IMPORTANT CONSIDERATIONS FOR SHORT-TERM PROPERTY RENTAL HOSTS IN MISSOURI

Posted on June 24, 2016 by Brian J. Sabin

Tags: Brian Sabin, Short-Term Property Rentals

The "sharing economy" (also known as the "peer economy" or "gig economy") in which individuals earn money from allowing strangers to use their underused assets, has received much attention in recent years. Uber is a well-known example of a sharing economy company, which allows travelers to use a smartphone app to locate drivers, who use their personal vehicles (at any time of the day such drivers desire to work) to transport the travelers.

The sharing economy is having an increasingly significant impact on the broader economy, as evidenced by a 2015 PwC report which found that revenues generated by the sharing economy are expected to increase from approximately $15 billion in 2015 to $335 billion by 2025.

Checking in

One sector of the sharing economy that has experienced rapid growth in recent years is known as "home sharing" or "hospitality sharing" in which online platforms such as Airbnb, HomeAway, CouchSurfing and VRBO, match property owners (known as "hosts") with travelers (known as "guests") seeking short-term property rentals. Airbnb, which operates in more than 34,000 cities in 191 countries worldwide, anticipated 80 million nights booked in 2015, a doubling of the 40 million nights booked in 2014, which rivals the largest hotel chains in the world.

Companies in the sharing economy are known to implement innovative and disruptive business models which conflict with laws written prior to the existence of such businesses. State and municipal governments around the world are reacting to the challenges presented by the sharing economy. At the same time, established businesses operating in the traditional economy lobby against legislation that favors the sharing economy over the traditional economy.

In **Missouri**, Uber has been embroiled in a high-profile dispute with the St. Louis Metropolitan Taxicab Commission, where Uber drivers are allegedly currently operating illegally due to noncompliance with background check and other licensing requirements. In addition to disputes with Uber, the City of Kansas City has also proposed strict home sharing regulations.

Short-Term Property Rentals in Missouri

Missourians are participating in the home sharing economy. More than 250 properties located in the St. Louis area are currently listed on Airbnb, and there are many listings in other major population centers and tourist destinations throughout Missouri, such as Columbia, Kansas City, Lake of the Ozarks and Springfield.

The myriad of laws, regulations, restrictions and liability considerations which hosts face can vary significantly depending on the location of a rental property. Home sharing companies make the process to register as a host easy to complete, but hosts should not be complacent. The consequences of not properly addressing the issues can be significant. Here are some important considerations for a host renting property in Missouri:

Missouri Laws: Short-Term Property Rentals

- While Missouri law does not expressly provide a home sharing right, it also does not prohibit or render it illegal. Municipalities throughout Missouri have taken different approaches with respect to the regulation of home sharing.
- Recently, the Missouri Legislature considered statewide legislation favorable to the home sharing industry, which would have prohibited municipalities from enacting ordinances that prohibit or unreasonably restrict residential dwelling rentals and home sharing.
- The law, proposed as the "Short Term Rental Freedom Act," did not pass in the recent Missouri legislative session that concluded on May 13, 2016, but may be introduced again in the future.

County and Municipal Ordinances: Short-Term Property Rentals

- The county or municipality in which a property is located may affect whether a host can participate in the home sharing economy, as well as the fees, licenses and permits applicable to a host property. Ordinances in many jurisdictions have not been updated to specifically address home sharing. Therefore, hosts may encounter an ambiguous or overly burdensome regulatory framework.

- Some municipalities, such as the City of Maplewood, a suburb of St. Louis, have spent significant time grappling with home sharing issues. After an ordinance that would have allowed home sharing in Maplewood was defeated on August 11, 2015, the Maplewood City Council later voted to approve home sharing, conditioned on hosts obtaining a special use permit and business license.
- Hosts in other St. Louis municipalities have to contend with otherwise reasonable ordinances intended for longer-term rental properties, which can become burdensome for shorter-term rentals prevalent in the home sharing context. For example, a host in University City must obtain a new occupancy permit each time that a new guest occupies the property.

Restrictive Covenants on Short-Term Property Rentals

- Condominiums and homes located in subdivisions may be subject to restrictive covenants. Subdivision indentures and condominium declarations are recorded in the official land records in the county or city (in the case of St. Louis) in which a property is located.
- These instruments should be reviewed to confirm there are no restrictions against the use of a property for rental purposes. Homeowners associations and condominium associations may also publish rules and regulations which could impact a host's ability to rent a property.

Lease Restrictions on Short-Term Property Rentals

- Occasionally, a long-term tenant may wish to participate in the home sharing economy as a host by renting a property to a subtenant. For example, a college student who signs a year-long lease and moves back home for the summer, may desire to sublease the property until classes begin.
- Many leases restrict a tenant's right to sublease a property without the landlord's consent. In a worst case scenario, the failure to obtain a landlord's consent could cause an event of default resulting in the termination of the lease. A lease may also require a tenant-host to share profits generated by a sublease with the tenant-host's landlord. A tenant-host should carefully review the underlying lease for any provisions that may impact a home sharing arrangement.

Tax Considerations on Short-Term Property Rentals

- Rental income from hosting is taxable. Generally, rental income is subject to federal income taxes collected by the Internal Revenue Service (IRS), as well as state income taxes collected by the Missouri Department of Revenue. Similar to local governments, the IRS has been slow to adapt to the sharing economy. As a result, hosts may be "confused about when, whether or how to report their earnings on their tax returns." Confusion or ignorance does not excuse the reporting of income and payments of taxes.
- Most hosts are eligible to receive tax deductions for certain expenses incurred in connection with the rental activity (such as cleaning, utilities, advertising, property taxes). The amount of a

tax deduction may vary depending on the percentage of a property that is rented and the number of days in a year that a property is rented.
- In addition to federal and state income taxes, other taxes may apply, such as local earnings taxes, self-employment taxes and occupancy taxes. Certain taxes may be passed along to and paid by guests. Some online home sharing platforms automatically withhold a percentage of a host's rental income or report a host's income directly to the IRS. A host should consult with an experienced tax advisor to navigate the maze of applicable taxes and deductions.

Insurance Considerations for Short-Term Property Rentals

- It is important for property owners to adequately protect themselves from property damage and liability for bodily injury. Incidents of home rental nightmares have been well documented. Guests have been seriously hurt or even killed while staying at a home rental.
- Hosts should take care to minimize hazards and to provide a safe environment for guests. However, even the most careful host cannot protect against all the possible issues that can arise in a home rental situation, so it is important for hosts to have adequate insurance coverage.
- Most property owners have some form of homeowners' insurance, which provides protection against property damage and bodily injury, but not all homeowners' insurance policies protect against home rentals. Hosts should check with their insurance providers to determine whether their policies adequately protect against the risks associated with short-term rentals. Additional insurance coverage, designed with short-term rentals in mind, may be available.
- Some home sharing companies provide additional protection, such as the Host Protection Insurance and the Host Guarantee from Airbnb, which covers up to $1,000,000 in damages under certain circumstances, while other companies provide no additional protection. It is important to closely review insurance policies provided by home sharing companies to ensure they provide as much protection as anticipated.
- For an additional layer of liability protection, hosts may wish to consider forming a business entity that offers liability protection, such as a limited liability company. In such case, a property should be titled in the name of the limited liability company and all agreements pertaining to the rental should be entered into by the limited liability company.

Checking Out

Given that successful hosts in a sampling of 15 American cities have earned an average profit in excess $20,000 per year, the home sharing industry is likely to continue its rapid growth. This post provides a general overview of important considerations, which can vary significantly from one host to another. Hosts should address the above considerations and stay up-to-date on new developments in order to protect their interests.