

Airbnb Rentals Pose Novel Issues for Condominium Associations and Unit Owners

By Donna T. Salvidio, Esq.

Airbnb and other similar web-based services provide an increasingly popular alternative to hotel accommodations by connecting travelers to local owners or occupants who want to earn extra revenue by renting out their homes, or perhaps just a room in their home, on a short-term basis. Travelers like it because they can rent anywhere from fully furnished luxury homes to spartan rooms at rates which are typically far below those of traditional hotels, and owners like it because they are able to generate more income than they would if their property were leased on an annual basis. Much like Uber has turned private vehicle owners into cabbies, Airbnb is making innkeepers of many homeowners. While this type of short-term rental service raises a host of legal issues in Massachusetts and beyond, it poses particularly thorny issues for condominium associations.

While my condominium unit may offer a choice location close to the hospitals for a visiting physician or the family members of a sick patient, you can bet that my neighbors won't be happy finding a constant parade of strangers roaming the building, using the gym or perhaps parking in the visitors' parking spots. This type of transient use not only results in increased traffic, but diminishes a condominium's sense of community and reduces security for all occupants of the building. Oftentimes, the renters are not aware of the condominium rules or simply flout them as they are only there for a short time. Meanwhile, the other residents see their residential condominium take on the appearance of a bed and breakfast.

The problems go beyond annoying your neighbors. A quick Google search will bring up tales of rentals gone bad with wild parties being thrown, guests being dropped off by the busload, squatters who won't leave, extreme damage being done to the common facilities of condominiums and even murder. What can condominiums do to prevent or control this kind of short-term leasing?

First, condominium associations need to review their legal documents. Most typical condominium documents contain language limiting the use of units for residential purposes. Many bylaws will contain restrictions on leasing units, either prohibiting leasing entirely or requiring leases to be of a six to 12 month minimum term. Often, there is specific language prohibiting transient or hotel-like use. If the legal documents contain language controlling this kind of use, the condominium may deal with Airbnb rentals through its normal compliance

channels. That means penalties may be imposed and/or court action taken in order to compel compliance, and the cost of getting caught can be expensive. As reported by the Boston Globe, one Back Bay condominium recently fined a unit owner \$9,700 for renting his unit through Airbnb in violation of the condominium's leasing restrictions. But what if the condominium documents do not contain language prohibiting this kind of leasing?

A second alternative is to amend the bylaws to clarify when owners can sublet units or to expressly forbid the kind of short-term rentals offered on Airbnb altogether. The difficulty with this approach is that such amendments typically require a high level of approval by the unit owners. In Massachusetts, restrictions limiting the use of units must be in the master deed or bylaws and cannot simply be imposed by the trustees as a rule or regulation. Accordingly, a formal amendment would need to be approved by the requisite percentage of unit owners as called for within the condominium's legal documents.

A third alternative is to determine whether the use of the unit complies with local municipal ordinances. If commercial uses are prohibited in a residential zone, then a hotel-type use might be prohibited by local zoning and enforcement could be sought through the municipality.

Other reasons to prohibit short-term leasing in the condominium context include concerns about insurance and mortgage ramifications. Treating a unit as a bed and breakfast raises new risks for the homeowner, the condominium association and the insurance companies underwriting those risks. If there is an accident involving an Airbnb guest, an insurance company could deny the claim under the theory that the insured property was converted to a rental property. Furthermore, most mortgages contain a provision stating that the mortgaged property will remain the borrower's principal residence and not an investment property. Unit owners may be violating their mortgages by converting their units into rental properties. Finally, a short term rental can trigger sanctions for FHA approved condominiums. The eligibility of FHA projects is determined based on strict compliance with FHA rules, and any short term rental can jeopardize project eligibility.

Home rental services such as Airbnb are booming in popularity, but as they grow they clash with traditional rules. The hotel industry has objected arguing that these rentals circumvent

health and tax laws, and municipalities are struggling with how to regulate them. In condominiums, the friction caused by frequent move-ins and move-outs and unfamiliar faces heighten safety concerns and erode the feeling of community. These are complex issues facing condominium trustees, and they are unlikely to disappear.

If you are a unit owner considering offering your unit as a short-term rental on Airbnb, be sure to review your condominium documents to ensure there are no applicable restrictions, contact your insurance company to make sure you are fully covered, require a security deposit and mandate that your guests to abide by all condominium rules and regulations. If you are a trustee, review your condominium documents to determine whether adequate controls are in place or need to be proposed. Airbnb is changing how property is being rented, and until the law catches up with the technology condominium trustees and unit owners need to be prepared.

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