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*
- 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”

- Homogenization
- Cheapest
- Mismanaged
- Forward thinking
- Process simplification
- Connectivity
- Speculators
IS THIS BIG BUSINESS - “Uh, Yup!”

Airbnb
- 5 million lodging options
- Presence in 800 cities around the world
  - 1/5 of all the world's 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 Billion (with a B) U.S. Dollars.

Happy 10\textsuperscript{th} 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”
  - Consumerist 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 . . .
- 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 ORDIANCE - 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