

OUTSIDE COUNSEL

Expert Analysis

## The Municipal Official's Guide To Short-Term Rental Regulations

Local governments often have to regulate rental properties, driven by constituents concerned about the impact that both long and short-term tenants will have on the quality of life in their communities. With the rise of homestay companies like AirBnB, there has been an explosion in the number of short-term rentals (i.e., rentals for less than 30 days), putting many municipalities under pressure from both sides to reexamine their regulatory schemes. This pressure comes from both those who would like to avail themselves to homestay companies as a source of revenue, and those who have concerns about the impact of allowing such uses.

This column will examine the arguments for and against short-term rentals, using AirBnB as an example, and discuss different regulatory tools available to municipal officials to regulate such activity.

### Homestay Companies

Homestay companies like AirBnB provide a peer-to-peer platform for property owners (or “hosts”) to list and rent accommodations to other

MARK A. CUTHBERTSON is the sole proprietor of the Law Offices of Mark A. Cuthbertson in Huntington, N.Y. He has also served on the Town Board for the Town of Huntington since 1996. MATTHEW DELUCA, an associate at the firm, assisted in the preparation of this article.

By  
Mark A.  
Cuthbertson



individuals. Such rentals can range from an entire single-family home to a spare couch, on anywhere from a nightly to monthly basis. Hosts set their

Critics also allege that homestay companies adversely impact local housing stock and rental prices, as some investors will buy multiple homes or apartments for full-time use as short-term rentals.

own prices, and the company takes a percentage fee from both host and renter (or “guest”) for each transaction.

The AirBnB model has proved incredibly popular. In 2016, AirBnB was valued at \$31 billion. The company reported over three million listings in 191 countries, and nearly two million guests stayed with 8,600 hosts in New York state alone.

### Benefits and Criticisms

To advocates of AirBnB, short-term rentals benefit all involved. The median

earnings for a host in New York are \$5,468, and \$9,800 for hosts on Long Island. This supplemental income can offset rent, property taxes, or just put extra money in an owner's pockets. For hosts, AirBnB is an alternative to traditional hotels that can better fit a guest's needs for cost or location. Thus, advocates claim short-term rentals are good for both users and the economy.

Critics see matters differently. Common complaints include excessive noise, large public gatherings, reduced parking availability, and other impacts affecting quality of life. Critics also allege that homestay companies adversely impact local housing stock and rental prices, as some investors will buy multiple homes or apartments for full-time use as short-term rentals. As a result, many municipalities are reexamining how they regulate short-term rentals.

### Regulatory Responses

Municipalities have adopted a wide range of regulations for short-term rentals. At one extreme, municipalities like the Town of Hempstead have imposed a total ban on short-term rentals. At the other end of the spectrum, some municipalities have opted against imposing short-term rental regulations at all. Yet many municipalities take a middle road, allowing some short-term rentals subject to certain limitations.

The hope is that with thoughtful regulation, users can continue to reap the benefits of homestay companies, while mitigating any negative impacts.

Very often, a regulation will be adopted requiring that any rented dwellings be owner-occupied (i.e., the owner's primary residence). This serves two purposes. First, an owner-occupancy requirement limits the ability of individuals to purchase multiple properties for use as short-term rentals, and may mitigate the impact short-term rental regulations have on local housing stock and rental prices. In addition, owner-occupancy creates a level of accountability as the owner can observe the guests and respond to complaints from authorities or neighbors if prohibited or disruptive conduct occurs. A less restrictive version of this requirement allows the owner to be absent from the property, provided that a local contact is available at all times to address complaints.

Another requirement commonly used to regulate short-term rentals are durational limits. Such limits can include caps on the length of any individual rental, limits on the number of consecutive days a dwelling may be rented out, or aggregate limits on how many days per month or year that the dwelling may be used as a short-term rental. Durational limits primarily serve to protect the residential character of a neighborhood, ensuring that residences do not become full-time commercial uses.

Finally, municipalities can regulate short-term rentals through permit conditions, which are undoubtedly the broadest and most versatile regulatory tool that municipalities have at their disposal. Specifically, a municipality may require that property owners acquire rental permits, and then condition the

issuance and renewal of such permits on the property owner's compliance with various regulations. By doing so, municipalities can address many of the quality of life concerns expressed by local property owners. Permit requirements can also provide ancillary benefits to a municipality, such as information about the properties being used as short-term rentals.

The specific permit conditions imposed by a municipality can vary between jurisdictions. However, as many municipalities are confronted with similar issues regarding short-term rentals, there is significant overlap in the broad strokes of their regulatory responses. For example, municipalities nearly always include some form of noise restrictions on short-term rentals. These noise limits can be applied generally or limited to specific hours of the day (e.g., 10:00 p.m. to 8:00 a.m.), and even vary between weekdays and weekends. Moreover, the noise limit can be framed objectively, using volume as measured in decibels, or using a discretionary standard based upon reasonableness in light of the particular time and location.

Another common permit condition is a limitation on assembly. Regulations may prohibit certain types of gatherings, such as wedding parties, or generally limit the number of non-residents on the property. One approach caps the number of guests that a tenant can invite to the property. Alternatively, the property owner can be prohibited from having a certain number of non-residents on the property at any given time. This can also be coupled with limits on the number of rentals per property at any given time, and off-street parking requirements to blunt the impact of multiple guests with respect to on-street parking.

Municipalities can also benefit financially from imposing permit requirements. The clearest example is additional revenue raised by permit application and renewal fees. Such fees can range from modest amounts to substantial annual fees of \$300 or more, based upon the administrative expense of the program and whether the municipality wishes to deter the number of renters.

Finally, the permit application process itself can provide a significant amount of information. A municipality can use this information to track the number and distribution of short-term rentals in its jurisdiction, and, if necessary, limit the issuance of new permits to stop or slow the growth in short-term rentals.

#### The Bottom Line

For some municipalities, the favored approach to homestay companies will always be a flat-out prohibition on short-term rentals. There is an attractive simplicity in banning short-term rentals, or even avoiding the issue entirely by declining to impose regulations. However, such options inherently require rejecting one side's viewpoint in favor of another. Given the strong emotions that homestay companies evoke on both sides, an absolutist approach will often not end debate on the issue.

Permitting short-term rentals, while subjecting them to reasonable regulations, may be the only viable, long-term approach that municipalities have. Accordingly, municipalities should carefully consider how to best craft regulations that fit with the needs of both their constituents and communities.