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THE INS AND OUTS OF SHORT-TERM RENTALS IN MANAGED COMMUNITIES

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Short-term rentals are trendy. Many people consider short-term rentals a way to make extra income from a spare room or investment property, or to simply keep their property occupied while on vacation and get paid for doing so! Websites such as Airbnb, Vacation Rentals by Owner (VRBO), HomeAway and Craigslist now make it easy for people offering lodging and people needing a place to stay to find each other, anywhere in the world.

An increase in disposable income and lower gas prices worldwide has spurred a rise in travel throughout North America. According to the Short Term Rental Advocacy Center, short-term rental guests are attracted by extra living space and better amenities, as well as the opportunity to “live like a local.” In pricey areas, homeowners say that they use short-term rental income to help offset their bills. No wonder so many people find the prospect of renting their home or condo on a short-term basis so tempting! (See *Table 1*.)

TOTAL AIRBNB LISTINGS IN THE U.S.:	660,000
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TOTAL AIRBNB LISTINGS IN SELECT CITIES:	
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New York City	34,580
Los Angeles	16,874
San Francisco	7,113
Miami	6,814
Chicago	4,626
Atlanta	4,565
Washington, D.C.	4,443
Boston	4,147
Orlando	3,871
Ft. Lauderdale	2,752

Table 1.
Active Airbnb listings as of
September 2017¹



If you're an association board member, you may already be facing challenges with short-term rentals in your community—especially if your governing documents don't adequately spell out the rules pertaining to them. If you're a homeowner, listing your home on sites like Airbnb may seem like a great way to make some extra cash. However, before renting out your home to vacationers or others needing lodging, there are a number of factors to consider. Most importantly, if your home is part of a homeowner association (HOA), condo or master-planned community, in addition to ensuring you are following all local laws, you need to ensure you are also complying with association rules, as both will generally have restrictions on what's allowed.

Despite these restrictions, the number of short-term rentals continues to grow, as *Table 2* indicates.

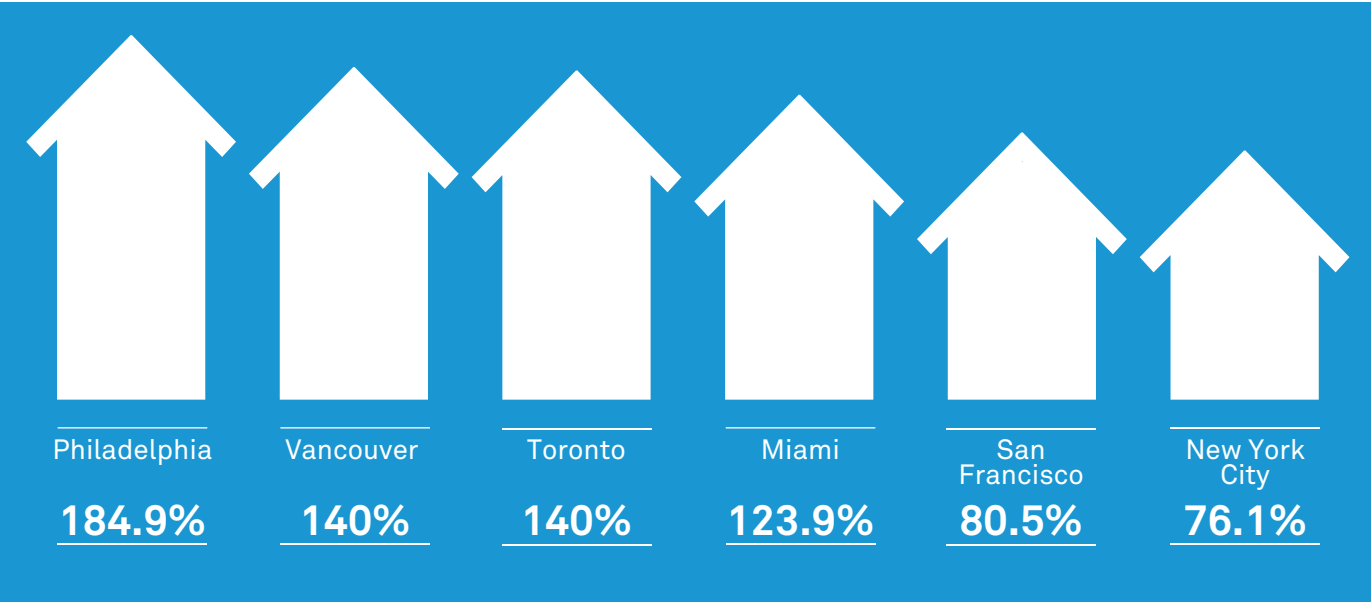
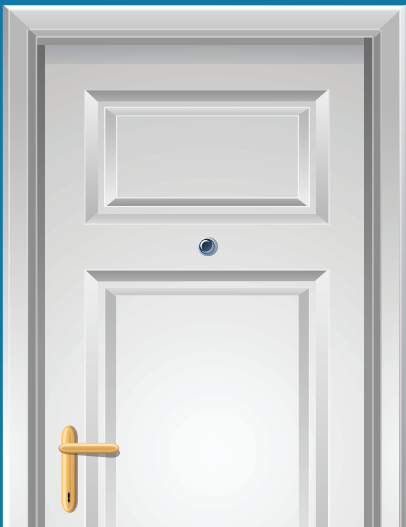


Table 2.
Percentage Growth of Active Airbnb Units from 2014 to 2015 in Leading Cities^{2,3}



This paper discusses how this growing trend is affecting HOAs, condos and master-planned communities. It also examines some of the factors that homeowners and board members should consider with regard to short-term rentals, including legal and regulatory concerns.

THE LOCAL LANDSCAPE

- What are your state, county, city and municipal laws concerning short-term rentals? (Do you even know if there are any?)
- How does your municipality define a “short-term rental,” and why should you care?



In this section, we'll look at what you need to know about local regulations and how they affect residents' ability to offer lodging in their home.

THE LONG ARM OF THE LAW: PLAYING CATCH-UP

Once upon a time not so long ago, websites like Airbnb and VRBO arose as part of a disruptive movement called the “sharing economy.” Thanks to technology, this sharing economy enabled owners to provide short-term lodging directly to potential customers. As with so many groundbreaking ideas, the law lagged behind, making it something of a free-for-all for both homeowners and renters.

However, as the popularity of these websites grew, so did the number of cities and municipalities implementing regulations governing short-term rentals. Today, most cities have regulations on the books, and these local laws can vary *significantly*.

Some cities have an outright ban on short-term rentals. Others do not allow homes to be rented out for “transient commercial occupancy” if they are located in residential-only zones. Some require that you obtain a permit or business license, prohibit putting up signs or only allow such rentals in certain areas or zones. Some cities require you to obtain both a business license and a renewable short-term rental permit, and others limit the number of permits they award for “non-hosted” accommodations (rentals of an entire home as opposed to just a bedroom).

In Florida, the regulations are a patchwork quilt that varies by city and county, but a state law passed in 2011 prohibits local governments from placing new restrictions on vacation rentals. Most of the

regulatory discussion in Florida is about making sure that all applicable taxes are collected and clarifying who should be paying them.⁴

Georgia is following suit legally, with Matt Dollar of Marietta proposing legislation in 2017 that would keep local governments from banning or regulating short-term rentals. Dollar's concern is that regulations would drive business from Georgia. The Georgia Hotel and Lodging Association is lobbying against the proposal and it remains to be settled one way or the other.⁵

The wide range of, and varying reasons for, local laws regarding short-term rentals makes for quite a complex landscape. Some laws have been implemented to protect residential communities from the noise, traffic, crime and other effects of having commercial endeavors close by. Other local laws are designed to create a fair playing field for businesses. Many laws can also be attributed to the lobbying efforts of existing businesses—such as hotels—that are concerned about the additional competition. It is critical that you check with your local planning and zoning board to find out what the laws are and proceed from there.

TO BE OR NOT TO BE A HOTEL

When it comes to short-term rentals—rentals offered for less than 30 days at a time—definitions matter. Why? How your rental is legally defined can impact your taxes.

In the U.S., for example, if your rental is defined as a hotel, you are required to collect what's known as a "transient occupancy tax" (sometimes called a "hotel tax" or a "bed tax"). Whether your home qualifies as a hotel depends entirely on where you live. Almost every city collects a hotel tax from lodgings they define as hotels. However, what constitutes a hotel can vary from place to place, as can the amount you are required to collect.

What exactly is this tax? You've probably noticed a rather hefty fee added to your bill when you've stayed at a hotel or a bed and breakfast in the U.S. This is the transient occupancy tax, and it was created to help local governments offset the increased cost of providing public services when tourists come to town. In many cases, the reason cities have cracked down on short-term rental violations is to ensure they will receive the tax money. Airbnb is currently the only short-term rental website that will collect the transient occupancy tax for you. Their website details the locations in which that service is provided, and the amounts required.

In Canada, short-term rentals are subject to the same goods and services tax (GST) or harmonized sales tax (HST) as hotels. If you rent your home or room for more than a month at a time, the GST/HST tax does not apply. You are also not required to pay it if you charge \$20 or less per day. Your province or city may also require additional taxes for short-term rentals.

Needless to say, you should consult with your accountant to determine how your short-term rental is classified and whether you are subject to any special taxes.



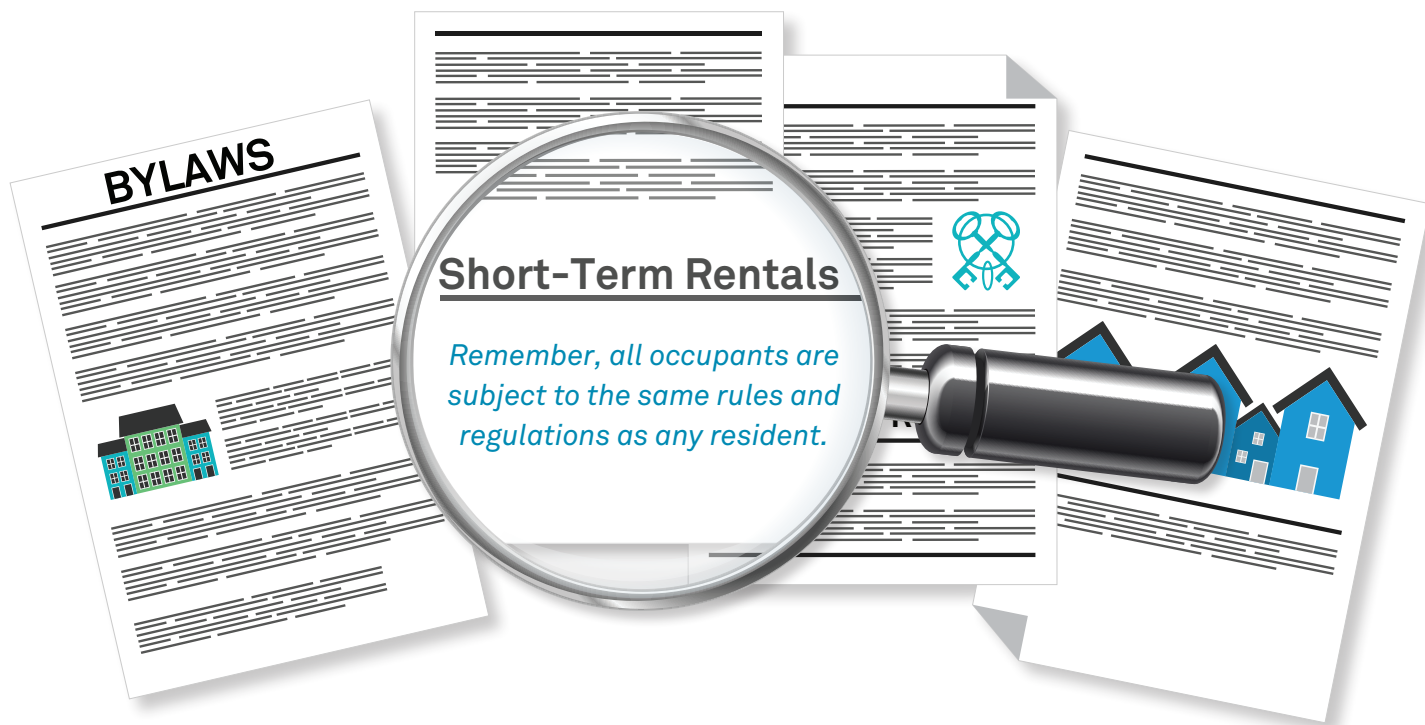
SHORT-TERM RENTALS AND YOUR COMMUNITY

- Where does your homeowners or condo association stand on short-term rentals in your community?
- What is the potential impact on your community?
- How can an association regulate rentals?



Even if a homeowner is in compliance with city or state regulations, the final word on the issue of short-term rentals ultimately lies with the association. This section will help you understand what to look for in your association's governing documents if you are a homeowner who is thinking about renting accommodations in your home. It also points out the pros and cons of allowing short-term rentals in your community and provides tips for board members about regulating these rentals.





FIRST STOP: COMMUNITY RULES & REGULATIONS

When you purchase a home in a community governed by a homeowners or condo association, you agree to comply with all existing association policies, governing documents and other provisions that spell out the dos and don'ts of home rentals. Many communities have specific regulations against renting out your home, or even a single room, to visitors seeking accommodations for less than 30 days. Noncompliance often results in fines. If you, as a homeowner, want to be able to rent your home on a short-term basis, check the community's rules before deciding where to buy. Check your association's governing documents before listing your home on one of the home-sharing websites to avoid being fined or incurring some other penalty.

As with local laws that lagged behind the Airbnb trend, communities that were created before the existence of these services may not have explicit rules governing short-term rentals. If yours is one of them—and if you comply with local laws—you may be able to rent out your home without repercussions....for now. Remember that, if you choose to do so, **you** are responsible for the actions of any occupants, whether you are home or not. You should also anticipate that your community will eventually add rules governing short-term rentals. Additionally, your community may have policy in place that prevents you from using your unit "for business intent," and some communities are interpreting those rules as a ban on short-term rentals, so proceed with caution.

If you are a board member, you should encourage a group review of your governing documents to determine what they say about renting. If you discover that short-term rentals aren't addressed, or if the language regarding rental length terms is unclear, you should raise the issue at your next board meeting to ensure existing rules are being enforced or to discuss possible changes.

Before proposing any changes, it is wise to survey the attitudes and opinions of the membership to see if there is any consensus. Changing governing documents requires positive votes from a large majority of the owners, and it is often difficult to reach the required quorum. This is an area in which a well-equipped, professional property management company can provide guidance and communication resources.

It is also recommended that you consult with your association attorney or outside counsel for further guidance.

How can you enforce those policies? Eric Love, community association manager of a high-rise in the Buckhead area of Atlanta, said that in his building, he works with board members to search for listings in their zip code and then they notify the owners that they are violating the policy against using their units for business intent. Love said that fines can be as much as \$500 per night, so owners realize it isn't worth it to violate the policy. He also said that the policy is reiterated frequently through the association's newsletter and other communications to keep homeowners aware that the policy exists.

THE POTENTIAL IMPACT ON YOUR COMMUNITY

Associations often view short-term rentals with skepticism because of the effect they could have on the community and its residents. The primary concerns are safety and security; homeowners are unlikely to screen their paying guests, creating a potential safety risk for other residents.

Short-term renters themselves can face risks as well. Unlike hotels, which are required to provide fire extinguishers, sprinklers and clearly marked exits to comply with fire and safety codes, homeowners are not usually bound by such codes. In addition, guests won't have the familiarity that community residents have when it comes to emergency protocols. The community may be liable if anything were to happen to a guest in the event of an emergency.

Two common complaints about short-term renters are noise and damage to common areas. These guests are less likely to follow established rules—whether that is because they are unfamiliar with them or because they don't have a stake in establishing good relationships with the neighbors or maintaining the condition of the property. Another issue that opponents of short-term rentals cite is their adverse effect on home values in a given community.

Having a large number of renters in a community at any one time can also stress staff and property managers who may find that their resources are stretched too thin. This can be even more pronounced on weekends, when guests are most likely to rent and properties typically employ less staff. Increasing staff coverage could mean more money out of residents' pockets.

Those who favor short-term rentals see it differently. They argue that when managed properly, short-term rentals can differentiate a community in competitive markets, increase property values and boost local economies. For example, if your community is in a high-density resort area, your association may decide that allowing short-term rentals is a positive step because it can increase buyer demand.

Another potential benefit is the income a short-term rental produces for the host. Homeowners with financial difficulties may not be able to keep up with fees and property maintenance. They are also more likely to face foreclosure and abandon their homes altogether if they are unable to pay their mortgage. Allowing homeowners to rent out a room or their entire home to vacationers may enable them to pay their housing-related bills.




MANAGING SHORT-TERM RENTALS

Regardless of where you stand on short-term rentals and whether your association decides to allow them or not, you want to make sure that your community policies are clear and that homeowners are complying with them. Here are some tips to help you enforce the rules:

- **Educate residents.** Use a variety of communication channels to remind residents about your community's governing documents and the consequences of illegal short-term rentals. Some ways to reach out to your residents include holding special meetings, leveraging communication resources provided by your property management company to send email blasts or letters, posting content on private community and social media sites, publishing articles in community newsletters and making phone calls.
- **Conduct training sessions.** Train board members, residents and staff about community awareness and how to handle suspicious or unauthorized guests. You may want to consult with your property management company about finding the proper resources to train your association members and staff.
- **Empower staff to enforce the rules.** All association staff should have the authority to forbid unauthorized guests from entering the community. Depending on how your policies are written, guests might only be allowed to enter if the owner is present or if they have written authorization.
- **Look for violators online.** Periodically check sites like Airbnb, VRBO, and HomeAway to see if any homeowners in your community are listing their homes in violation of your association's policies. Your property manager can then notify the owners of their violations, resulting fines and request removal of the listing.
- **Document violations.** Keep detailed records of violations and the actions taken related to violations. You may need this documentation if legal action becomes necessary.
- **Impose fines and penalties.** If you discover any violations, take the appropriate action per your governing documents or published policies, whether that is a warning, fine or other action. Speak with your property management company and community attorney to determine if you'll need to take legal action.

CONCLUSION

The use of Airbnb and similar home-sharing sites continues to grow, and communities cannot escape their impact. Being proactive is the best way to reduce potential problems. Remember, this issue is not just a board member concern. How your association chooses to address short-term rentals today can shape the future of your community.



The best way to stay up-to-date on short-term rental legislation and trends is by talking to the experts at FirstService Residential. For more information, [contact FirstService Residential](#) today!



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About FirstService Residential

FirstService Residential is North America's largest manager of residential communities and the preferred partner of HOAs, community associations and strata corporations in the U.S. and Canada. FirstService Residential's managed communities include low-, mid- and high-rise condominiums and cooperatives, single-family homes, master-planned, lifestyle and active adult communities, and rental and commercial properties. With an unmatched combination of deep industry experience, local market expertise and personalized attention, FirstService Residential delivers proven solutions and exceptional service that add value, enhance lifestyles and make a difference, every day, for every resident and community it manages. FirstService Residential is a subsidiary of FirstService Corporation, a North American leader in the property services sector. For more information, visit www.fsresidential.com.

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