

South Florida's war with Airbnb

Shifting laws have created a patchwork of confusing rules about what's legal for short-term rentals

By Mike Seemuth

Tourists are flocking to Airbnb units, and the gleaming condos along the water are among the most desirable.



South Florida is a mecca for all kinds of tourists, but local governments extend little hospitality to Airbnb, HomeAway and other online home-sharing companies active in the Miami and Fort Lauderdale area.

Consider, for example, the low tolerance for home-based competition with hotels in Miami Beach, where ordinances allow short-term rentals only in limited areas and residents who violate the rules face steep fines. Last year, from March to mid-August, the city collected nearly \$1.6 million in fines. The fees start at \$20,000, then double and triple for subsequent violations.

Across Biscayne Bay, a temporary restraining order suspended Miami's enforcement of a municipal ban on short-term rentals in residential areas. A Miami-Dade judge issued the restraining order in April in an ongoing case Airbnb brought to overturn the city's ban on residential rentals lasting less than a month.

In late spring, the Miami-Dade County Commission was considering a proposal to spread the regulatory net for short-term

rentals westward into the county's unincorporated territory. "I'd never even heard the term 'Airbnb' five years ago," said Sally Heyman, the county commissioner who made the proposal.

"We respect free enterprise, but there has to be a balance, because you're changing the use of property" when it is rented by the day or week, Heyman said. "Regulating it without stifling it is another issue ... You always wonder if decisions you make are going to chill commerce."

Under her proposed ordinance, hosts with listings on such platforms as Airbnb and HomeAway would be required to obtain a certificate of use and a business license and to enforce their guests' compliance with short-term rental standards. Fines for violating the proposed ordinance would range from \$100 for a first offense to \$2,500 for the third offense in a 24-month period.

Stakes in South Florida are high. Miami home owners who rented their residences on Airbnb collected \$37 million of rental revenue during the year-long period that ended Nov. 1. The San Francisco-based home-sharing network reported that 174,000 guests visited Miami hosts during those 12 months.

And Airbnb has started to collect and remit substantial tax revenue in South Florida.

"On May 1st, the [Airbnb] platform began collecting the 6 percent Miami-Dade County tourist tax and the 5 percent Broward County tourist tax," based on voluntary collection agreements Airbnb reached with each county in March, John Heffernan, a spokesman for Airbnb, said in an email.

"Currently, there is no agreement with Palm Beach County. In all, Airbnb has now secured tourist tax agreements with 38 of the 63 Florida counties that assess a bed tax," Heffernan said. "It is important to emphasize that Airbnb is the only short-term rental platform that proactively seeks to collect taxes on behalf of its hosts, and we're very proud of that fact."



Sally Heyman

Shifting state law in Florida has contributed to the local patchwork of rules and regulations that Airbnb and other short-term rental platforms face.

The state enacted a law in 2011 that prohibited local governments from regulating what it calls "vacation rentals," defined as residential properties rented more than three times per year for less than 30 days at a time. The law exempted, or "grandfathered," local governments — including the City of Miami Beach — that started regulating short-term rentals prior to the law's enactment on July 1, 2011.

But the state then softened its stance on local regulation in 2014 with a revision to the 2011 law. "It said cities could adopt regulations that require vacation rentals to register with the city and prove they are licensed," said **Joseph Serota, a partner at Coral Gables-based law firm Weiss Serota Helfman Cole & Bierman**. "But it prohibited cities from regulating the duration or the frequency of the rentals."

One of the cities that took advantage of the 2014 revision of state law is Fort Lauderdale, which initially enacted a short-term rental ordinance in 2015 and has since tweaked it twice. The last revision, which the city commission approved in April, reduced the city's registration-renewal fee for owner-occupied vacation rentals to \$80 from \$500.

One reason for lowering the renewal fee is to encourage compliance with Fort Lauderdale's short-term rental ordinance. "We want people to register," said Lee Feldman, the city manager, "and we will be going through some more rigorous processes to get enforcement."

Despite the city's efforts to regulate vacation rentals, these properties still generate complaints about noise, traffic and other disruptions, prompting calls to police from some of Fort Lauderdale's most exclusive waterfront neighborhoods.

"We have been burdened by short-term rentals where the occupants do not act in a responsible fashion," Feldman said. "We end up using our resources to address a problem that shouldn't be there in the first place."

Noncompliance with short-term rental regulations is a big challenge in other jurisdictions, too. For example, in North Bay Village, a small waterfront community just north of Miami Beach, many short-term rental properties attract noisy guests who go clubbing in South Beach and return to the village to party into the predawn hours. In April 2016, the village passed an ordinance regulating short-term rentals by requiring owners to register with the village government and obtain a business license. Fines range from \$250 for the first violation to \$500 for subsequent violations.

"It doesn't appear to be a deterrent, because it's just a cost of doing business. If they're making \$300 a night or \$1,500 over a weekend, paying a \$250 fine doesn't seem to bother them," said Frank Rollason, the village manager of North Bay Village. "We can't do what Miami Beach has done. They've got unbelievable fines. But they are exempted because they took this action before the 2011 [state] law went into effect. We did not."

Meanwhile many condo-owner associations in South Florida have sought to revise their condominium documents to prevent owners from renting units to short-term guests.

At Thirty 30 North Ocean, a boutique condo under development in Fort Lauderdale's beachfront community, condominium documents will limit both the frequency and duration of short-term rentals.

"It's not as strict as some condominium documents. But if someone wants to rent under our condominium documents, the maximum number of times they can do that is four times a year, and the minimum they can rent it for is one month," said Adam Adache, the developer of Thirty 30 North Ocean.

"More and more associations are asking about rule passage and amendments to their documents to restrict hotel-type use on the property. It's an increased phenomenon, for sure," said Joshua Krut, a partner at South Florida law firm Kopelowitz Ostrow. "It kind of highlights some of the inflexibility we have with condos as they exist. They're very rigid, and amendments are tough to pass. As the world changes, you have this tension."

But just limiting short-term rentals in the language of condominium documents is no guarantee of compliance. Krut represents one condo association that successfully uses a photographic-identification rule to limit unauthorized short-term rentals.

"They passed a rule requiring all residents, both owners and renters, to have picture IDs to get access to the property and to the amenities," said Krut, who chairs his law firm's community association, club and resort practice. "They have 24-hour security ... It works if you have on-site security, 24/7."

While condo and homeowner associations wrestle with online home-sharing companies, the legal environment for such companies is likely to continue to evolve in the Sunshine State. In early May, for example, the Miami-Dade County Commission advanced its proposed short-term rental ordinance to a committee for further review before taking a final vote. Heyman, the commissioner behind the proposal, said the failure of a bill in the Florida Legislature had cleared the way for Miami-Dade County to adopt its own ordinance.

The Florida House passed a bill during the Legislature's spring session that would have pre-empted local regulation of vacation rentals — essentially resurrecting the old 2011 law. But the bill was stuck in a Senate committee when the legislative session ended in early May.

"They killed the Airbnb pre-emption bill in Tallahassee. So now, it's full steam ahead" for her proposed short-term rental ordinance, Heyman said.

However, she predicted that state legislators will try again to pass a similar pre-emption bill: "Trust me, it's going to come back to the state next year."