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Boston short-term rental regulations condominium requirements included - by Christopher Malloy

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In June 2018, the Boston City Council passed an Ordinance aimed in large part at curtailing the ability of investors to purchase housing units for the purpose of renting the unit on short-term rental platforms, such as Airbnb. The Ordinance goes into effect on January 1, 2019, however there are certain grandfathering provisions which extend the effective date until September 2019 for those owners with existing short-term rental reservations.

While the Ordinance prohibits investors from renting units on short-term rental platforms, it allows homeowners and owner-occupants of multi-family dwellings to list their unit, or available rooms within their unit, provided they register as an “Operator” with the City’s Inspectional Service Department (“ISD”) and pay a yearly fee based on the nature of the rental. The Ordinance defines an “Operator” as a natural person who is the record owner of the residential unit that he or she seeks to offer as a short-term rental, and non-owner occupants are prohibited from offering short-term rentals of their leased units.

The Ordinance provides specific protections to condominiums by placing a further requirement that when a unit owner of a condominium registers with ISD, that unit owner must certify; (1) that they are the record owner of the condominium unit; and (2) that by offering the condominium unit for short-term rental under the Ordinance, such offering “complies with applicable condominium documents, bylaws, or other governing documents.” For condominium associations located within Boston’s city limits, the Ordinance’s registration requirements may provide a basis to regulate and restrict short-term rentals where existing governing documents either do not address minimum lease terms, or the association has been unsuccessful in amending its documents to include prohibitions against transient rentals, etc. Most condominium documents contain language requiring unit owners to keep their unit and maintain conduct in compliance with all applicable laws, codes, regulations, etc. In an instance where an investor has purchased a block of units within a condominium that does not have restrictions on transient rentals, boards in the City of Boston can base an enforcement action against investor-owners on their violation of the Ordinance. Depending on the circumstance,

this can be accomplished either by the board taking direct action against the unit owner (fines, demand notices, claim for injunctive relief, etc.), or by reporting the violation to the City. Generally speaking, however, boards should proceed cautiously when choosing to report the potentially illegal activity of a unit owner to a local, state, or federal authority, unless and until they can document and substantiate the violation.

Further Protections for Condominiums

The Ordinance requires that an Operator retain their rental records for three years and make those records available to the City to demonstrate compliance with the Ordinance. Operators are required to submit: (a) records demonstrating number of months that Operator has resided or will reside in the Unit; (b) records showing that Operator is the record owner of the unit; and (c) records demonstrating number of days per year that unit is offered as a short-term rental. Such records should be available for inspection at ISD, which may provide condominium boards access to the documentation necessary to substantiate a suspected violation of a condominium's restrictions on transient rentals when other means of proof are lacking.

Operators are further required to provide written notice to all abutters of their intent to offer short-term rental within thirty days of an approved registration, and must also include their ISD registration number on any listing offered. While not specifically defined in the Ordinance itself, abutters in the condominium setting would likely include other unit owners, and could extend to the board as well. As a consequence of a condominium unit owner failing to provide the required notice to abutters, boards may have additional grounds to support an enforcement action against that unit owner for their failure to adhere to local law. Boards should also be aware that a registration is tied to both the unit and the Operator, and the registration may not be transferred upon the sale of the unit so any subsequent unit owner would need to start the registration process over as the selling unit owner's registration would become void. Registrations are good for one-year and the regulations require annual registration with ISD to verify compliance with the provisions of the ordinance and to pay the applicable annual license fee.

While the new regulations pertain only to the City of Boston, many other cities and towns are in various stages of evaluating and implementing similar restrictions which will likely share similar provisions and characteristics with the City's model. Depending on where you live, laws and regulations will vary, however condominiums who are unable to generate enough support to implement transient rental restrictions, these developing regulations may provide the support necessary to curtail short-term rentals within their communities.

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