

SHORT TERM RENTAL REGULATIONS

From Air Mattresses To The Unregulated Entrepreneur

What is a short term rental?

- Day(s)
- Week(s)
- Month(s)

Subjective

- Is a *short term rental* in Pierre different than a *short term rental* in NY City?
 - Definition depends upon
 - History of use
 - Regulations

THE BIGGIES WHEN THEY WERE SMALLIES

- Vacation Rentals by Owner - VRBO - 1995
 - Entire home & apt. rentals

- HomeAway - 2006
 - Binary Fission (VRBO)

- Airbnb - 2008
 - Entire home, apt. rentals, *home-sharing and individual room rentals*
 - Changed industry
 - Popularized the marketplace model
 - Instant bookings
 - *Developed trust and consumer confidence*

HUNGRY HUNGRY HIPPOS

VRBO / HomeAway / Airbnb

- Starting in 2008 - companies were gobbled up. . .
 - Flipkey
 - Holiday Lettings (United Kingdom)
 - 9Flats.com
 - Wimdu
 - Second Porch
 - VRMB
 - Niumba (Spain)
 - Buuteeq
 - Futurestay
 - Tripping
 - Migoa
 - Luxury Retreats
 - Momondo
 - Roomorama
 - Booking.com

WHY?

SORTING ALGORITHM

- Assets vs Liabilities
 - Assimilation
 - Weakest
 - Vulnerable
 - Up-and-coming
 - “Ripe for the Taking”
 - Access to end-user!
 - “Red Shirt Officer in Away Team” Speculators
- Homogenization
- Cheapest
- Mismanaged
- Forward thinking
- Process simplification
- Connectivity

IS THIS BIG BUSINESS - "Uh, Yup!"

Airbnb

- 5 million lodging options
- Presence in 800 cities around the world
 - 1/5 of all the worlds cities

12-city U.S. sample

- Sept 2014, Host Revenue 78.1 Million
- Sept 2015, Host Revenue 124.3 Million (59.2% Increase)

Airbnb valued at between 30 and 38 **B**illion_(with a B) U.S. Dollars.

Happy 10th Birthday!

What's the driver?

NATURAL FORCES vs UNNATURAL FORCES

- Empty properties can earn \$\$\$ with minimal effort
- Free Market will dictate success
- Analysis
 - This is NOT a fad like Parachute Pants or Fidget Spinners
 - Hotel stays increasing 1.1% annually
 - Airbnb, VRBO, HomeAway DOUBLING in use year after year
 - Prediction by 2020 the BIG THREE will topple The Hotel Industry
- "Give it a Thought"
 - Consumerist6 2017 Study
 - On-line users utilizing lodging platforms
 - 50%+ surveyed didn't know the BIG THREE even existed
 - 40%+ availability of VHR's dictated vacation destination
- This industry is JUST GETTING STARTED

THE TRIFECTA

PERSONAL TESTIMONIAL

- *WIN - 1 / Percentage of rental fee*
- *WIN - 2 / Owner gets \$\$\$ from rental*
- *Win - 3 / Renter usually gets more and pays less*

People want the Get'n while the Get'ns good!

That's where we come in . . .

SOUTH DAKOTA CODIFIED LAW

- Chapter 34-18
Health Regulations of a Lodging and Food Service Establishments and Campgrounds
- SDCL 34-18-1 - Definition of Terms
 - *“Lodging Establishments - any building or other structure and property or premises kept, used, maintained or held out to the public to be a place where sleeping accommodations are furnished pay to two or more transient guest...included Vacation Home Establishments”*
 - *“Vacation Home Establishments - any home, cabin, or similar building that is rented, leased, or furnished in its entirety to the public on a daily or weekly basis for more than fourteen days in a calendar year and is not occupied by an owner or manager during the time of rental. This term does not include a bed and breakfast establishment as defined in subdivision 34-18-9.1(1).”*
 - *Rally Rule*
- *All Vacation Home Establishments are Lodging Establishments, but not all Lodging Establishments are Vacation Home Establishments.*

CLIFF NOTE VERSION

- Initial Inspection by SD Department of Health
- SD Sales Tax License
- SD Lodging License (1-year)
- Fire Safety Inspection
- Annual Inspection
- SD DENR - OSWTS
 - Overnight guests (2 per bedroom)
 - May restrict daily guests too

SDCL 34-18-22.3- Fire Safety Inspection

- Two or more remote exits on floors sleeping 10 or more occupants . .
- Primary exits to exterior shall be capable of unlocking from the interior without the use of a key . . .
- Smoke detectors in each bedroom / tested 2x year . . .
- Any sleeping room shall have operable egress windows . . .
- Fire extinguisher rated 2-A available on each floor / inspected and tagged annually . . .

OTHERS

- 34-18-10.1 / Application review
 - Approval or Denial and Why

- 34-18-10.2 / Closure
 - Failure to secure license
 - Continued operation - sent to appropriate State's Attorney

- 34-18-14 / Issuance of License when establishment in compliance
 - Application is:
 - Properly completed
 - Correct fee's have been paid
 - SDCL used the term "Himself" who, when satisfied that the establishment is in compliance issues the License.
 - What about Herself?

- 34-18-21 / Guest registration

- Name
- Number in party
- Permanent home address
- Vehicle description
- Date of check-in
- Date of check-out

Available for immediate inspection by Secretary of Health

WHY IMPORTANT?

- 34-18-25.1 / Yearly Inspection

- Shall take place during operational season and hours

- 34-18.27.1 / Grounds for denial, suspension, or revocation

- Fraud or willful misrepresentation on application
- Unlawful act within Lodging Establishment
- Conduct or practice detrimental to public health, safety, or welfare
- Failure to allow inspection
- Violation of any part of Chapter 34
- Failure to remit follow-up inspection payment

- 34-18-27.3 / Inspection upon complaint
 - After Inspection and determination of authenticity
 - Suspension, revocation, or denial

- 34-18-32 / Violation of chapter or rules or regulations
 - Class 2 misdemeanor
 - Each day of operation after service is a separate and distinct offense

PENNINGTON COUNTY ZONING ORDINANCE - SECTION 319

- Committee formed in 2014 to revise Ordinance
 - Met for two years
- 2016 - new version adopted
- Ways to get a VHR
 - Conditional Use Permit
 - \$370 - initial application
 - Plus mailings
 - \$100 - each review after initial 1-year review
 - VHR ONLY
 - Major Planned Unit Development Amendment
 - \$400
 - Plus mailings

More restrictive, but not more lenient

- Examples:
 - Landowner ultimately responsible
 - One (1) acre minimum
 - Prohibited in Special Flood Hazard Areas (Floodway)
 - Limited to five (5) bedrooms
 - Sale or Transfer of property/establishment
 - Notification, hearing letters
 - Hearing
 - Automatic one (1) year review
 - Local Contact
 - Must be within 50 miles driving distance
 - If changed - send notice to Planning Dept. and letters to landowners within 500 feet of property lines

- Use of RV's not allowed
- Must be 21 to rent
- Open Fires, Fire Pits, and Fireworks
 - Not without Local Contact or Landowners permission
- Maximum allowed daily guests
 - Double that of allowable overnight guests
 - Night guests not included in calculation
 - 5 overnight allowed
 - 10 day guests allowed
 - 15 allowed during day

- Interior Signage
 - Local Contact name and number
 - Max nightly guests
 - Max daily guests
 - Open Fires, Fire Pit, Fireworks information
 - Rules and Regulations of Establishment
 - Quiet Hours
 - Trash drop-off location and pick up day
 - Statement, "Guests are expected to be courteous to all neighbors and to respect property boundaries."
 - Property address
 - Special Flood Hazard Area map if property is located within one (1) mile of a Special Flood Hazard Area (Zone A or Zone AE)

WHERE IN PENN CO.

- Without CUP:
 - Highway Service
 - General Commercial

- Planned Unit Development - with Amendment under 319

- Prohibited
 - Heavy & Light Industrial

- With approved CUP
 - General Agriculture
 - Limited Agriculture
 - Low Density Residential
 - Suburban Residential

REMINDER -- ALL properties must be AT LEAST one (1) acre in size

COVENANTS - Not enforced by Penn Co . . . However, it MAY if . . .

- Covenants expressly and specifically excludes the use of a residence as VHR
 - Simply stating no commercial business is not enough

All are still required, at a minimum, to meet State Requirements

WHAT WE'RE SEEING

- Illegal operations
 - No CUP from Penn Co., but they do have State approval
 - VHR's with neither Penn Co or State approval, but with strong on-line presence and history
- Lots consolidation to meet one (1) acre minimum
 - Denial of Lot Size Variances to one (1) acre minimum requirement
- FEMA - Letter of Map Revision / LOMR
- Multi-Family Dwellings with owner living upstairs and wanting to rent out downstairs (also owner not on-site wanting to rent BOTH - turns into Specialty Resort per State)
- Retirement homes bought or built early - VHR to subsidize costs
- Covenants being updated to specifically state NO Vacation Homes
- Beds in hallways
- Neighbor complaints on existing VHRs - ongoing and weekly
- Neighbors "calling in" neighbors with illegal VHRs (out of spite or "fairness")

RECENT EXAMPLES PENN CO.

HOAs lot consolidations

Advertising more than allowed (Web - screen shot)

PUD

CUP

Court Cases

- Airbnb, HomeAway, VRBO - knowingly aiding owners in illegal activities
- VHR's are Commercial Operations
- Challenges to States/Cities with laws that are too restrictive

Saturation of market

Survival of the Fittest - Market will Regulate Itself

THE END



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