SHORT-TERM RENTALS: UPDATE ON REGULATION, LITIGATION, AND ENFORCEMENT

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OVERVIEW

REGULATION	FEDERAL CONSTITUTIONAL ISSUES	LITIGATION	ENFORCEMENT
Defining a short-term rental	Atypical	Standing	Hearings
Limiting vs. prohibiting	Common	Ripeness	Consequences
Licensing		Mootness	Neighbors Litigating
Noise, Non-Zoning Regulation, and Noise			
Platforms			

REGULATING

DEFINING A SHORT-TERM RENTAL

- Relying on definitions for single-family, dwelling unit, and other related terms.
  - *Working Stiff Partners, LLC v. City of Portsmouth, 172 N.H. 611 (N.H. 2019).*
  - *Slice of Life, LLC v. Hamilton Township Zoning Hearing Board, 652 Pa. 224 (Pa 2019).*

- Vagueness
  - *Morgan County v. May, 305 Ga. 305 (Ga. 2019).*
  - *Anding v. City of Austin, 2020 WL 2048255 (Tex. App. – Austin 2020).*

- Interpreting
  - *Township of West Lakeland v. Auleciems, 2020 WL 1130318 (Minn. App. 2020).*

LIMITING VS. PROHIBITING

- LIMITING
  - *Anderson v. Metropolitan Government of Nashville and Davidson County, 2018 WL 527104 (Tenn. Ct. App. 2018).*
  - *Draper v. City of Arlington, 2021 WL 2966139 (Tex.App.-Ft. Worth, 7/15/2021).*

- PROHIBITING
  - *Kracke v. City of Santa Barbara, 63 Cal.App.5th 1089 (Ca. App. Ct. 2nd 5/4/2021)*
  - *City of Grapevine v. Muns, 2021 WL 3419675 (Tex.App.-Ft Worth, 8/5/2021)*

- AMORTIZATION
  - *Wallace v. Town of Grand Island, 184 A.D. 3d 1088 (4th Dept. 2020).*
  - *Zaatari v. City of Austin, 615 S.W.3d 172 (Tex.App. – Austin 2019).*

LICENSING

- Moratoriums
  - *Moskovic v. City of New Buffalo, 2021 WL 1422680 (W.D. Mich. 4/15/2021).*

- 1st Amendment
  - *Hignell v. City of New Orleans, 2021 WL 2886213 (E.D. La 7/9/2021)*

NON-ZONING REGULATION AND TAXATION AND NOISE

- Noise
  - *Municipality of Saint-Ferreol-Les-Neiges v. Larouche Martin Real Estate Management, Inc. and Turgeon Pelchat Real Estate Company, Inc., 2020 QCCA 1059 (Aug. 13, 2020).*

- Non-Zoning Regulation
  - *Williams v. City of Asbury Park, 2021 WL 961125 (NJ App. Div. 3/15/2021)*

- Taxation
  - *Norton v. Board of Supervisors of Fairfax County, 299 Va. 749 (Va. 2021)*

PLATFORMS

- *Homeaway, Inc. v. City of Portland*, 2017 WL 2213154 (D.C. Portland May 11, 2017).
- *Homeaway, Inc. v. City of Santa Monica*, 918 F.3d 676 (9th Cir. 2019).
- *Homeaway, Inc. v. City of New York,* 2021 WL 791232 (S.D. NY 3/1/2021).

TAKE AWAYS

- Defining STRs:
  - *Distinguish between long-term and short-term uses.*
  - *Exclusive use for periods of time.*
- Limiting vs. Prohibiting:
  - *Methods used to limit STRs should fit government's interests.*
  - *Prohibiting can be challenging.*
- Licensing:
  - *The duration of a moratorium is important.*
  - *Requirements could trigger 1st Amendment claims.*
- Platforms:
  - *Audit requirements will be challenged.*
  - *Federal law implications.*

FEDERAL CONSTITUTIONAL ISSUES

ATYPICAL FEDERAL ISSUES

- Dormant Commerce Clause
  - *Rosenblatt v. City of Santa Monica, 940 F.3d 439 (9th Cir. 2019).*
- Anti-Trust
  - *Stone River Lodge, LLC v. Village of North Utica, 2020 WL 6717729 (N.D. Ill 2020).*
- Contract Clause
  - *Nekrilov v. City of Jersey City, 2021 WL 1138360 (D. NJ 3/24/2021).*
- Intimate Association
  - *Thayre v. Town of Brookline, 2021 WL 664042 (D. Mass. 2021).*

COMMON FEDERAL ISSUES

- Due Process/Equal Protection
  - *Chaumont v. City of New Orleans, 302 So.3d 39 (La. App. 4 Cir. 6/3/2020).*
  - *Stone River Lodge, LLC v. Village of North Utica, 2020 WL 6717729 (N.D. Ill. 11/15/2020)*
  - *Bondar v. Town of Jupiter Inlet Colony, 2021 WL 1774457 (Fl. 4th DCA 5/5/2021).*

- Kitchen-Sink
  - *Calvey v. Town Board of North Elba,* 2021 WL 1146283 (N.D. NY 3/25/2021).
  - *Short Term Rental Owners Association of Georgia, Inc. v. Cooper, 2021 WL 389776 (N.D. GA 2021).*

LITIGATION

STANDING/RIPENESS/MOOTNESS

- Standing
  - *Short Term Rental Owners Association of Georgia, Inc. v. Cooper, 2021 WL 389776 (N.D. Ga 2021).*
- Ripeness
  - *Blackburn v. City of Orange Beach, 2021 WL 1572563 (S.D. Ala. 4/21/2021).*
- Mootness
  - *Board of Supervisors of Fairfax County v. Ratcliff, 298 Va. 622 (Va. 2020).*
- Multi-Issue
  - *Styller v. Zoning Board of Appeals of Lynnfield, 487 Mass. 588 (Mass. 2021).*

ENFORCEMENT

HEARINGS

- Screenshots
  - *Whipple v. City of New Orleans Dept. of Safety and Permits, 2020 WL 4499647 (La. App. 4 Cir. 8/5/2020)*

- Administrative Hearings
  - *Chaumont v. City of New Orleans, 302 So.3d 39 (La. App. 4 Cir. 6/3/2020)*

CONSEQUENCES

- Penalties
  - *Wheelahan v. City of New Orleans,* 2020 WL 1503560 (E.D. LA March 30, 2020).
  - *Hignell v. City of New Orleans,* 476 F.Supp.3d 369 (E.D. LA Aug. 6, 2020).

- Double Jeopardy
  - *Metropolitan Government of Nashville and Davidson County v. Dreher, 2021 WL 942872 (Tenn. Ct. App. March 12, 2021).*

- Contempt
  - *Town of West Lakeland v. Auleciems, 2021 WL 79789 (Minn. App. 2021).*
  - *Metropolitan Government of Nashville and Davidson County v. Jones, 2021 WL 1590236 (Tenn. Ct. App. 4/23/2021).*

TAKE AWAYS

- Hearings
  - *Screenshots are competent evidence.*
  - *Avoid direct financial incentive to find violations and assess fines.*

- Consequences
  - *May be able to defend against 8th Amendment excessive fine claims based on your state law penalty limits.*
  - *Amount of discretion in penalty assessments can result in legal challenges.*
  - *Possibility of double jeopardy should be considered when there are multiple enforcement options.*

NEIGHBORS LITIGATING

- Violating regulations
  - *Pigeon v. Ashkay Island, LLC, 2021 WL 299329 (Mich. Ct. App. 1/28/2021).*

QUESTIONS?

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