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What Does AirBNB Mean for Associations?

The internet changed the marketplace for goods and services. People no longer rely on retail stores to purchase items, travel agencies to book vacations, or taxi cab companies to provide transportation. Since its debut in 2008, AirBNB likewise cuts out the hotel middle man in providing people with lodging in others' homes. Like an Uber for a place to sleep, AirBNB is a marketplace that allows prospective hosts to find prospective guests to rent a living space for a night, a week, or even longer. As with many of the innovative social concepts from the internet, AirBNB poses a host of new legal issues, including those for condominium associations.

The question for the association is: can owners rent their units to strangers on the internet? The answer depends on the association's condominium declaration and its rules and regulations. Many condominium associations' leasing regulations specifically disallow unit owners from leasing their space for "transient or hotel purposes." A prototypical provision is as follows:

"If a dwelling Unit Owner elects to lease his Dwelling Unit, he/she shall not lease less than the entire Dwelling Unit nor may the Dwelling Unit be leased for transient or hotel purposes. All leases must be for a period of at least one (1) year and for no more than a period of two (2) consecutive years."

Such a limit on leasing would ban owners from renting their units to AirBNB users. An association lacking such a time limitation in its leasing restrictions will want to consider amending them to ensure they have legal authority to ban unit owners from listing and leasing their units on AirBNB. The concept of allowing strangers from the internet onto condominium or common interest community property runs afoul of the ban against the use of units for "transient" purposes.

Enforcement: Even if renting units on AirBNB is a *per se* violation of the associations restrictions, can the association enforce the ban? The answer is tricky. AirBNB does not list the specific addresses of listings on its website, and only provides the address after booking. Although the website does display the general location of its listings on a map, the way the information is presented makes it useless for associations. Practically speaking, in order to definitively catch the owner in the violation, associations would have to monitor the website and attempt to reserve rooms in places that the association believes may fall on its property. Community enforcement has hurdles as well. Even if community members notice strangers entering and leaving a unit, how does the association prove that those individuals are not friends or relatives? It will be difficult for associations to practically ban AirBNB users from renting their units absent a smoking gun or an admission. At minimum, associations will want to consider adding hefty fines for violations of the restriction against use of the unit for transient purposes.

Licensing, Tax, and Regulation Requirements: AirBNB renters create looming issues with municipalities regarding licensing and taxing requirements. Some cities require specific licensing for "short-term vacation" rentals and others are contemplating how to tax such rentals. For example, the city of Chicago requires a licensing fee of \$500, as well as a safety and insurance inspection, and a written affidavit from a condo association representative attesting that vacation rentals are allowed. Other municipalities are contemplating legislation aiming to tax short-term vacation rentals, the enforcement of which may cause issues with associations. Associations could find themselves caught in between disputes between municipalities and unit owners arising out of these issues with short-term vacation rentals. If the association

finds itself the target of a fine or other municipal inquiry, it will want its rules to permit it to pass the cost of any sanction along to the offending owner.

Liability: Another concern is liability and insurance. Who is responsible for property damage or personal injury? AirBNB offers liability insurance, however it only covers the unit listed and not surrounding units or common areas. Further, insurance companies may opt to deny claims on the basis of exclusions in their policies, or change their existing policies to exclude incidents involving short-term vacation rentals.

Such liability and insurance issues may drag associations into litigation and associations may find themselves not covered by insurance.

Technology creates an ever-changing legal landscape and associations need to be aware of the legal implications of new concepts and ideas becoming the norm in society. The AirBNB phenomenon presents a host of considerations of which associations need to be aware.