



# Short-Term Rental Regulations: Advocacy Tips to Protect the Right to Rent

In the past decade, the popularity of short-term rentals has grown at a rate that has far outpaced governmental regulation. This surge in growth is largely attributable to the popularity of online hosting platforms, which make it easy for “hosts” to rent out a home or a spare room, and for “guests” to book them. State and local governments that were not prepared for the short-term rental market as it exists today, have begun to catch up with many adopting regulations designed to “rein in” short-term rentals and address their perceived impacts on residential neighborhoods.

Many local governments have also taken the position that short-term rental regulations are necessary to protect renters from unsafe accommodations, and to achieve greater compliance with property maintenance and zoning codes. Some state and local governments have also turned short-term rentals into a revenue source by imposing lodging or other taxes on short-term rental stays.

Whatever the justification, local government regulation of short-term rentals is having a significant impact on property owners’ right to rent out their properties on a short-term basis. As the voice of real estate, the National Association of REALTORS® is committed to protecting private property rights. State and local REALTOR® associations, while respecting community concerns, are well positioned to monitor state and local regulatory activity and to take action to protect private property rights.

This resource provides REALTORS® with the basis for arguing that the right to rent is a fundamental aspect of private property ownership, and talking points to use in opposing proposed short-term rental regulations that would infringe upon this fundamental property right to rent.

## Private Property Rights – Protecting the Right to Rent

Among the core rights that a property owner has is the right to lease or rent the property. This right has long been recognized by the courts.<sup>1</sup> For example, the Supreme Court of Connecticut has explained that the “right to rent” is one of the important “sticks” in the bundle of property rights, stating:

[It] is undisputable that the right of property owners to rent their real estate is one of the bundle of rights that, taken together, constitute the essence of ownership of property.... Owners of a single-family residence can do one of three economically productive things with the residence: (1) live in it; (2) rent it; or (3) sell it.<sup>2</sup>

The inherent nature of this right to rent is supported by a leading treatise, *Thompson on Real Property*, which observes that “the right to lease property is an incident of ownership.”<sup>3</sup>

Short-term rental regulations can infringe upon this fundamental property right in many ways, including (1) outright bans on short-term rentals, (2) licensing requirements, and (3) mandatory inspection requirements. The discussion below summarizes these and other types of short-term rental regulations that can negatively affect the right to rent and provides a brief discussion of the positions that REALTORS® could take to counter them.

**1. Outright Ban on Short-Term Rentals:** Some communities have considered banning short-term rentals altogether. An outright ban on short-term rentals can be citywide, or may be limited to certain zoning districts or neighborhoods. It can also apply only to certain types of residential units, such as single-family homes or multifamily buildings. Regardless of what form it takes, for the owners of property that cannot be used as a short-term rental, a ban on short-term rentals is

<sup>1</sup> See J.E. Penner, *The “Bundle of Rights” Picture of Property*, 43 *UCLA L. REV.* 711 (1996) (noting the conventional “bundle of rights” formulation and various views of the “bundle of rights”).

<sup>2</sup> *Gangemi v. Zoning Bd. of Appeals of the Town of Fairfield*, 763 A.2d 1011, 1015-16 (Conn. 2001) (citing *J. DUKEMINIER & J. KRIER, PROPERTY* at 86 (3d ed. 1993) (stating (“[property] consists of a number of disparate rights, a ‘bundle’ of them: the right to possess, the right to use, the right to exclude, the right to transfer”) (emphasis added)).

<sup>3</sup> *THOMPSON ON REAL PROPERTY* § 14.02(a) (2016, Matthew Bender & Company, Inc.) (citing *Norwest Bank Arizona v. Superior Court In and For County of Maricopa*, 963 P.2d 319, 323 (Ariz. 1998) (right to rent under a lease of real property is an incorporeal hereditament that is an incident to an estate in land); *Magnolia Petroleum Co. v. Carter*, 2 So. 2d 680 (La. App, 1941); *Assessors of West Springfield v. Eastern States Exposition*, 93 N.E.2d 462 (Mass. 1950); *Attorney General v. Pere Marquette Ry. Co.*, 248 N.W. 860 (Mich. 1933)).



an outright deprivation of their right to rent their home on a short-term basis.

**Advocacy Tip:** REALTORS® could oppose a proposed ban on short-term rentals, whether citywide or limited in scope, on the ground that it would deprive affected property owners of their core property right to rent their property on a short-term basis.

- 2. License Requirements:** Short-term rental regulations can also infringe upon the right to rent by making it unlawful for an owner to rent their property on a short-term basis without a license. A licensing requirement typically requires the payment of a licensing fee and makes any violation a misdemeanor punishable by fine, with each day constituting a separate offense. In general, a license is defined as “permission or privilege to do what otherwise would be unlawful.”<sup>4</sup> By preventing property owners from renting out private property on a short-term basis unless they obtain a license, a licensing requirement effectively treats the right to rent as if it were a mere privilege, like conditioning the right to drive a car upon passing a test and obtaining an “operator’s license,” rather than an inherent right of property ownership.

**Advocacy Tip:** REALTORS® could oppose short-term rental license requirements on the ground that such requirements impair a core right of private property ownership, namely the right to rent. REALTORS® could also argue that a license requirement improperly treats short-term rentals an activity is unlawful and requires a privilege of license to exist, contrary to the principles of private property.

- 3. Inspection Requirements:** Short-term rental regulations can also require that the home be inspected for compliance with applicable building, zoning, and property maintenance codes before a permit or license will be issued. For affected property owners and tenants, a mandatory inspection provision that does not require that the inspectors obtain a warrant to inspect a short-term rental property without the consent of the owner or occupant, raises serious concerns under the Fourth Amendment of the U.S. Constitution. Key point: The U.S. Supreme Court has made clear that the Fourth Amendment applies not only to criminal searches, but also to civil searches, including municipal code inspections.<sup>5</sup> Therefore an “administrative warrant” is required before an inspection may be made without the consent of the owner or occupant.

**Advocacy Tip:** REALTORS® could oppose any mandatory inspection requirement that does not require the local government inspector to obtain a search warrant if consent to inspect the property is not granted by the owner or occupant.

- 4. Limited Scope of Zoning Authority:** While most short-term rental regulations are adopted as a general regulation under the local government’s “police power,” some communities have instead chosen to regulate short-term rentals under their zoning code. The problem with this approach is that the regulation of short-term rentals does not fall within the scope of local zoning authority. The reason is that a key characteristic of local zoning power is the long-established principle that

---

<sup>4</sup> MCQUILLIN MUN CORP § 26:2 (Municipal Licenses and Permits – Definitions; nature of municipal license) (3d ed).

<sup>5</sup> Camara v. Municipal Court of City & County of San Francisco, 387 U.S. 523, 534 (1967).



“zoning deals with land use, not the owner, operator, or occupant of the land.”<sup>6</sup> Zoning inherently pertains to land rather than to the landowner, or user—it “deals basically with land use and not with the person who owns or occupies it.”<sup>7</sup>

Zoning regulation of short-term rentals violates this fundamental principle in that it focuses not on the use of land, but on the form of one’s interest in property (i.e., owner or renter) and the duration of the occupancy (e.g., short-term vs. long-term).

**Advocacy Tip:** REALTORS® could take the position that regardless of whether a home is occupied by an owner or renter, and regardless of whether the occupancy is long-term or short-term, the use of a single-family home for living purposes is a residential use.<sup>8</sup> Therefore, any zoning ordinance that regulates single-family homes differently based solely on the occupant’s interest in property (owner or renter), or the duration of the occupancy (short-term vs. long-term)—as short-term rental regulations do—violates the fundamental principle that zoning deals with land use, not the user of the land.

- 5. Short-Term Rentals Are a Residential Use, Not a Commercial Use:** Opponents often argue that short-term rentals could not be allowed in residential zoning districts because they are a commercial use that is incompatible with the character of residential neighborhoods. However, courts in many states have ruled that short-term rentals are residential use, not a commercial use. For example, the Maryland Court of Appeals rejected a claim that because a restrictive covenant required that all lots in a subdivision be used for “single family residential purposes only,” that meant short-term rentals were prohibited. The court concluded that the covenant plainly allowed residential rentals regardless of whether the rental was for a short term or a long term, explaining that the transitory or temporary nature of a short-term rental does not change the residential status of the use:

---

<sup>6</sup> RATHKOPF’S THE LAW OF ZONING AND PLANNING § 2:16 (Zoning regulates the use of land—Identity or status of land users) (citing cases in Connecticut, Iowa, Louisiana, Maryland, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, and Washington) (emphasis added).

<sup>7</sup> See FGL & L Prop. Corp. v. City of Rye, 485 N.E. 986, 989 (N.Y. 1985).

<sup>8</sup> Lowden v. Bosley, 909 A.2d 261, 267 (Md. 2006).

*“Residential use,” without more, has been consistently interpreted as meaning that the use of the property is for living purposes, or a dwelling, or a place of abode.... The transitory or temporary nature of such use does not defeat the residential status.<sup>9</sup>*

Courts in other states have similarly ruled that residential rentals, no matter how long the term, are a residential use because the renter uses the home for the same purpose as the owner.<sup>10</sup> The courts have also rejected the argument that short-term rentals are not a residential use because the homeowner earns rental income by renting out his or her home. The Maryland Court of Appeals, for example, explained: “While the owner may be receiving rental income, the use of the property is unquestionably ‘residential.’ The fact that the owner receives rental income is not, in any way, inconsistent with the property being used as a residence.”<sup>11</sup>

**Advocacy Tip:** REALTORS® could counter the argument that short-term rentals are a commercial use that could not be allowed in residential neighborhoods by pointing out that courts in many states have ruled that short-term rentals are residential use, not a commercial use. If possible, REALTORS® could cite to a case in their own state in support of this position.

- 6. Local Contact Person Requirements:** Short-term rental regulations frequently require the owner to designate a local contact person who must be available 24 hours a day, 7 days a week to respond in-person to any complaints regarding a short-term rental property. By forcing a local contact person to respond to complaints about a short-term rental property, such provisions inappropriately shift the government’s code enforcement responsibilities onto civilians who are

<sup>9</sup> Lowden v. Bosley, 909 A.2d 261, 267 (Md. 2006).

<sup>10</sup> See Santa Monica Beach Prop. Owners Ass’n v. Acord, 219 So. 3d 111 (Fla. Ct. App. 2017); Wilkinson v. Chiwawa Communities Association, 327 P.3d 614, 620 (Wash. 2014); see also HEEF Realty & Invs., v. City of Cedarburg Bd. of Appeals, 361 Wis. 2nd 185 (2015); Houston v. Wilson Mesa Ranch Homeowners Ass’n, 360 P.3d 255 (Col. App. 2015); In re Toor, 59 A.3d 722, 727 (Vt. 2012); Estates at Desert Ridge Trails Home Owners’ Association v. Vazquez, 300 P.3d 736 (N.M. Ct. App. 2013); Slaby v. Mountain River Estates Residential Ass’n, 100 So. 3d 569 (Ala. Civ. App. 2012); Mullin v. Silvercreek Condo. Owner’s Ass’n, 195 S.W.3d 484 (Mo. Ct. App. 2006); Pinehaven Planning Bd. v. Brooks, 70 P.3d 664 (Idaho 2003); Yogman v. Parrott, 937 P.2d 1019 (Or. 1997); Catawba Orchard Beach Ass’n v. Basinger, 685 N.E.2d 584 (Ohio Ct. App. 1996).

<sup>11</sup> Lowden v. Bosley, 909 A.2d at 267 (emphasis added).



not trained or equipped to respond on short notice to complaints. Moreover, to the extent that it requires a local contact person to confront badly behaving tenants and their guests in response to a complaint, an in-person response requirement would place the local contact person at risk of physical harm or potential liability. Local government officials need to give serious consideration to the potential consequences of compelling a local agent to personally confront a tenant about such a complaint.

**Advocacy Tip:** REALTORS® could oppose any short-term rental regulation that requires a local contact person to be available 24 hours a day, 7 days a week, to respond in-person to complaints regarding a short-term rental property on the ground that such requirements unreasonably place local contact persons at risk of physical harm. REALTORS® could argue that local law enforcement and code enforcement personnel should be the ones responding to complaints and enforcing the requirements of a short-term rental regulation, not local contact persons.



**For more information on short-term rentals, visit [www.realtorparty.realtor/strentals](http://www.realtorparty.realtor/strentals) or contact or Adriann Murawski, State & Local Government Affairs Representative, at (202) 383-1068 or [amurawski@realtors.org](mailto:amurawski@realtors.org).**