

OUTSIDE COUNSEL

Expert Analysis

Legal Issues Surrounding the Rise Of Short-Term Rentals

In recent years, vacation rentals and other short-term rentals have become incredibly popular. Homeowners can gain some extra income and travelers can enjoy relatively inexpensive accommodations. The most prominent short-term rental business is, of course, Airbnb. Other short-term rental businesses include RBO, Homeaway, and House-trip. They all operate similarly by connecting hosts and guests online and giving them a platform to make a short-term rental agreement.

While this new home-sharing marketplace certainly has its benefits, there are also a number of issues that can arise when a homeowner or tenant decides to start renting out a property on a short-term basis. Homeowners should be aware of the laws and regulations governing short-

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term rentals. Landlords should also carefully monitor tenants to make sure they are abiding by those rules.

Short-Term Rentals and the Law

States and cities across the country are beginning to develop an increasing number of regulations specifically aimed to rein in the use of short-term rentals. There are a number of policy goals behind these rules, from safety to mitigating rent inflation.

The major New York state laws that impact short-term rentals include the Multiple Dwelling Law, the Housing Maintenance Code, the Administrative Code, and the New York City Building Code. All of these laws prohibit

short-term rentals—those that are for a term of less than 30 days—in “Class A” dwellings. Class A dwellings are those that are zoned for “permanent residence purposes.”

It should also be remembered that homeowners associations (HOA), condo boards, co-op agreements, and other neighborhood organizations can and often do restrict how properties

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can be used, including prohibition of short-term renting.

Risks for Landlords

It presents a security concern when tenants illegally carry out short-term rentals. Unlike typical lease agreements, which are

more robust, agreements reached on sites like Airbnb occur after a minimal level of due diligence. “Guests” living at a property are not usually vetted carefully, and this can present a big risk to the property and to neighbors.

Moreover, liability for the use of short-term rentals usually falls to the owner of the property. This can even be the case when the landlord had no idea that short-term rentals were occurring. A landlord may think that the tenant paying him rent is living full-time on the property. In fact, the tenant may be illegally renting the property out on sites like Airbnb for a huge profit. When state or city regulators find out, they can levy large fines against the owner despite his lack of knowledge. It isn’t fair, but that is the current state of the law.

Short-term renting could also lower property values. Most people want to live in stable neighborhoods, not places populated by tourists and transients who have no ties to the community. Moreover, because services such as Airbnb are primarily used by vacationers, they are often crowded with people. This extra population boost can put a strain on public services and create more work for homeowners associations. For all of these reasons, the very use of Airbnb

or similar home-sharing services could drive property values down in a neighborhood.

Rights of Neighbors

Neighbors may also have legitimate grievances and claims against a property owner when a property is being used as a short-term rental. When HOA or other neighborhood organization rules are violated, neighbors can bring a complaint.

Neighbors may also have legal claims if property inhabitants are a nuisance. Under New York law, when property inhabitants engage in a continuous course of conduct which threatens the safety, health, welfare, or comfort of the neighborhood, neighbors can make a nuisance claim. Landlords can also move to evict tenants on the basis of nuisance claim.

A key element of a nuisance claim is that the conduct must be continuous. Therefore, a single bad experience will not permit a nuisance claim. There must be a sustained course of conduct that is causing the harm.

Here are some suggestions for what landlords can do to prevent short-term rentals:

- Always have very clear prohibitions in the lease agreement on the tenant’s ability to do short-term rentals. The lease should require tenants to abide by all New York

state and local laws and to restrict occupancy only to the express terms of the lease.

- The lease agreement should include a conspicuous clause indemnifying for any fines, fees, or other costs incurred by a tenant’s illegal use of the property as a short-term rental.

- Make an effort to monitor properties to make sure they are not being illegally used as a short-term rental. This could even include registering on sites like Airbnb.com to see if any of your properties are listed.

- If you find that a tenant has been illegally using a property as a short-term rental, bring eviction proceedings forward.