

The Legal Consequences of Airbnb



By Andrew L. Smith

Airbnb is a concept very similar to Uber and ride-sharing. “Home-sharing” occurs when a person rents a room or their home to a person, often by using an app or a website. Guests select property and pay for the stay like a hotel. The important difference is the property is not a licensed hotel or bed and breakfast, and is often a privately-owned apartment, condo, or house. Anyone can register as a host or guest.

Airbnb began in 2008 when two designers who had space to share hosted three travelers looking for a place to stay. CEO and co-founder Brian Chesky now has a net worth of \$3.3 billion. He is the seventh richest entrepreneur under 40, and Airbnb is currently valued at roughly \$25 billion. To say business is booming would be an extreme understatement. According to the Airbnb website, “[w]hether an apartment for a night, a castle for a week, or a villa for a month, Airbnb connects people to unique travel experiences, at any price point, in more than 34,000 cities and 190 countries. Airbnb is the easiest way for people to monetize their extra space and showcase it to an audience of millions.”

Policy Exclusion for Commercial Activity

Regarding the host’s homeowner’s insurance policy, an important issue involves the typical coverage exclusion for engaging in a commercial/business activity at the insured’s residential home. Indeed, “[i]f you’re conducting a business, on a full or part-time basis, by renting out your home or apartment (or a room in your

home or apartment) as a way to earn money, your homeowner's or renter's insurance policy probably would not provide liability coverage," according to Rebecca Hirsch, a USAA spokeswoman. However, instances of limited renting may still be permitted:

- Allstate allows people to rent out their home for a week or two while still maintaining liability coverage for people who stay there.
- Ms. Hirsch of USAA said that for people who "very occasionally rent a room out (as opposed to doing this as a business), liability coverage may be available."
- Chubb offers coverage as long as you are not taking in more than \$15,000 a year in rental income, which it believes is more generous than most other insurance companies.

Regardless, never assume a homeowner's policy will or will not provide coverage for damages or claims related to an Airbnb rental. Each policy is unique. You should always review key definitions of terms such as "insured," "insured location," "residential premises," and "business." Also remember to carefully review all exclusionary language, including the relevant exclusion for business usage at the insured home.

State and City Regulations

Another important consideration, and issue in the news recently, is the aspect of state and city regulations of Airbnb. This may also implicate the illegal acts and criminal acts exclusions contained in a typical homeowner's or renter's insurance policy. Many cities, counties, and other municipalities have legal restrictions on short-term home rentals. These vary greatly from place to place. The restrictions in some cities are quite severe and make most short-term rentals illegal. Here are just a few examples:

- A San Diego woman renting rooms through Airbnb was fined \$25,000 for failing to obtain the required permit to operate a bed-and-breakfast out of her home.

- A New Yorker who earned \$300 by renting his East Village apartment to a visitor from Russia for three nights, was fined \$2,400.

For instance, a new San Francisco ordinance makes it legal for permanent residents of the city to rent out their primary residential units on a limited basis, as long as they meet certain requirements:

- Have \$500,000 liability insurance coverage;
- Have occupied the residence for 275 days out of the prior year;
- Have a business license; and
- Get a permit from the city and not have any building code violations.

The legal restrictions on short-term home rentals described are haphazardly enforced at best. Typically, due to a lack of manpower, cities, towns, and municipalities do not spend much time or effort on this issue. Indeed, most often they are unaware that short-term renting is going on. Usually, enforcement efforts are undertaken only when neighbors complain. However, be cautious. The penalties for violations can be severe!

Leases and contracts also include restrictions on owners of condos, town homes, and developments. Remember to keep these possible exclusions to insurance coverage in mind.

Real-Life Stories and Claims

I am personally a huge fan of Airbnb and frequently try to use the option when traveling. However, there have been a number of downright bizarre stories across the country.

- Yvonne Schumacher, a German woman who stayed with a man at an Irvine apartment owned by Fariah Hassim and Jamil Jiva in December 2013, rented via Airbnb's service, said she had been walking around the apartment naked and having intimate conversations before it was discovered, several days into her stay, that she was being watched the whole time by an active camera and sound

recording system. *See Yvonne Edith Maria Schumacher v. Airbnb Inc. et al.*, Case No. 4:15-cv-05734, U.S. District Court for the Northern District of California.

- An Airbnb renter in Texas was killed when he was laying on a hammock and a tree fell over.
- A host in Madrid locked his guests inside the rented apartment.
- Many instances include stories of the Airbnb renters destroying the home or apartment and all property inside, leaving the host helpless.

Conclusion

Whether you are the host or the renter, remember to carefully evaluate all legal aspects of the Airbnb rental process. Does the host have adequate insurance coverage over and above the typical homeowner's policy? Remember, homeowner's policies are not designed to cover commercial or business risk. Is the rental location properly permitted? Are there other relevant regulations, statutes, or contractual restrictions on point? Airbnb is here to stay — get to know the legal consequences.

Smith is a partner in the Cincinnati, Ohio office of Smith, Rolfe & Skavdahl Company LPA who concentrates his practice in the areas of construction law, insurance defense, and bad faith litigation defense. He is the creator of the AGC of Ohio construction law blog, Between the Law and a Hard Hat, and the co-host of BearcatsSportsRadio.com.

Join author Andrew L. Smith on March 22 from 12-1 p.m. for a Brown Bag CLE on Understanding the Sharing Economy — Uber and Airbnb. Register at www.cincybar.org.