG. § 15-208 (West 2023).

54. MD. CODE ANN., PUB. SAFETY §§ 9-201, 9-204 (West 2023).

55. *See* MD. CODE ANN., CORPS. & ASS’NS §§ 7-202, 7-203 (West 2023).

56. *See* MD. CODE ANN., TAX-GEN. §§ 11-102, 11-104 (West 2023).

57. *See* MD. CODE ANN., LOCAL GOV’T § 20-405 (West 2024).

58. *See* MD. CODE ANN., BUS. REG. § 15-201(c) (West 2023).

59. *See infra* Section IV.A.

while avoiding the responsibilities traditionally imposed on innkeepers.⁶⁰

Some local jurisdictions have implemented regulations in an effort to control undesirable impacts of short-term rentals. For example, Prince George's County implemented a Short-Term Rentals Program which requires homeowners to obtain a short-term rental license prior to listing their properties on a hosting platform.⁶¹ In 2020, Baltimore City implemented Ordinance 19-217 requiring licensure for short-term rentals, provided the units met specified requirements, limited to an owner's permanent residence or a residence in which he resides for at least 180 days annually.⁶² Montgomery County also restricted short-term rentals to a homeowner's primary residence, implemented a cap of 120 rentable nights within one calendar year, and authorized the collection of hotel taxes on short-term rentals.⁶³ However, statewide efforts to impose restrictions on short-term rentals have proved futile.⁶⁴

III. AN ANALYSIS OF THE VARIOUS TOOLS USED TO CURB SHORT-TERM RENTALS IN RESPONSE TO THE HOUSING CRISIS

Jurisdictions across the country have implemented various regulatory methods to mitigate the adverse effects of short-term rentals.⁶⁵ Although each jurisdiction implements measures specifically tailored to its community's unique needs, four main regulatory methods have emerged in tackling the housing issues associated with Airbnb: (1) moratoriums, (2) a maximum number of properties or days a host may rent within a given year, (3) taxation, and (4) a license or permit process.⁶⁶ The first three measures are discussed below, while the licensing method will be highlighted by past Maryland legislation in Part IV.

60. See Povich, *supra* note 25.

61. *Short-Term Rental Licensing*, PRINCE GEORGE'S CNTY., MD., <https://www.princegeorgescountymd.gov/departments-offices/permitting-inspections-and-enforcement/licensing/rental-housing-licenses/short-term-rental-licensing> [https://perma.cc/GF49-XSEE].

62. *Baltimore City Begins Registration Process for Short-Term Residential Rentals*, BALT. CITY DEP'T OF HOUS. & CMTY. DEV. (Nov. 6, 2019), <https://dhcd.baltimorecity.gov/news/press-releases/2019-11-06-baltimore-city-begins-registration-process-short-term-residential> [https://perma.cc/2YZG-TATK].

63. See Povich, *supra* note 25.

64. See *infra* Part IV.

65. See *infra* Sections III.A, III.B, III.C.

66. See *infra* Sections III.A, III.B, III.C, IV.B.

A. Moratoriums

Some jurisdictions have sought to address Airbnb's disruption of affordable housing through moratoriums.⁶⁷ Moratoriums are temporary prohibitions on an activity for a specified time period when justified by public necessity.⁶⁸ A municipality may implement a moratorium to control the harmful effects of short-term rentals while lawmakers consider other appropriate measures to protect the local housing market.⁶⁹ This would prevent any property owner from renting a unit on Airbnb while the moratorium is in place.⁷⁰ Under a moratorium, unwarranted evictions,⁷¹ displacement of residents, and other unwanted effects of short-term rentals on local neighborhoods may come to a halt.⁷²

However, moratoriums often receive backlash from Airbnb supporters because blanket bans on short-term rentals result in loss of revenue for both Airbnb as a platform and for individual hosts, as well as a reduction of revenue from tourism-based operations, due to a decrease in the number of accommodations for potential visitors.⁷³ Additionally, a total ban on short-term rentals may subject a jurisdiction to constitutional regulatory taking claims, where a property owner challenges a government action for depriving the land of all its value.⁷⁴ For these reasons, a moratorium on Airbnb rentals is only appropriate as an initial, temporary measure, where an extreme detriment justifies an emergency prohibition.⁷⁵

67. See James A. Allen, *Disrupting Affordable Housing: Regulating Airbnb and Other Short-Term Rental Hosting in New York City*, 26 J. AFFORDABLE HOUS. & CMTY. DEV. L. 151, 177 (2017).

68. See MICHAEL A. ZIZKA & PATRICIA E. CURTIN, STATE AND LOCAL GOVERNMENT LAND USE LIABILITY § 4:4 (2024).

69. See Allen, *supra* note 67, at 177.

70. *Id.* at 177–78.

71. See *supra* note 23 and accompanying text.

72. See Dayne Lee, *How Airbnb Short-Term Rentals Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations*, 10 HARV. L. & POL'Y REV. 229, 248 (2016).

73. Allen, *supra* note 67, at 178.

74. See Lee, *supra* note 72, at 248. Scholars are not in agreement whether New York's short-term rental regulations would survive a takings challenge; one argues the severity of the regulations are not sufficient to outweigh investment expectations, while another argues the interest in protecting affordable housing could be sufficient to defeat a takings challenge. *Id.*

75. See *supra* notes 67–74 and accompanying text.

B. Cap on Rental Days or Properties

Another method governments may use to limit the harmful effects of short-term rentals on the housing market is restricting the permissible number of days owners may rent their properties.⁷⁶ Placing a cap on the number of days owners may rent out their properties may discourage the purchase of whole units for Airbnb use, without interfering with one's ability to list ordinary vacation homes or spare rooms in one's permanent residence. Some international jurisdictions, such as London and Amsterdam, have placed the responsibility on Airbnb to enforce such caps.⁷⁷ Under those regimes, Airbnb must police the number of days units are rented through the platform and remove any listings that extend beyond the permissible number of days in a year—sixty days in Amsterdam and ninety days in London.⁷⁸ However, enforcement measures are difficult to execute without open data sharing and an agreement with the platform to enforce the provisions.⁷⁹ As a result, this method is not practical unless U.S. jurisdictions are willing to negotiate with rental platforms.

New York amended its Multiple Dwelling Law (MDL) to prohibit entire apartment rentals for increments of less than thirty days if the permanent resident is absent.⁸⁰ Drafters intended the MDL amendment to prevent the conversion of whole units to short-term rentals and to restrict most listings to spare rooms within a host's permanent residence.⁸¹ Hosts reacted with hostility, arguing the MDL's restrictions were too severe,⁸² and on one occasion, a judge struck down an enforcement measure as overbroad.⁸³ Due to a lack of

76. See Allen, *supra* note 67, at 168; see also discussion of Montgomery County, Maryland's 120-day cap on short-term rentals, *supra* note 63 and accompanying text.

77. Allen, *supra* note 67, at 182.

78. *Id.*

79. See AIRBNB, AIRBNB POLICY TOOL CHEST 2.0, at 13 (2017), <https://press.airbnb.com/wp-content/uploads/sites/4/2019/08/Airbnb-Policy-Tool-Chest-2.0.pdf> [<https://perma.cc/8Z2W-SA4Y>].

80. See Allen, *supra* note 67, at 169; see also N.Y. MULT. DWELL. LAW § 4(8)(a) (McKinney 2023).

81. See Allen, *supra* note 67, at 169.

82. *Id.* at 168.

83. See *Airbnb, Inc. v. Schneiderman*, 989 N.Y.S.2d 786 (N.Y. Sup. Ct. 2014). Airbnb challenged a subpoena from the New York Attorney General that requested an Excel spreadsheet with identification and taxation information for all hosts that list rental properties in New York State through the platform. *Id.* at 788–89. The Attorney General issued the subpoena during an investigation after an internet search suggested property owners were issuing their properties for less than 30 days while not residing

accurate data, difficulty monitoring, unclear messaging to hosts, and lack of enforcement, the MDL proved ineffective.⁸⁴

While capping the number of days a host may rent out a single property may deter some short-term rental hosts, it does not prevent a host from converting additional properties to short-term use. For this reason, some jurisdictions like San Francisco have implemented a “One Host, One Home” policy prohibiting an individual from listing rentals at more than one address.⁸⁵ This scheme may appear effective in protecting the housing supply, but it faces opposition from prospective hosts wishing to exercise their property rights and turn a larger profit margin.⁸⁶ Additionally, without a formal monitoring and enforcement mechanism in place, imposing a property cap would require participation from Airbnb to monitor and remove excess listings.⁸⁷

C. Taxation

A third method of curbing Airbnb’s prevalence throughout a city is the implementation of hotel occupancy taxes on short-term rentals.⁸⁸ Funds generated from short-term rental taxes can be directed at increasing access to affordable housing.⁸⁹ For example, in 2015, Los Angeles Mayor Garcetti announced a proposal to collect a 14% occupancy tax on Airbnb rentals.⁹⁰ Such a tax would generate an expected \$5 million annually, which Garcetti pledged to allocate to Los Angeles’s Affordable Housing Trust Fund to develop additional affordable housing units.⁹¹ Nevertheless, the potential development spurred by the reallocated tax revenues would be insufficient to

in the residence, in violation of MDL. *Id.* at 790. While the court did find that the subpoena was not unduly burdensome since Airbnb failed to show that the requested information was not readily accessible to the platform, and that the issue was not ripe for review as the Attorney General had not yet taken any individual enforcement action, the court ultimately quashed the subpoena. *Id.* at 792–93. The court held that the subpoena was overbroad because it sought materials “irrelevant to the inquiry at hand.” *Id.* at 792.

84. *See* Allen, *supra* note 67, at 173–74. Ultimately, most Airbnb listings within the state violated the statute. *Id.* at 172.

85. *See* AIRBNB POLICY TOOL CHEST 2.0, *supra* note 79, at 12.

86. *See id.* Interestingly, Airbnb notes in its Policy Tool Chest a desire to “ensure the rights of homeowners and tenants to share their own homes to make needed extra income while also protecting the permanent housing stock and enabling regulators to target enforcement at truly bad actors.” *Id.*

87. *See id.*

88. *See* Lee, *supra* note 72, at 251.

89. *See id.* at 245.

90. *Id.*

91. *Id.*

counteract the high number of Airbnb units removed from the market.⁹² Mayor Garcetti's plan also failed to address other harmful effects of short-term rentals, such as evictions or rent increases.⁹³

Surprisingly, Airbnb encourages municipalities to partner with the company in collecting and remitting hotel and tourism taxes.⁹⁴ In its Policy Tool Chest, the company guides governments in regulating short-term rentals and promotes Voluntary Collection Agreements (VCAs) to streamline the tax collection process on bookings.⁹⁵ As of May 1, 2017, Airbnb had VCAs with over 275 jurisdictions across the globe, collecting over \$240 million in taxes.⁹⁶ Airbnb also highlights its partnership in Portland, Oregon, where it deposits collected lodging fees into the City's Housing Investment Fund, which the city uses to support affordable housing.⁹⁷ Similarly, in New Orleans, the platform remits one dollar per night of every booking to the city for affordable housing development.⁹⁸ In 2020, the company launched its City Portal—a dashboard containing rental market and taxation data for partner jurisdictions—to facilitate the administrative relationship between the entities.⁹⁹

Imposing a lodging and occupancy tax on short-term rentals is one step towards treating Airbnbs similarly to hotels. Although imposing a hotel occupancy tax on short-term rentals alone is insufficient to comprehensively address the harmful impacts of Airbnbs on the

92. *Id.* It is estimated that it would take at least 457 years for the occupancy taxes to fund replacement of the more than seven thousand units used year-round as short-term rentals, assuming Airbnb ceases growth throughout the City. *Id.*

93. *Id.* at 246.

94. *See* AIRBNB POLICY TOOL CHEST 2.0, *supra* note 79, at 10–11.

95. *Id.*

96. *Id.* at 10.

97. *Id.* at 12; *see also* PORTLAND, OR., CODE § 6.09.005 (2018) (“The revenues from this fee will be used to fund affordable housing and homelessness initiatives in the Portland area.”).

98. AIRBNB POLICY TOOL CHEST 2.0, *supra* note 79, at 12; *see also* CITY OF NEW ORLEANS, LA., CODE OF ORDINANCES § 70-415.1 (2021) (“There is hereby created a special fund designated as the City of New Orleans Neighborhood Housing Improvement Fund (hereinafter ‘NHIF’), into which shall be deposited all proceeds of the special tax authorized by Proposition D of R-91-100, and any other funds designated by lawful authority for deposit in the fund, *including revenues collected relative to the nightly occupancy of short-term rentals*, pursuant to section 26-616(c).” (emphasis added)).

99. *Airbnb Launches City Portal: A First-of-its-Kind Resource for Governments*, AIRBNB NEWSROOM (Sept. 23, 2020), <https://news.airbnb.com/cityportal/> [<https://perma.cc/UW82-ZLBM>].

housing market,¹⁰⁰ it generates additional funds a jurisdiction may allocate towards supplementing affordable housing.¹⁰¹ Municipalities can easily implement taxation measures with the willingness and assistance of Airbnb-provided tools and the existing taxation infrastructure.¹⁰²

IV. MARYLAND'S LEGISLATIVE EFFORTS IN REGULATING SHORT-TERM RENTALS

Over the past decade, the Maryland General Assembly has introduced several bills to regulate the short-term rental market.¹⁰³ While the legislature successfully imposed a taxation measure after multiple attempts, it ultimately failed to impose any major regulatory requirements on short-term rentals.¹⁰⁴

A. Early Taxation Bills

In 2015, a group of Maryland Senators¹⁰⁵ sponsored Senate Bill 190: Sales and Use Tax – Taxable Price – Accommodations (S.B. 190).¹⁰⁶ Despite placing a tax burden on transient guests, S.B. 190 targeted online travel companies that facilitate rentals through hotels and other lodgings.¹⁰⁷ S.B. 190 amended the definition of “vendor” in § 11-101 of the Tax-General Article of the Code of Maryland to include an “accommodations intermediary,” or a person or platform who facilitates the use of lodging and collects payment for the accommodation, such as online travel companies.¹⁰⁸ S.B. 190 also altered the definition of “taxable price” to include the full consideration paid by a guest to use the accommodation, with few enumerated exceptions.¹⁰⁹ As amended, § 11-101 required the collection and remission of the state sales and use tax on the full price paid by the end user for each rental facilitated by an

100. See Lee, *supra* note 72, at 245.

101. See *supra* note 91 and accompanying text.

102. See AIRBNB POLICY TOOL CHEST 2.0, *supra* note 79, at 13; *Airbnb Launches City Portal: A First-of-its-Kind Resource for Governments*, *supra* note 99.

103. See *infra* Sections IV.B, IV.C.

104. See *infra* Section IV.D.

105. See S.B. 190, 2015 Leg., 435th Sess. (Md. 2015) (noting that the bill was sponsored by Senators Madaleno, Eckardt, Guzzone, King, Manno, and McFadden) (enacted).

106. *Id.*

107. MICHAEL SANELLI, MD. DEP'T OF LEGIS. SERVS., FISCAL AND POLICY NOTE, S.B. 435-190, 2015 Sess., at 2 (2015).

108. Md. S.B. 190 §§ 11-101(a)(A-2)(1), 11-101(o).

109. *Id.* § 11-101(l)(5). “Taxable Price” does not include “a commission paid by an accommodations provider to a person after facilitating the sale or use of an accommodation.” *Id.* § 11-101(l)(6).

accommodations intermediary.¹¹⁰ While the Governor vetoed the bill, the Legislature carried out a veto override in January 2016.¹¹¹

However, S.B. 190 failed to clarify whether the individual host or the rental platform was responsible for collecting and remitting taxes, particularly for local hotel rental taxes. To remedy this, Senator John C. Astle sponsored Senate Bill 776: Hotel Rental Tax and Sales and Use Tax – Limited Residential Lodging (S.B. 776) the following year.¹¹² S.B. 776 required hosting platforms to register with the State Comptroller to provide a mechanism for the hosting platform to collect and remit the state sales and use tax on behalf of the individual hosts.¹¹³ S.B. 776 failed, but the following year, Senator Astle reintroduced a similar bill, Senate Bill 93: Hotel Rental Tax – Accommodations Intermediary – Collection Requirement (S.B. 93).¹¹⁴ S.B. 93 required hosting platforms to collect and remit the appropriate hotel tax for any rental property in its specified county.¹¹⁵ Though the counties and municipalities supported S.B. 93 because it would have allowed them to seize previously missed tax revenue,¹¹⁶ the bill once again failed.¹¹⁷ Though the passage of S.B. 190 provided a first step toward regulating short-term rentals, tax collection remained inconsistent while the mass commercialization of short-term rentals continued.¹¹⁸

B. First Major Regulatory Bill

During the 2017 Legislative Session, Senator Joan Carter Conway introduced Senate Bill 463: Business Regulation – Limited Residential Lodging (S.B. 463).¹¹⁹ S.B. 463 would have imposed traditional “innkeeper” responsibilities on those who rent limited

110. See MD. CODE ANN., TAX-GEN. §§ 11-403(b), 11-601(b) (West 2023).

111. Md. S.B. 190.

112. S.B. 776, 2016 Leg., 436th Sess. (Md. 2016). An identical House bill, H.B. 1361, was cross-filed by Delegates M. Washington, A. Washington, Fennell, Kaiser, Kelly, and Luedtke. H.B. 1361, 2016 Leg., 436th Sess. (Md. 2016).

113. MICHAEL SANELLI & CHARITY SCOTT, MD. DEP’T OF LEGIS. SERVS., FISCAL AND POLICY NOTE, S.B. 436-776, 2016 Sess., at 2 (2016).

114. S.B. 93, 2017 Leg., 437th Sess. (Md. 2017).

115. MICHAEL SANELLI, MD. DEP’T OF LEGIS. SERVS., FISCAL AND POLICY NOTE, S.B. 437-93, 2017 Sess., at 1 (2017).

116. See, e.g., *Hearing on S.B. 93 Before the S. Budget & Tax’n Comm.*, 2017 Leg., 437th Sess. (Md. 2017) (statement of Michael Sanderson, Maryland Association of Counties).

117. Md. S.B. 93.

118. See *infra* Section IV.D.

119. S.B. 463, 2017 Leg., 437th Sess. (Md. 2017).

residential lodging through a hosting platform, such as Airbnb, and required potential hosts to meet certain requirements before listing their property as available to rent.¹²⁰ Senator Conway expressed that her intent for the bill was to promote fairness in the lodging sector, ensuring that short-term rentals complied with local laws and remitted taxes as required by S.B. 190.¹²¹

Prior to the bill, most local jurisdictions permitted property owners to rent all or a portion of their homes for thirty consecutive days or more at a time, but many had not yet addressed short-term rentals of less than thirty days.¹²² A few local governments regulated short-term residential rentals, but there was no state law pertaining to short-term rentals through an internet-based hosting platform.¹²³

1. Application of Existing Laws for Lodging Establishments

S.B. 463's proposed amendment to § 15-201 within the Business Regulation Article of the Maryland Code defined a "hosting platform" as "an internet-based digital entity that facilitates reservations and collects payments for booking transactions for rental of a limited residential lodging unit."¹²⁴ Additionally, it defined "limited residential lodging" as:

the use of a residential dwelling unit, including any single-family house or dwelling, multifamily house or dwelling, condominium, or cooperative, or any portion of the unit by an innkeeper to provide accommodations to transient guests for sleeping or lodging purposes in exchange for a charge or fee imposed in a booking transaction.¹²⁵

Under these definitions, listing one's residential property on Airbnb qualified as renting limited residential lodging on a hosting platform.¹²⁶ The general definition of "lodging establishment" within § 15-201 included limited residential lodging, making all existing lodging laws applicable to limited residential lodging, including anti-discrimination laws, taxation, and building codes.¹²⁷ Thus, S.B. 463

120. *Id.*

121. *Hearing on S.B. 463 Before the S. Fin. Comm.*, 2017 Leg., 437th Sess. (Md. 2017) (statement of Sen. Joan Carter Conway).

122. STEPHEN M. ROSS, MD. DEP'T OF LEGIS. SERVS., FISCAL AND POLICY NOTE, S.B. 437-463, 2017 Sess., at 5 (2017).

123. *Id.*

124. Md. S.B. 463 § 15-201(C).

125. *Id.* § 15-201(F).

126. *Id.*

127. FISCAL AND POLICY NOTE, S.B. 437-463.

would have given the state authority to regulate short-term rentals on equal footing with hotels.¹²⁸

2. Licensure Requirements

S.B. 463 proposed the addition of § 15-208 to the Business Regulation Article, restricting the listing of properties for rental on Airbnb or another hosting platform unless the owner met certain criteria.¹²⁹ The bill required a property owner wishing to rent their property as short-term lodging—now an “innkeeper”—to:

- (1) Be licensed by the Comptroller under Title 11, Subtitle 7 of the Tax-General Article;
- (2) Display the registration number issued by the Comptroller with the license in any advertisement related to the availability of a limited residential lodging unit that is posted or exhibited to the public on a hosting platform;
- (3) Ensure that the use of the limited residential lodging unit for limited residential lodging is in accordance with the applicable laws of the local jurisdiction in which the limited residential lodging unit is located; and
- (4) Provide to the hosting platform operator, at least annually, a written attestation stating that the innkeeper has not received a notice from a local jurisdiction under § 4-105 of the Land Use Article that the use of the limited residential lodging unit for limited residential lodging is in violation of the zoning laws or other local laws of the local jurisdiction.¹³⁰

Thus, the registration requirement provided a mechanism for the State Comptroller to track properties used as limited residential lodging and ensure the appropriate amount of sales and use taxes are collected.¹³¹

In addition to licensure, S.B. 463 imposed extensive record-keeping responsibilities on property owners, requiring the owners to maintain detailed records for a minimum of four years after a booking.¹³² The bill required an owner to make their records

128. *Id.*

129. Md. S.B. 463 § 15-208(A).

130. *Id.* § 15-208(B).

131. *Hearing on S.B. 463, supra* note 121.

132. Md. S.B. 463 § 15-208(C). The bill would require an owner to maintain records of the names of guests, the physical address of the unit, the booking costs, the amount of

available to certain state or law enforcement agencies during an enforcement action.¹³³ A non-compliant Airbnb host would receive a notice from the state, municipality, or law enforcement agency ordering the owner to cease offering the unit for rental or else face a civil penalty of \$500 for the host's first violation, \$1,000 for a second, and \$2,500 for subsequent violations.¹³⁴

Additionally, S.B. 463's proposed enactment of § 15-209 to the Business Regulation Article imposed similar requirements on the corporations acting as hosting platform operators.¹³⁵ As a hosting platform operator, Airbnb needed licensure by the Comptroller of Maryland and registration with the State Department of Assessments and Taxation to facilitate bookings within the state and would have to carry out the same record-keeping responsibilities.¹³⁶ S.B. 463 also prohibited Airbnb from facilitating bookings for property owners violating the provisions of § 15-208, requiring it to verify the owner's licensure and written attestation and to cease facilitation of booking once notified of a violation—what some opponents termed the “one-strike rule.”¹³⁷ Non-compliant hosting platform operators would face a civil citation prohibiting further facilitation of any bookings within the state or penalties of \$2,500 for first violations, \$5,000 for second violations, and \$7,500 for subsequent violations.¹³⁸

3. Response

Analysis of S.B. 463 did not project a substantial increase in general fund revenues due to the penalty provisions.¹³⁹ However, it projected an increase in revenues from business licensure and the additional taxes collected on the newly regulated rentals at both the state and local levels.¹⁴⁰ Drafters also expected that state agencies could implement S.B. 463's requirements through existing means, assuming that local jurisdictions and the Comptroller would hold the primary responsibility for enforcement.¹⁴¹ The most significant

sales and use and local taxes collected and remitted in each transaction, a copy of the written attestation in effect during each booking, and any other information required by the State or municipality. *Id.*

133. *Id.* § 15-208(C)(3).

134. *Id.* § 15-208(D).

135. *Id.* § 15-209.

136. *Id.* §§ 15-209(A), (B)(1), (C).

137. *Id.* § 15-209(B)(2).

138. *Id.* § 15-209(D)(3).

139. STEPHEN M. ROSS, MD, DEP'T OF LEGIS. SERVS., FISCAL AND POLICY NOTE, S.B. 437-463, 2017 Sess., at 6–7 (2017).

140. *Id.*

141. *Id.* at 6.

burden proposed by S.B. 463 fell to the individual property owners who wish to rent their properties through Airbnb or similar platforms because the bill required them to register as “small businesses” and remit taxes.¹⁴²

S.B. 463 faced resistance in the legislature, even after amendments removed some of the building code requirements.¹⁴³ At its February 22, 2017, hearing, the Senate Finance Committee heard testimony from many individuals in support of and in opposition to the bill.¹⁴⁴ Representatives from the hotel and lodging industry and the local chambers of commerce supported S.B. 463, arguing that it did not propose any new regulations but would simply require short-term rental hosts to comply with the same regulations as other forms of lodging.¹⁴⁵ Additionally, supporters believed the bill would ensure all rental properties were safe, complied with local laws, and correctly remitted the appropriate taxes.¹⁴⁶ Nonetheless, the hotel and lodging industry mentioned that its main concern was the short-term rental hosts who managed numerous properties, essentially operating unregulated hotels and escaping the responsibilities of traditional commercial operators.¹⁴⁷ Representatives from the counties and municipalities supported the bill with amendments, stating a desire to regulate short-term rentals while protecting local authority.¹⁴⁸

On the other hand, representatives from Airbnb and other online hosting platforms opposed the bill, noting that they would work with the state to collect and remit taxes but that the bill was overly restrictive on hosts.¹⁴⁹ They argued that the bill did not protect consumers seeking short-term rentals over hotels, but rather sought to prevent competition within the lodging industry.¹⁵⁰ They also expressed concern that the record-keeping requirements of the bill were violative of federal law regarding liability for information furnished from third parties and providing those records to law

142. *See id.* at 7.

143. *Hearing on S.B. 463, supra* note 121.

144. *Compare id.* (statement of Amy Rohrer, President and CEO, Maryland Hotel Lodging Association), *with id.* (statement of Will Burns, Senior Counsel, Airbnb).

145. *Id.* (statement of Frank Boston III, Maryland Hotel Lodging Association).

146. *Id.*

147. *Id.* (statement of Amy Rohrer President and CEO, Maryland Hotel Lodging Association).

148. *See, e.g., id.* (statement of Natasha Mehu, Maryland Association of Counties).

149. *See, e.g., id.* (statement of Will Burns, Senior Advisor, Airbnb).

150. *Id.* (statement of Steve DelBianco, President and CEO, NetChoice).

enforcement without a warrant.¹⁵¹ Several citizens renting properties as short-term lodging opposed the bill, concerned that the proposed requirements would lessen their already-low profit margins that they depended on to pay their bills, maintain their homes, and provide for their families.¹⁵² Another concern was the possibility of the state ordering all operations to cease after a single violation—the one strike rule—believing it to be unfair on both the hosts and hosting platforms if one unruly guest caused a violation.¹⁵³ A common sentiment of those who opposed S.B. 463 was that they generally favored reasonable regulations to ensure the safety of rentals, as long as the regulations did not intrude on the property rights of hosts.¹⁵⁴

In evaluating the bill, some senators opined that it would have been more appropriate to leave the issue to local jurisdictions rather than impose state regulation.¹⁵⁵ Other senators expressed concern for the bill's host requirements on those who occasionally rent one home or unit, particularly when the state draws tourists to areas with few hotels.¹⁵⁶ Amongst the varying opinions, the bill failed to move any further in the legislative process and the measure ultimately failed.¹⁵⁷

C. *Revamped Regulatory Bills*

During the 2018 Legislative Session of the Maryland General Assembly, Senators John C. Astle and Brian J. Feldman once again attempted to regulate short-term rentals in Maryland by introducing a similar legislative measure, Senate Bill 1081: Business Regulation – Limited Residential Lodging (S.B. 1081).¹⁵⁸ Delegate Frick sponsored an identical bill, H.B. 1604, within the House of Delegates.¹⁵⁹ The two bills largely resembled Senator Conway's S.B. 463 but eliminated the physical upgrades to meet building codes required of other types of lodging.¹⁶⁰

151. *Id.* (statement of Will Burns, Senior Advisor, Airbnb). The Stored Communications Act Protects electronic communications and transactional records held by internet service providers from government disclosure without a warrant or subpoena. *See* 18 U.S.C. §§ 2701–2712.

152. *See, e.g., Hearing on S.B. 463, supra* note 121 (statement of Gretchen Maneval).

153. *See id.*; *see also supra* note 125 and accompanying text.

154. *E.g., Hearing on S.B. 463, supra* note 121 (statement of Mike Liptak, Vice President of Government Relations, Travel Technology Association).

155. *Id.* (statement of Sen. Stephen S. Hershey, Jr., Member, S. Comm. on Fin.).

156. *E.g., id.* (statement of Sen. J.B. Jennings, Member, S. Comm. on Fin.).

157. S.B. 463, 2017 Leg., 437th Sess. (Md. 2017).

158. S.B. 1081, 2018 Leg., 438th Sess. (Md. 2018).

159. H.B. 1604, 2018 Leg., 438th Sess. (Md. 2018).

160. *See* Md. S.B. 1081 (requiring hosting platform operator to keep records for the rental unit unrelated to physical upgrades of the site).

The bills' proposed changes to the Business Regulation Article included the same § 15-201 definitions proposed by S.B. 463, albeit with a more detailed definition of "hosting platform."¹⁶¹ Within § 15-208, the bills kept S.B. 463's requirement for property owners to register with the Comptroller and comply with local laws, but removed its record-keeping responsibilities for hosts.¹⁶² Proposed § 15-209 still required the hosting platform to register with the Comptroller, register with the State Department of Assessments and Taxation, and maintain records of booking data, but without the written attestation aspect.¹⁶³ The new bills also eliminated S.B. 463's one strike rule and provided civil citations, penalties, and injunctive relief.¹⁶⁴

Most notably, the bills explicitly provided in § 15-208 that nothing in the section would be "construed to limit the power of a county or municipality to regulate limited residential lodging activities or impose penalties for violations of local law."¹⁶⁵ In § 4-105 of the Land Use Article, in addition to providing local jurisdictions authority to notify property owners and hosting platforms of violations, the bills stated: "a local jurisdiction may regulate by local law or zoning law the activities of an innkeeper engaged in limited residential lodging or adopt other regulations to protect the health, safety, and welfare of residents and travelers staying in limited residential lodging units."¹⁶⁶ Thus, the new bills kept the taxation and regulatory requirements of S.B. 463 while addressing many of the concerns raised by S.B. 463's opponents; the new bills lessened the administrative burdens of record-keeping and physical property upgrades on individual property owners, eliminated the one-strike

161. *Id.* § 15-201. S.B. 1081 and H.B. 1604 defined "hosting platform" as

an internet-based digital entity that: (1) advertises the availability of limited residential lodging units for rent; and (2) receives compensation for providing advertising, facilitating reservations, or collecting payments for booking transactions on behalf of an innkeeper that is the owner, operator, manager, or keeper of a limited residential lodging unit.

Id. § 15-201(C).

162. *Id.* §§ 15-208–209.

163. *Id.* § 15-209(B)–(C).

164. *See generally id.* (authorizing certain law enforcement agencies to impose penalties or file certain action if the hosting platform operator does not satisfy the bill requirements).

165. *Id.* § 15-208(C).

166. *Id.* § 4-105(D).

rule for hosting platforms, and expressly preserved local authority to regulate.¹⁶⁷

Still, both S.B. 1081 and H.B. 1604 faced similar opposition and failed to pass during the Legislative Session.¹⁶⁸ Supporters reiterated that the bills' main purposes were collecting the sales and use tax and ensuring compliance with local ordinances.¹⁶⁹ Representatives from the counties and municipalities supported the bills, especially with the provisions that expressly protected local power.¹⁷⁰ Airbnb once again opposed, arguing that the new bills still imposed unnecessary obstacles on small, single-home or single-unit hosts and that the record-keeping requirements for hosting platforms continued to run afoul of federal law.¹⁷¹ H.B. 1604 received an unfavorable report from the House Economic Matters Committee after its first hearing.¹⁷²

Legislators amended S.B. 1081 to remove the regulatory provisions and to focus solely on taxation collection, as confusion as to which party bore the responsibility to collect taxes persisted.¹⁷³ The amendment altered the Tax-General Article to explicitly require an accommodations intermediary or hosting platform to collect the state sales and use tax.¹⁷⁴ Airbnb and other platforms expressed they would support the amended bill with additional amendments clarifying that the platforms would voluntarily collect and remit the taxes as an added service for the property owners and excluding the service fee from the taxable price.¹⁷⁵ However, with only a few days left in the Legislative Session and the apparent need for additional discussion, the General Assembly failed to pass S.B. 1081 during the 2018 Legislative Session.¹⁷⁶

167. See generally *id.* (proposing state and local municipality's ability to regulate housing platforms and their operators).

168. See *id.*; H.B. 1604, 2018 Leg., 438th Sess. (Md. 2018).

169. E.g., *Hearing on H.B. 1604 Before the H. Econ. Matters Comm.*, 2018 Leg., 438th Sess. (Md. 2018) (statement of Amy Rohrer, President and CEO, Maryland Hotel Lodging Association).

170. *Id.* (statement of Justin Fiori, Government Relations Manager, Maryland Municipal League).

171. *Id.* (statement of Brandon Hatton, Public Policy Associate, Airbnb).

172. *H. Econ. Matters Comm. Voting Record on H.B. 1604* (Mar. 21, 2018), 2018 Leg., 438th Sess. (Md. 2018).

173. *Hearing on S.B. 1081 Before the S. Budget & Tax'n Comm.*, 2018 Leg., 438th Sess. (Md. 2018) (statement of Sen. John C. Astle).

174. See *id.*

175. *Hearing on S.B. 1081, supra* note 173. (statement of Brandon Hatton, Public Policy Associate, Airbnb).

176. S.B. 1081, 2018 Leg., 438th Sess. (Md. 2018).

D. Most Recent Taxation Bill

In 2019, Delegate Mosby once again brought the short-term rental taxation issue to the Maryland General Assembly with House Bill 884: Sales and Use Tax – Short-Term Rentals (H.B. 884).¹⁷⁷ After an amendment to the original bill, H.B. 884 passed both chambers, received signature from the Governor, and took effect June 1, 2019.¹⁷⁸ As enacted, the bill amends the Tax-General Article to require hosting platforms to collect and remit the sales and use tax for each booking, and excludes the service fee from the taxable price.¹⁷⁹ Airbnb also consented to a VCA, authorizing the platform to collect and remit taxes on behalf of its hosts.¹⁸⁰ Thus, H.B. 884 effectively resolved the tax collection issue for short-term rentals. However, it left the other detrimental effects associated with short-term rentals unaddressed.

*V. RECOMMENDATIONS FOR MARYLAND**A. Funnel Tax Revenues Into the Affordable Housing Trust Fund*

With the enactment of H.B. 884 and the state's VCA with Airbnb, the first step Maryland should take in mitigating the short-term rental industry's effects on the housing market is to funnel tax revenues collected on these rentals into affordable housing. Because the tax collection is a recent measure and individual hosts are no longer responsible for its collection, it is still uncertain whether the tax imposition led to any reduction in Airbnb listings. However, these tax revenues can spur the development of affordable units to satisfy the state's need for homes, particularly for low-income residents.¹⁸¹ While the revenue stream from short-term rental taxes is likely insufficient to fully fund the development needed to replace the housing stock taken off the market for short-term rentals, it can offset the impacts while the state pursues additional measures.¹⁸²

177. H.B. 884, 2019 Leg., 439th Sess. (Md. 2019).

178. *See id.*

179. *See id.*

180. MICHAEL SANELLI, MD. DEP'T OF LEGIS. SERVS., FISCAL AND POLICY NOTE, H.B. 439-884, 2019 Sess., at 3 (2019); *see also* *Occupancy Tax Collection and Remittance by Airbnb in Maryland*, AIRBNB HELP CTR., <https://www.airbnb.com/help/article/2309> [<https://perma.cc/GVA9-JQSF>].

181. *See* MARYLAND HOUSING NEEDS ASSESSMENT & 10-YEAR STRATEGIC PLAN, *supra* note 9, at 7.

182. *See supra* notes 89–93, 100–01 and accompanying text.

Conveniently, Maryland already has a designated fund for the development of affordable housing—the Affordable Housing Trust Fund.¹⁸³ Therefore, a simple amendment to § 10-204 of the Housing and Community Development Article can direct tax revenues from short-term rentals to the Fund. Consider the following language to implement this change:

§ 10-204. Composition.

The Fund consists of:

....

(5) the proceeds of the sales and use tax imposed by § 11-403 of the Tax-General Article that are attributable to the taxation of booking transactions of short-term rentals, as defined in § 11-101 of the Tax-General Article.¹⁸⁴

By redirecting the sales and use tax collected on short-term rentals to the Affordable Housing Trust Fund, the taxation measures secured by H.B. 884 can appropriately offset some of the harmful effects on housing caused by short-term rentals.

B. Implement a Cap on the Allowable Number of Rental Properties

Notably, the taxation measure, alone, fails to address the conversion of property to short-term rentals and its resulting depletion of the housing stock.¹⁸⁵ Thus, Maryland must find a way to limit conversions from long-term to short-term housing.

To achieve this, Maryland must crack down on hosts who are essentially commercial operators, while respecting the property rights and maintaining access to Airbnb's benefits for individual property owners.¹⁸⁶ To accomplish this, Maryland should limit the number of properties one may offer for short-term rental, similar to San Francisco's scheme.¹⁸⁷ However, the "One Host, One Home" policy implemented within other jurisdictions is likely inappropriate for Maryland, given the staunch opposition from hosts on previous bills.¹⁸⁸ The number of permitted rental properties should be small enough to discourage the public from using Airbnb as unregulated

183. See *supra* notes 17–21 and accompanying text.

184. Proposed modification to MD. CODE ANN., HOUS. & CMTY. DEV. § 10-204 (West 2023). Additions and amendments indicated by underlined text. The added language is modeled after language used in H.B. 884.

185. See *supra* note 92 and accompanying text.

186. See *supra* notes 33–36, 147 and accompanying text.

187. See *supra* note 85 and accompanying text.

188. See *supra* notes 149–50, 153 and accompanying text.

hotels, but large enough to allow residents to exercise their property rights and supplement their income.¹⁸⁹ While additional study is required to determine the most appropriate number, this comment suggests a limitation of three to four separate addresses. This will allow hosts to rent out spare rooms within their primary residences, a vacation home, and one to two additional properties used for investment purposes. This maximum should provide reasonable regulation on short-term rentals and prevent mass conversion while respecting property rights.

While opponents may once again argue the state should leave any regulation of short-term rentals to the local authorities,¹⁹⁰ state law is needed to ensure uniformity across all jurisdictions within Maryland. One jurisdiction may set a three-home maximum, for example, but it will not prevent a zealous investor reaching this maximum from buying additional properties in other jurisdictions. In the aggregate, these single-jurisdictional requirements could still lead to a major depletion of the housing stock throughout the state. Therefore, it is crucial for a property limitation at the state level, which may resemble the following language adapted from a similar New York proposal:

§ 15-211.¹⁹¹ Limitations on Number of Properties Offered As Short-Term Rentals.

(a) A property owner may operate a dwelling unit as a short-term rental unit, as defined in 11-101(j-3) of the Tax-General Article, provided such property owner shall not operate more than four dwelling units as short-term rentals, unless all or some of the units are at the same address, including apartment number, if applicable.

189. At the bill hearing on H.B. 463, several Maryland “small” Airbnb hosts expressed they owned a few properties, which they operated as short-term rentals to supplement their income and support their households. While these hosts lamented the idea of harsh regulations which would limit their current operations, they also generally seemed in favor of additional regulations for “big” Airbnb hosts which owned dozens or more units. *See supra* note 152 and accompanying text.

190. *See supra* note 155 and accompanying text.

191. Though prior bills proposed the additions as Sections 15-208 and 15-209, recent passage of other bills created provisions under those section numbers. As such, the number reflects the next available number under Subtitle 2 (Rights and Responsibilities of Innkeepers) of Title 15 (Lodging Establishments) within the Business Regulation Article.

(b) A property owner shall not be permitted to operate dwelling units as short-term rentals at more than four distinct addresses.

(c) A short-term rental platform as defined in 11-101(j-2) of the Tax-General Article shall maintain records related to each short-term rental host who rented a short-term rental unit on the platform for X years, including:

(i) The number of distinct addresses simultaneously advertised as short-term rentals during the prior year for each short-term rental host simultaneously advertising more than one unit; and

(ii) The number of such distinct addresses simultaneously rented as short-term rentals during the prior year for each short-term rental host simultaneously advertising more than one unit.

(d) A short-term rental platform shall make all relevant records available to the Department consistent in response to valid legal process.

(e) The Department shall have the authority to enter into agreements necessary and appropriate to enforce this article with hosting platform operators.

(f) Any property owner who shall violate any provision of this section may be prohibited from operating a short-term rental unit for a period of one year.¹⁹²

Large-scale Airbnb hosts may resist such an effort out of a desire to keep their existing operations going.¹⁹³ However, Maryland legislators should consider imposing a licensure requirement on these large-scale operators once they surpass the allowable property cap.¹⁹⁴ Upon registration, these large-scale operators would be subject to the same regulations as traditional hotels, similar to the mechanism proposed in prior bills.¹⁹⁵ This may serve as a deterrent from large-scale conversion of the housing stock, while retaining the right for

192. Proposed language is modeled after NY Senate Bill 7182 from the 2017-2018 Legislative Session. *See* S.B. 1081, 2018 Leg., 438th Sess. (Md. 2018) §§ 15-208–209. Additions and amendments indicated by underlined text. Legislators may wish to consider adding a limit to the number of years a short-term rental would be required to maintain records.

193. *See supra* notes 33–36 and accompanying text.

194. This licensure requirement could be similar to that found in S.B. 1081. *See* Md. S.B. 1081 § 15-209(B)–(C).

195. *See supra* Section IV.B.1.

those who wish to operate short-term rentals as a commercial venture to do so.

Nonetheless, implementing a property limitation will require cooperation with Airbnb and other hosting platforms for monitoring and enforcement since the registration system proposed under previous bills received much hostility and failed to pass due to such push back.¹⁹⁶ This is likely not an issue, as Airbnb and the state continually cooperate under the VCA.¹⁹⁷ Additionally, Airbnb has expressed its willingness to work with state and local governments to ensure compliance with reasonable regulatory measures.¹⁹⁸ Accordingly, upon the passage of any rental property limitation, the state must confer with Airbnb and other hosting platforms to establish an enforcement agreement or expand those in existence.¹⁹⁹

C. Incorporate Anti-Preemption Provisions

Any proposed statute should still expressly provide that state law will not preempt the power of a county or municipality to impose stricter regulations on short-term rentals, just as S.B. 1081 and H.B. 1604 proposed.²⁰⁰ The state should give local jurisdictions explicit authority to regulate other aspects of short-term rentals to protect the health, safety, and welfare of residents and travelers, provided the regulations are not more permissive than any state law. Anti-preemption language is crucial to obtain support from the states' counties and municipalities.²⁰¹ Proposed language may resemble:

§ 15-211. Limitations on Number of Properties Offered As Short-Term Rentals.

....

(g) This section may not be construed to limit the power of a county or municipality to regulate short-term rental activities or impose penalties for violations of local law.²⁰²

196. See *supra* notes 149–54 and accompanying text.

197. MICHAEL SANELLI, MD. DEP'T OF LEGIS. SERVS., FISCAL & POLICY NOTE, H.B. 439-884, 2019 Sess., at 3 (2019).

198. See AIRBNB POLICY TOOL CHEST 2.0, *supra* note 79, at 13; *Airbnb Launches City Portal: A First-of-its-Kind Resource for Governments*, *supra* note 99.

199. See *supra* note 87 and accompanying text.

200. See *supra* notes 165–66 and accompanying text.

201. See *supra* notes 148, 170 and accompanying text.

202. Additions and amendments indicated by underlined text. Adapted from S.B. 1081, modified to use “short-term rentals” instead of “limited residential lodging” as established under H.B. 884. See S.B. 1081, 2018 Leg., 438th Sess. (Md. 2018).

Additionally, the Legislature should add an express grant of authority to local jurisdictions to regulate short-term rentals to protect public welfare within the Land Use Article. This may be accomplished with an additional section, such as proposed § 4-105 under S.B. 1081, or with an amendment to the existing § 4-103:

§ 4-103. Additional Powers.

....

e) A local jurisdiction may regulate by local law or zoning law the activities of an innkeeper engaged in short-term rentals or adopt other regulations to protect the health, safety, and welfare of residents and travelers staying in short-term rentals.²⁰³

Together, these recommendations propose a reasonable regulatory scheme to combat one of the largest detriments posed by short-term rentals, while still likely to secure enough legislative support to pass. With these regulations, Maryland can reroute collected taxes to the development of affordable housing using the state's existing infrastructure,²⁰⁴ allow residents to exercise their property rights while preventing rampant conversion of the housing stock,²⁰⁵ and preserve local discretion to impose additional restrictions in response to local needs.²⁰⁶

VI. CONCLUSION

With soaring housing costs, the need for affordable housing in Maryland is a pressing issue.²⁰⁷ Short-term rentals, such as those rented through platforms like Airbnb, exacerbate this issue by removing housing units for long-term use from the market.²⁰⁸ Jurisdictions throughout the country, and even internationally, have attempted to regulate short-term rentals through a variety of methods.²⁰⁹ Each method has strengths and weaknesses, depending on the unique circumstances of an individual jurisdiction.²¹⁰ Moratoriums are only appropriate as temporary measures while

203. Adapted from S.B. 1081, modified to use "short-term rentals" instead of "limited residential lodging" as established under H.B. 884. *See* Md. S.B. 1081.

204. *See supra* Section V.A.

205. *See supra* Section V.B.

206. *See supra* Section V.C.

207. *See supra* notes 9–16 and accompanying text.

208. *See supra* notes 22–36 and accompanying text.

209. *See supra* Part III.

210. *See supra* Part III.

legislators work to develop long-term solutions.²¹¹ Caps on the number of days or properties an owner is allowed to rent may be useful in curbing mass conversion of units, but are often difficult to enforce.²¹² Licensure requirements can aid governments in monitoring and enforcing any regulatory measures but often face resistance due to increased burdens on individual hosts.²¹³ Finally, taxation measures are one aspect of treating short-term rentals similarly to other forms of lodging, but alone are insufficient to remedy dire housing market conditions.²¹⁴

Maryland has faced difficulty regulating short-term rentals because short-term rentals do not clearly fit within the state's existing lodging regulations.²¹⁵ While there have been legislative efforts over the course of several years to impose lodging requirements on short-term rentals, most bills failed due to resistance against restricting property rights.²¹⁶ Currently, Maryland's only statewide regulatory measure for short-term rentals is an imposition of the sales and use tax.²¹⁷ Maryland should pass additional legislation directing the tax revenue collected on short-term rental transactions to the Maryland Affordable Housing Trust Fund to help spur the development of additional affordable housing and offset some of the negative impacts of short-term rentals.²¹⁸ In addition, Maryland should consider placing a cap on the number of properties a host may operate as short-term rentals to limit conversion of long-term units while still respecting property rights.²¹⁹ The state should include anti-preemption provisions to ensure municipalities and counties may still regulate short-term rentals as they see fit.²²⁰ With these measures, Maryland may be able to address the severe housing impacts of Airbnb once and for all.

211. *See supra* Section III.A.

212. *See supra* Section III.B.

213. *See supra* Sections IV.B, IV.C.

214. *See supra* Section III.C.

215. *See supra* Part IV.

216. *See supra* Part IV.

217. *See supra* Section IV.D.

218. *See supra* Section V.A.

219. *See supra* Section V.B.

220. *See supra* Section V.C.

