



County of Marin - Department of Finance
Transient Occupancy Tax
Program Polices & Procedures

The County of Marin Tax Collector has developed the following general guidelines, Frequently Asked Questions (FAQ's) and answers about Short Term Rentals requirements for renting residential property in the County's unincorporated areas on a short-term basis.

The County of Marin is committed to working with residents to ensure that short-term rental activities respect neighborhood character and comply with the governing laws. Registration is required through the Tax Collector's office to obtain a Business license and Transient Occupancy Tax certificate number. Short-term rental operators are to collect Transient Occupancy Tax from the guest and remit the tax on a monthly basis to the Tax Collector. The Community Development Agency is responsible for administering enforcement of the County's code compliance regulations.

Transient Occupancy Tax (TOT):

Transient Occupancy Tax is not a tax on the business operator; it is collected by the operator from the transient guest who stays 30 days or less.

TOT is authorized under the California Revenue and Taxation Code Section 7280 and Marin County ordinance. Property owners and, property managers or their designated agents, shall collect transient occupancy tax from the guest, and report and remit to the Tax Collector monthly. The amount of tax collected is a percentage of the room rents received in the month of the reporting period. The tax rate is determined by the electorate and is a percentage of the rental receipts charged by the hotel operator to transient guests. There are two TOT Tax Rate Areas (TRA) in the unincorporated areas of Marin:

TOT1– 10% all unincorporated areas that are not located in the TOT2 Tax Rate Area
TOT2– 14% West Marin region (Effective January 1, 2019 Marin County Code §3.05.035)

Governing laws:

- Marin County Code: Chapter 3.05 Uniform Transient Occupancy Tax
- Marin County Code: Chapter 5.54 Business Licenses
- Marin County Code: Chapter 5.41 Notice of Short-Term Rentals
- California Revenue and Taxation Code 7280-7283.51

Definitions:

Person means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

Occupancy means any use or possession, or right to the use or possession, of any room, rooms, or portion thereof, in any hotel for dwelling, lodging, or sleeping purposes.

Transient is any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days.

Rent is any consideration charged, whether received, for the occupancy of hotel space valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash credits, and property and services of any kind or nature, without any deduction therefrom whatsoever.

Operator is any person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, management company or mortgagee in possession, licensee, or any other capacity. Where the operator performs functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator and shall have the same duties and liabilities as his/her principal.

Short Term Rental

A short-term rental is the rental of all or portion of a residential unit, dwelling unit, accessory unit, a room, or rooms of a dwelling unit, hotels, living spaces in hotels, inns, house, bed and breakfast, motel and other lodging for a period of **30 days or less**.

Hotel

Any structure, or any portion of any structure, which is licensed or subject to being licensed as a hotel or motel by any state law or local ordinance and intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, dormitory, public or private club, mobile home or house trailer or house trailer tie down pad at a fixed location, or houseboats or berthing facilities or other similar structures or portions thereof, or any place advertised by any person that rents rooms by day, week or month to the public.

Getting Started:

Business License Requirement:

The County of Marin Business License Ordinance 5.54 requires any person or business that operates or engages in any business activity in the unincorporated area of the County to register as a business and obtain a Business License number. The fee for a Business license is \$15.00 per dwelling until + the state mandated fee of \$4.00. Business license is active on a fiscal year basis and must be renewed each year. It is the responsibility of the business owner to obtain a Business License before conducting business in the unincorporated areas of the County.

TOT Registration:

The County of Marin Transient Occupancy Tax Ordinance requires any person who operates as a short-term rental operator to, Register for a Transient Occupancy Tax Certificate Number and a Business License. Registration may be completed using a paper form or online services

The following information is required from Operators for Transient Occupancy Tax when registering:

- 1) Name of operator responsible for collecting & remitting tax; if corporation or partnership, provide names of officers or partners;
- 2) Type of ownership (individual, corporation, partnership, etc.);
- 3) Name of property owner; if corporation or partnership, provide names of officers or partners;
- 4) Type of hotel (i.e.: hotel, motel, RV park, bed & breakfast, etc.);
- 5) Name of hotel, motel, RV park, bed & breakfast, or rental unit
- 6) Name, address, and phone number of person preparing TOT reports;
- 7) Mailing address of hotel or location of place of business;
- 8) Mailing address of corporate or partnership headquarters;
- 9) Mailing address for TOT report or TOT correspondence purposes;
- 10) Phone numbers for persons/entities and locations;
- 11) Starting date of business;
- 12) Purchase or lease date (if an existing hotel/establishment);
- 13) Date first rented units for 30 days or less, if different from lease or purchase date;
- 14) Name of the previous operator if hotel leased or purchased - The name should match previous records for the hotel;
- 15) Number and type of units subject to TOT rentals;
- 16) Number and type of units rented for more than 30 days;
- 17) Rates charged for each type of unit subject to TOT;
- 18) Information concerning seasonal rentals; and
- 19) Authorized signature

Online Services:

Transient Occupancy Tax Registration and Reporting: marincounty.org/tot1
Business License Registration & Renewals: marincounty.org/bl

Notice of Short-Term Rentals:

County of Marin Ordinance: 5.41 Notice of Short-Term Rentals, is administered through Marin County Community Development Agency. The public must be notified that a Short-Term Rental is offered on a property by either placing exterior signage on the rental property or delivering a written notice to all properties within a 300-foot radius of the rental. The following information is required:

- Name of Local Contact Person (person available to respond in case of emergencies)
- Phone number and email address of Local Contact Person
- Street Address of Short-Term Rental
- Phone number and web address of the Marin County Short Term Rental Hotline
 - Phone Number: (415) 300-4445
 - Web Address: <https://hostcompliance.com/tips>

The Local Contact Person, as noted above, is an individual who is available to respond to any issues that may arise related to a Short-Term Rental operation. This individual can be either the property owner or a selected representative, who is required to take any necessary actions to resolve all reported issues. Ideally, the Local Contact Person lives near the rental property (within 20 miles) and can physically respond to any nuisance within 12 hours. Property owner(s) failing to comply with the public notification requirements outlined in this letter are subject to an administrative citation issued by the Community Development Agency.

Affidavit of Neighborhood Notification:

An affidavit from the operator certifying that the notice has been provided in conformance with ordinance 3695, ten (10) days prior to the operator applying for a new business license or renewing an existing business license shall be submitted to the Marin County Department of Finance. The Affidavit shall be signed under penalty of perjury and is required to have a valid Business license number and Transient Occupancy Tax number. Affidavit forms can be obtained on-line or may be requested by emailing: tot@marincounty.org

Tax Rate Areas & Tax Rates:

There are two different TOT Tax Rate Areas (TRA) in the unincorporated areas of Marin:

TOT1– 10% all unincorporated areas that are not located in the TOT2 Tax Rate Area

TOT2– 14% West Marin region (Effective January 1, 2019 Marin County Code §3.05.035)

Collection & Remittance of Transient Occupancy Tax:

Transient guests staying at a short-term rental in the unincorporated areas of Marin County for 30 days or less are required to pay Transient Occupancy Tax. The appropriate tax is to be collected by the Operator from the guest at the same time the rent is collected.

Short-Term Rental operators, owners and/or authorized agents are required to collect, report and remit Transient Occupancy Tax to the County Tax Collector monthly.

The monthly tax report should be submitted online at www.marincounty.org/tot1, or on a tax form designated by the Tax Collector. The tax report should contain:

- Operator(s) name and address
- Transient Occupancy Tax Certificate number
- Total rents charged for the that are subject to TOT
- Total amount of TOT being remitted
- Reporting period
- TOT tax rate
- Business name and location
- Due date

Due Date:

Transient Occupancy Tax must be paid and reported to the Tax Collector within 30 days after each calendar month end. The complete TOT report and remittance should be postmarked on or before the last day of the reporting due date. A TOT report must be filed monthly, even if no tax is due. Payments postmarked by the final due date are considered timely. Interest and penalties are strictly enforced on late filings pursuant to MCC §3.05.080.

Interest and Penalties:

If TOT reports and taxes are not remitted to the County Tax Collector by the due date, penalties and interest apply on the first day the tax becomes delinquent. The initial penalty is equal to ten percent of the tax due. If payment is not remitted by 30 days after the delinquent date, an additional 10 percent penalty is charged, plus 0.5% interest per month. Transient Occupancy Tax compliance is required under the County ordinance.

Online Agents:

Any Operator that utilizes an Online Agent to manage or broker online rental reservations in which the Online Agent collects and remits the Tax directly to the Tax Collector, must report the total rents during the period from each source. Any portion of that Operator's total tax liability for the period that is expected to be paid directly to the Tax Collector by an Online Agent shall be reported separately on the Operator's tax return as a Credit Adjustment to their total tax liability for that same period.

Any Credit Adjustments claimed by an Operator pursuant to this section must be accompanied by documentation originating from the official records of the Online Agent(s), so the Tax Collector can accurately account for lump sum payments made by Online Agents on behalf of multiple Operators. This documentation should readily identify the Rental and itemize the dates, Rents and Taxes brokered by the Online Agent on behalf of the Operator for that period.

Credit Adjustments will be disallowed if an Operator utilizing an Online Agent to collect and remit tax directly to the Tax Collector on their behalf, claims a Credit Adjustment on their tax return but does not provide documentation originating from the official records of the Online Agent(s) that identifies the Rental and itemizes the dates, Rents and Taxes brokered by the Online Agent on behalf of that Operator. Any Operator that does not comply with the requirements of this section may be assessed penalties for late filing pursuant to Section 3.05.080 and will remain liable for the total amount of taxes due for the period until the documentation required to support a Credit Adjustment is filed with the Tax Collector.

Record Keeping:

The Transient Occupancy Tax Ordinance requires the Short-Term Rental operator to retain records for a period of three years. Audits are necessary to determine whether operators are correctly reporting Transient Occupancy Tax. Rental records must provide an adequate audit trail from booking/registration to monthly income figures reported to the County, and can include registration records, revenue/deposit summaries, general ledger and similar records. A sufficiently detailed ledger of all rental payments, TOT collected and received by guest name and dates of stay should be maintained. The tax should be separately stated on all records. All exemptions granted must be supported and documentation maintained for subsequent audit verification

Audits:

Audits are performed to ensure amounts reported are accurate and that all TOT collected and due the County has been remitted.

Audit Cycle- Each Short-Term Rental will be audited on a regular cycle to ensure compliance with all County TOT ordinance. An audit notification letter will be sent to the operator informing them of the upcoming audit and the timeframe covered by the audit. The audit requests are at the Tax Collector's discretion.

Required Documentation- Typical documents reviewed in an audit include: registration records, daily and monthly sales records, general ledgers, financial statements, bank statements, documents supporting all exemptions, online agent reports, and other records deemed necessary to support the TOT due.

Failure to Report or Maintain adequate records:

The Tax Collector may determine a tax amount by any means available, if an operator does not maintain or fails to make available adequate records for audit purposes or fails to report the tax. The tax determined to be due will be subject to change only if the operator appeals to the County Tax Collector in writing and provides records that are verifiable as accurate and true.

Actions by County to Collect:

Short-term rental Operators are legally responsible for collecting Transient Occupancy Tax from their guests and remitting that tax to the Tax Collector monthly. Any transient occupancy tax required to be paid by the transient, that is not collected by the Operator and/or remitted the Tax Collector, shall be deemed a debt owed by the Operator to the County.

The County may proceed with various administrative actions to collect unpaid TOT, including the recordation of a tax lien in the name of the responsible Operator(s) and/or their agent(s).

Certificate of Tax Lien:

Certificate of Tax liens for delinquent or unpaid TOT shall be recorded with the County Recorder. The lien has the same force and effect as a judgment and may attach to real property. The lien shall be issued in the name of the person or entity responsible for collecting, reporting and owing the TOT to the County. The operator may or may not be the owner of the real property.

Property owners are responsible for knowing that short-term rental activity is occurring at their property and are ultimately responsible for ensuring that transient occupancy tax is reported and remitted.

Business Closure:

Any operator that ceases operating or plans to sell an existing Short-Term Rental must notify the Tax Collector 30 days prior to the date of sale or closure. Tax returns and payments are due immediately to the County upon cessation of business for any reason (sale, bankruptcy, renovation, etc.). A close out form must be submitted to the Tax Collector to close the Transient Occupancy Tax Certificate account and Business License.

Change in ownership:

A new application for Transient Occupancy Tax Certificate and a Business License must be submitted by the new owner within 30 days of commencing business. TOT must be reported and remitted prior to the sale.

Tax Clearance Certificate: Liability of Successor Owner:

The successor (purchaser) is required to withhold from the sale price of the short-term rental, any unpaid Transient Occupancy Tax owed by the seller, such withholding may not exceed the sale price. Upon request by the purchaser or seller, the Tax Collector must either issue a Tax Clearance Certificate or audit the records of the records of the current owner within 90 days and then issue a Tax Clearance within 30 days of the audit.

The purchaser, transferee or other person or entity who obtains ownership may rely upon the Tax Clearance Certificate as conclusive evidence of the tax liability as of the date specified on the Certificate.

Any purchaser, transferee or other person or entity who obtains ownership without obtaining a Tax Clearance Certificate or obtains a Tax Clearance Certificate that shows a tax liability and fails to withhold sufficient funds in the escrow account, shall be held liable for the tax due. (RTC 7283.5 (e)).

Land Use and Zoning:

Questions regarding land use and zoning for short-term rentals should be directed to the Marin County Community Development Agency: www.marincounty.org/str