What is an online marketplace?

- **An online marketplace is a digital platform**, such as Airbnb, Vrbo, or Booking.com, that connects users. In the rental home context, such platforms connect people who have property to share (hosts) with people seeking accommodations (guests).
- The digital platform provides the *infrastructure* that allows secure transactions and **enables these two parties to find each other, communicate, and complete a transaction**.
- Generally, **hosts are responsible for their property and the service they offer and guests are responsible for any damage they cause to the host's property.**
- Some **digital platforms go a step further by providing guarantees** to promote trust on the platform and ensure a safe, reliable experience.

What is a guarantee?

- Online marketplaces often require users to accept terms of service that may include a guarantee.
- **Guarantees and insurance are not the same thing.**
- **Insurance is a contract between two parties**: an insurer (who receives premium) and an insured (who receives coverage) in the event a specific loss or incident occurs.
- **Guarantees involve three parties**: a guarantor (the online marketplace), a debtor (the guest in our context), and a beneficiary (the host in our context).
- Under these guarantees, the online marketplace guarantor promises to fulfill the guest's obligations if the guest fails to do so.
    - Commonly, this is used when a guest refuses or is unable to pay for damage caused to the host's property.
- Statutes in 24 states exclude guarantees from insurance when they are merely incidental or ancillary to another legitimate business or activity.
- Case law in other states arrives at the same conclusion.
- Common examples of guarantees that are entered into every day and not considered insurance:
    - A general contractor guaranteeing a subcontractor's work.
    - A parent guaranteeing a child's rent or student-loan payments.

HF 3972 and SF 4157

- Modeling language adopted by the National Council of Insurance Legislators in April 2025, HF 3972 and SF 4157 establishes a **regulatory framework for rental home marketplaces, such as Airbnb, VRBO, or booking.com**, that may offer programs that guarantee a guest's obligation to pay for damages they cause to a host's property.
- **Clarifies that rental home marketplace guarantees are not insurance** under Minnesota law while providing that they are subject to appropriate regulatory supervision by the Department of Commerce and backed by insurance.
- Requires rental home platforms offering guarantees to:
    - Register with the state insurance commissioner.

    - Pay an annual $750 registration fee.
    - Post guarantee terms on their website.
- **Mandates consumer protections**, including:
    - Disclosures that guarantees are *not* insurance.
    - Clear, plain-language terms and limitations.
    - Requiring that such guarantees are backed by an authorized or surplus lines insurer in the event of non-performance.
    - Prohibition on misleading statements or omissions in advertising.
    - Transparency that users may make direct claims to the insurer if the provider does not pay within 120 days.
- Arkansas has adopted the Online Marketplace Guarantees Act (SB 329), a similar law to the Rental Home Marketplace Guarantee Model Act. Similar bills are currently being considered in Virginia and Ohio.

Appendix A: Insurance Policy and Guaranty Contracts Compared

	Insurance Policy	Guaranty Contract
Parties	Two Parties: Insurer and Insured	Three Parties: Guarantor, Guarantee and Debtor
Nature of Contract	Indemnity Contract: A contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies	Guaranty Contract: A collateral undertaking by one person (Guarantor) to answer for the payment of some debt or performance of some duty or contract that another party (Debtor) owes to a third party (Guarantee)
Obligation	One obligation: Direct obligation of the insurer to the insured	Two obligations: Principal debtor obligation to a third party and the Guarantor's conditional, secondary obligation to the above third party
Duty to Pay	The insurer has a primary duty to pay the insured for a loss. The insured is not required to seek payment or reimbursement from another party as a condition of the insurer's obligation	Guarantor has no duty to directly pay the guarantee for a loss. The guarantor's duty arises only upon a default by the Debtor
Performance Trigger	A specified loss by the insured (e.g., damage to or loss of property)	Debtor's default in payment obligation or performance (e.g., Debtor's failure to perform under a contract (as primary obligor))
Payment Amount	Loss amount incurred by insured, subject to deductible and limits	Debtor's default amount

- Legislation is similar to existing laws in Minnesota (and other states): Service contracts (Apple Care) (MN ST S 59B) and Vehicle Protection Products (MN ST S 59C).
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