



# **Short Term Rental: Who's That Sleeping on Our Couch? The Impact of Short Term Rentals on Real Estate Law**

**Wednesday, April 17, 2019**

**1:00 to 2:30 PM Eastern**

# Your Presenters

## Joan H. Story

Sheppard, Mullin, Richter & Hampton, LLP  
San Francisco



## Dwight Merriam

Attorney at Law  
Simsbury, Connecticut



# Stakeholders

“It makes a difference whose ox is gored.”

Martin Luther, circa

- Host platforms



- Hosts



- Guests



- Government



# Stakeholders, cont'd

- Landlords



- Homeowner associations



- Neighbors



# Stakeholders, cont'd

- Hotels
- Unions, e.g., Unite Here
- Affordable housing advocates





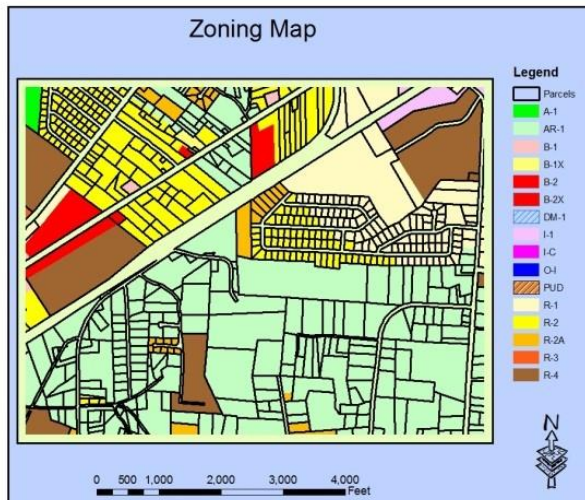
# Government Regulation

“Laws, like sausages, cease to inspire respect in proportion as we know how they are made.”

John Godfrey Saxe, 1869



- Who regulates?
- Basis for regulation locally
  - Zoning, health & safety, building and fire inspections



# Government Regulation, cont'd

- Define in or out of regulation
  - Area, building type, length of stay, days per year, owner occupancy, number guests
- Registration
- Taxes, insurance, inspections, recordkeeping disclosures



# HOAs, CC&Rs, and Landlords

“It’s all about dogs, cars, and kids.”

Gurdon (“Don”) H. Buck, circa 1980

- What is prohibited?
  - Subtenants, short term rental, commercial use
- Lease and CC&R provisions
- Insurance
- Who has standing to sue?





# Insurance

**“Insurance is the only product that both the seller and buyer hope is never actually used.”**

Unknown

- **Airbnb Host Protection Insurance/Host Guarantee**
- **Insurance as a registration requirement**
- **Consult an insurance professional**



# From the Frontlines: NOLA and STR

“There are a lot of places I like, but I like New Orleans better.”

Bob Dylan

- How municipalities (including NOLA) are adjusting regulations as the industry changes and best practices emerge
- Impacts on affordable housing
- Combining regulations with added staffing and resources to facilitate enforcement
- Short Term Rental Study  
<https://tinyurl.com/STR-NOLA>



Short Term Rental  
Study – 2018 Ed.

City of New Orleans



City Planning Commission

Robert D. Rivers, Executive Director  
Leslie T. Alley, Deputy Director

Prepared By:  
Brooke Perry  
Kelly Butler  
Rachel Kemp  
Paul Cramer  
James Gille  
Nicholas Kindel  
Larry W. Massey, Jr.

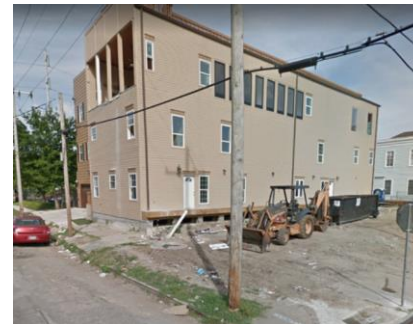
Prepared on: September 18, 2018

# From the Frontlines: NOLA and STR, cont'd

- The politicization of STRs as seen in the 2017 Mayor/Council election



- Impacts of STRs on routine commercial rezoning requests

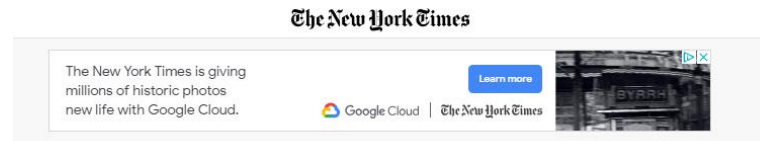


- Regulation of platforms

Spot zoning turns into a sore spot for  
New Orleans City Council

# Recent Cases

- San Francisco (settled)



## *Airbnb Settles Lawsuit With Its Hometown, San Francisco*



Dennis J. Herrera, the San Francisco city attorney, at City Hall on Monday. Airbnb agreed to provide data on its hosts to the city. Eric Risberg/Associated Press

By Katie Benner

May 1, 2017



<https://www.nytimes.com/2017/05/01/technology/airbnb-san-francisco-settle-registration-lawsuit.html>

# Recent Cases

- Santa Monica



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Housing

City Goes Two for Two on “Short Term Rental Lawsuits” This Week: Rulings Could Put Hundreds of Units Back on the Rental Market

By Damien Newton - 19 June, 2018

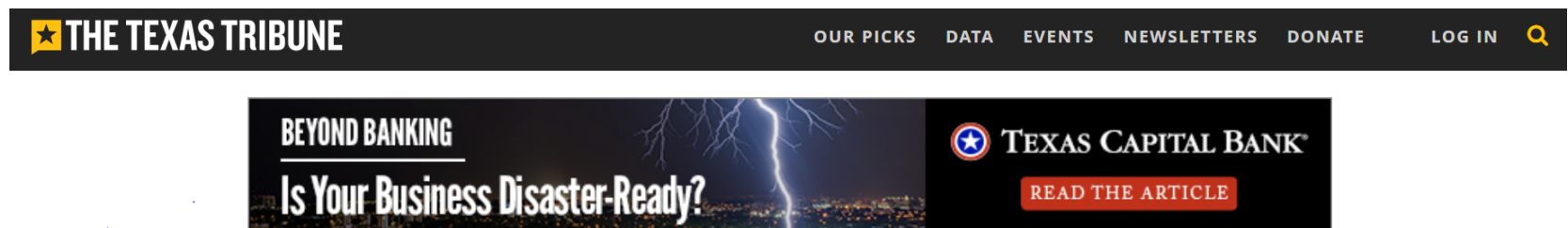
<http://www.santamonicanext.org/2018/06/city-goes-two-for-two-on-short-term-rental-lawsuits-this-week-rulings-could-put-hundreds-of-units-back-on-the-rental-market/>



- **Ninth Circuit upheld Santa Monica STR ordinance (3/13/19)**
- **“We are thrilled to have confirmation from the Ninth Circuit that our balanced approach to home sharing is working at a time when housing and affordability continue to challenge the region,” Santa Monica Mayor Gleam Davis said in a statement.**

# Recent Cases

- San Antonio



## Texas Supreme Court sides with short-term renters, likely bolstering state's fight against Austin's ordinance

Friday's ruling doesn't directly address regulations implemented by some Texas cities restricting homeowners' use of services like Airbnb. But it bolsters the case against the City of Austin's short-term rental ordinance in several major ways, lawyers said.

BY EMMA PLATOFF MAY 25, 2018 11 AM

<https://www.texastribune.org/2018/05/25/airbnb-homeaway-texas-supreme-court-ken-paxton-austin-ordinance/>

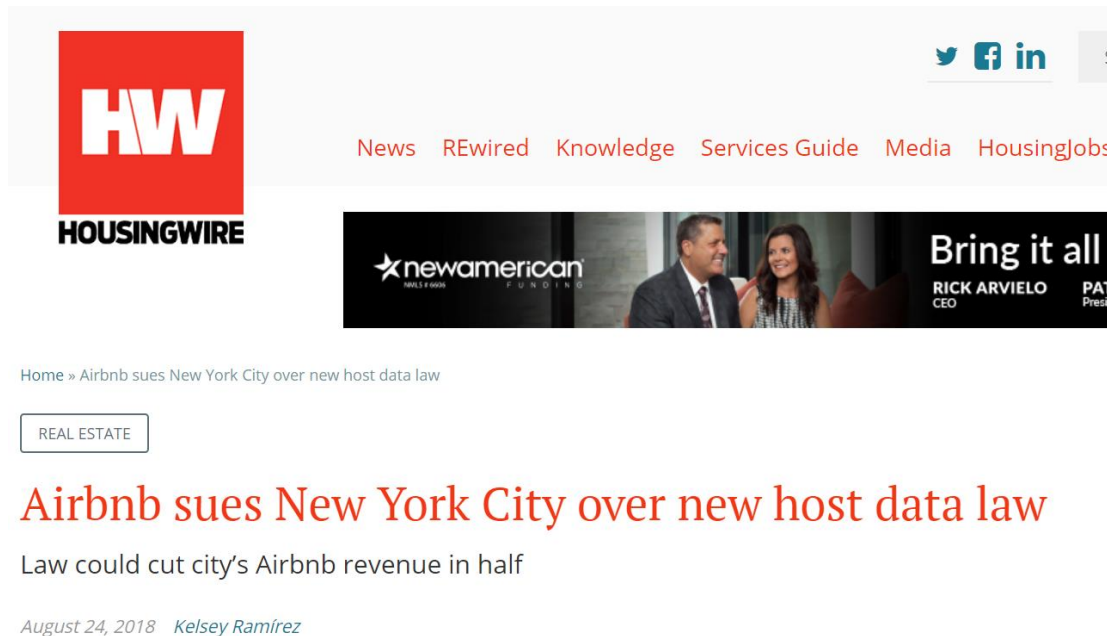
- **San Antonio City Council enacted STR ordinance. (11/1/19)**
  - **Applies to over 2,000 STRs**
  - **Permit requirements**
  - **Fees**
  - **Limitation on non-owner occupied STRs per block**
    - **about 1/8 of all STRs on a block can be non-owner-occupied**

# Recent Cases

- New York City

- Complaint filed 08/24/18:

- [https://cdn.vox-cdn.com/uploads/chorus\\_asset/file/12550647/08.24.18\\_Airbnb\\_v\\_City\\_of\\_NY\\_Complaint\\_\\_1\\_.pdf](https://cdn.vox-cdn.com/uploads/chorus_asset/file/12550647/08.24.18_Airbnb_v_City_of_NY_Complaint__1_.pdf)




# Recent Cases

- **Boston**


- **The complaint filed 11/13/18:**

- <https://d279m997dpfwgl.cloudfront.net/wp/2018/11/AIRBNB-BOSTON-LAWSUIT.pdf>

 **Menu**

**The Boston Globe**

**Metro**

**Download Now**  The Boston Globe app, exclusively for subscribers

## Airbnb sues city over rental rules



ASSOCIATED PRESS

Airbnb co-founder and CEO Brian Chesky spoke in San Francisco earlier this year.



# Recent Cases

- Miami Dade (Man Bites Dog)
  - The complaint filed 11/18:
    - <https://>

≡ SECTIONS



Photos.com - Getty Images

TOURISM & CRUISES

Miami-Dade is owed 'millions of dollars' from vacation rental site, new lawsuit says



BY TAYLOR DOLVEN  
[tdolven@miamiherald.com](mailto:tdolven@miamiherald.com)



November 07, 2018 06:15 PM  
Updated November 07, 2018 06:31 PM

Miami Herald

<https://www.miamiherald.com/news/business/tourism-cruises/article221236045.html>

# **Top STR Issues to Watch**

# Evolution of Host Platforms

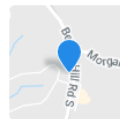
- Trip planning/excursions
- Listing services for boutique hotels, long-term rentals
- Collaborations with fitness centers, co-working facilities, airlines



BAR CRAWL

**Irish Author's Neighborhood Bar Tour**

\$60 per person



**Long Term Rental, Pet Friendly, Fully Furnished, Move In Ready**

📍 Pinehurst, NC, USA



Condo

900 sq. ft.



Bedrooms

1



Sleeps

2



Bathrooms

1



Half Baths

0



Min Stay

30 nights

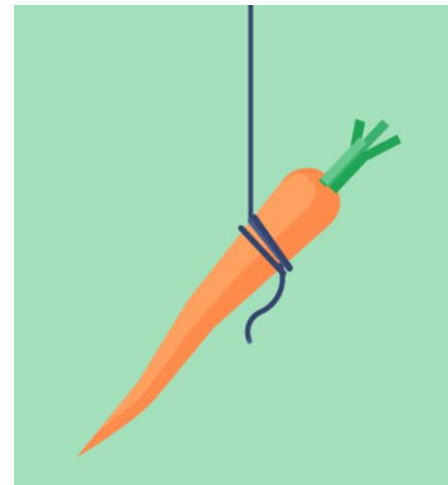
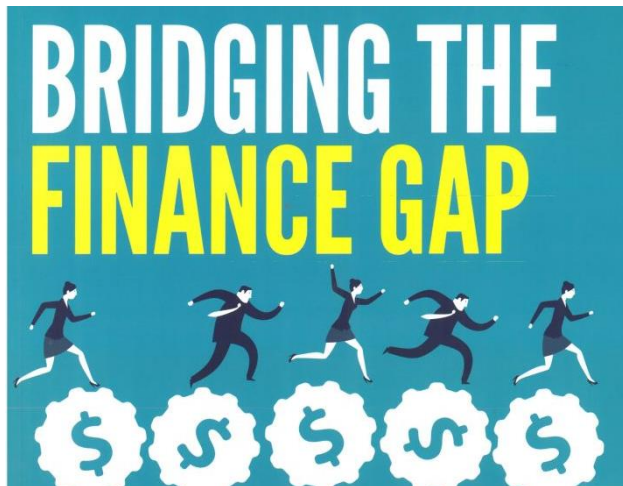
# Privacy

- Video monitoring
- Collection of information to enforce registration
- Disclosure of guest information



# As a Financing Tool

- **Gap Financing**
  - During lease-up, sale of condominium units
- **Incentive for affordable housing/blight remediation/commercial revitalization**





# Enforcement

- San Francisco



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BIZ & TECH // BUSINESS

## SF fines Airbnb landlords \$2.25 million for illegal rentals



Carolyn Said | Nov. 5, 2018 | Updated: Nov. 5, 2018 7:23 p.m.



2 of 27

An apartment at 826 Masonic is shown with high-end staging for its Airbnb listing photos, and with more-disheveled looking staging before a tour by city investigators. A legal motion says this apartment and others illegally rented on Airbnb had identical staging of Costco bags of fruit and other items to make them appear inhabited by ...

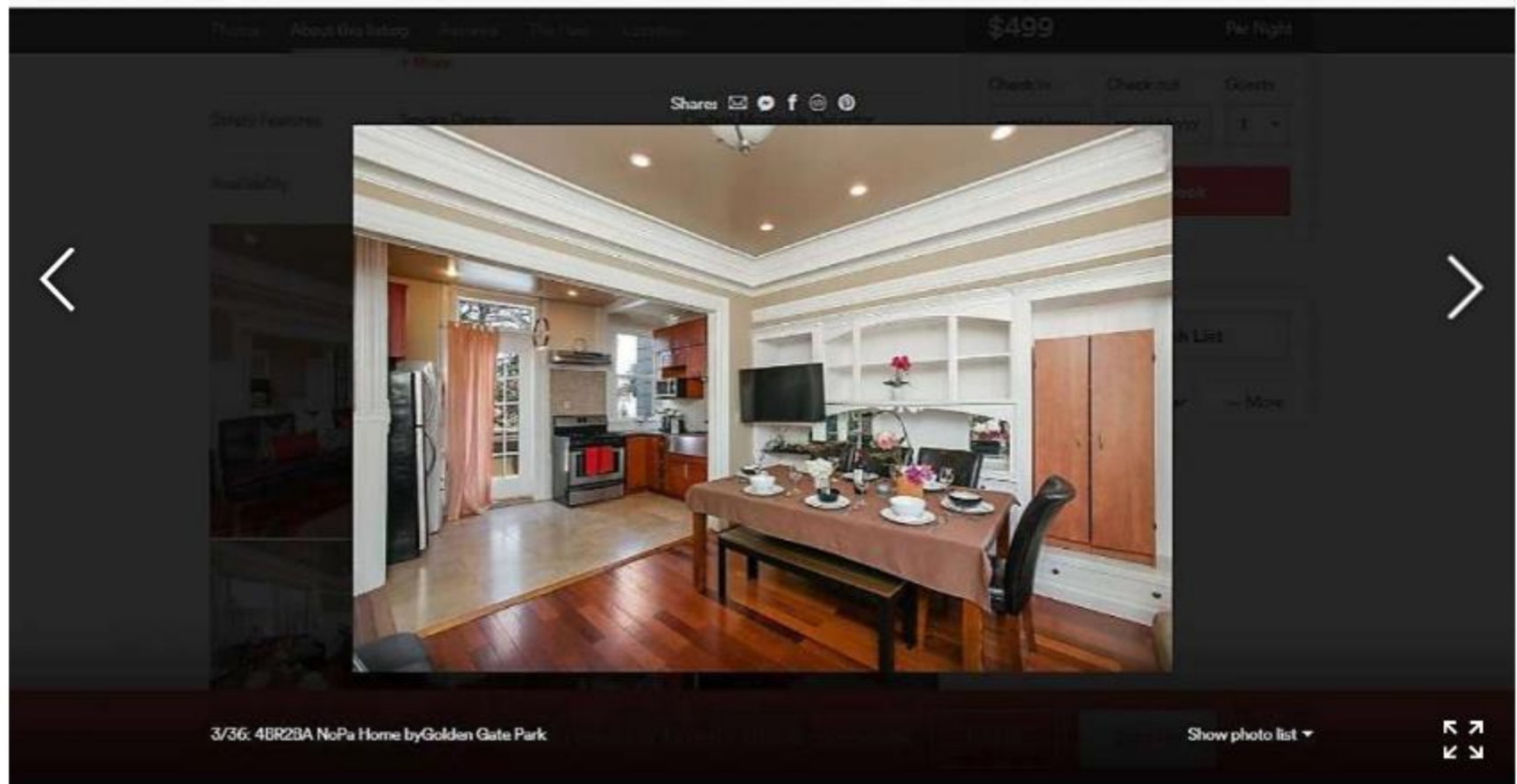
<https://www.sfchronicle.com/business/article/SF-fines-Airbnb-landlords-2-25-million-for-13364513.php>



6 of 27



Valerie and Darren Lee illegally rented multiple San Francisco properties on Airbnb, according to a court motion. When city investigators visited the units, they were staged to appear as if tenants lived there — but all had almost identical staging, the motion said. This kitchen at 1362 Utah St. is shown in a shoot taken by the city ...



4 of 27



An apartment at 826 Masonic is shown with high-end staging for its Airbnb listing photos, and with more-disheveled looking staging before a tour by city investigators. A legal motion says this apartment and others illegally rented on Airbnb had identical staging of Costco bags of fruit and other items to make them appear inhabited by ...

... and other items to make them appear inhabited by ...

# Miami Beach

- Crackdown, starting 9/22/18
- Regulations modeled on San Francisco
- Listings dropped from 10,000 to 4,000 in
- First violation: \$20,000
- View videos on both links below to see the aggressive enforcement

<https://www.cnbc.com/2018/10/04/miami-beach-cracks-down-on-short-term-rentals.html>

<https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article226269295.html>

# New York City

- **City of New York v. Metropolitan Property Group, et al. (1/14-19)**
- **\$21,000,000 suit**
- **Alleges firm used fake identities and 18 corporate accounts to run an illegal hotel operation**
- **Using Airbnb in 35 Manhattan buildings**
- **75,000 guests 2015-2018, \$21 million profit**

<https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=9oXwjxhzUZCWNhplGXSoSA==&system=prod>

<https://ny.curbed.com/2019/1/14/18182306/airbnb-nyc-lawsuit-metropolitan-property-group>



**Fini...**