

NEW SHARING ECONOMY

Legal Analysis: Airbnb

It does not appear that public lodging establishments are required by law to have general liability, property or other insurance coverage, although most conventional establishments procure such coverage as a basic risk mitigation strategy and as a requirement of lending and other commercial relationships they maintain.

However, Airbnb rentals are likely subject to regulation by the State of Florida as "public lodging establishments." A "public lodging establishment" is defined to include any "transient public lodging establishment," which means "any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests." Fla. Stat. § 509.013(4)(a)1. "Public lodging establishments" are likewise broken down into hotels, motels, vacation rentals, nontransient apartments, transient apartments, bed and breakfast inns, and timeshare projects for purposes of licensure and regulation. An Airbnb rental would likely be considered a "vacation rental," which are defined as "any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project." Fla. Stat. §509.242(1)(c). Vacation rentals, like all public lodging establishments, are subject to licensure, inspection and regulation by the Department of Business and Professional Regulation's Division of Hotels and Restaurants. Chapter 509 of the Florida Statutes and implementing regulations by the Division of Hotels and Restaurants requires that public lodging establishments generally or transient public lodging establishments specifically comply with the following requirements:

- Obtain a license from the Division as a "vacation rental dwelling" or a "vacation dwelling condominium" and pay the applicable fee upon application for the license. The owner must conspicuously display such license or have readily available for inspection upon request. Fla. Stat. §§ 509.241, 509.251; Fla. Admin. Code r. 61C-1.002(1).
- Equip each bedroom or apartment with an approved locking device on each door opening to the outside, to an adjoining room or apartment, or to a hallway. Fla. Stat. § 509.211(1); Fla. Admin. Code r. 61C-3.001(4).
- Refund the unused portion of a prepaid rental amount if the operator of notifies a guest

that the establishment no longer desires to entertain the guest and requests that the guest immediately depart from the establishment. Fla. Stat. § 509.141(2).

- Provide notice of any surcharges/fees imposed for telephone calls. Fla. Stat. § 509.2015.
- Provide in the main public bathroom soap and clean towels or other approved hand-drying devices and each public lodging establishment shall furnish each guest with two clean individual towels so that two guests will not be required to use the same towel unless it has first been laundered. Fla. Stat. § 509.221(5).
- Provide a bed, bunk, cot, or other sleeping place for the use of guests with clean pillowslips and under and top sheets. Sheets and pillowslips shall be laundered before they are used by another guest, a clean set being furnished each succeeding guest. All bedding, including mattresses, quilts, blankets, pillows, sheets, and comforters, shall be thoroughly aired, disinfected, and kept clean. Fla. Stat. § 509.221(6).
- If the establishment is 3 or more stories tall, have safe and secure railings on all balconies, platforms, and stairways, and all such railings must be properly maintained and repaired. Fla. Stat. § 509.211(3). A certificate of inspection must be filed with the Division. Fla. Stat. § 509.2112; Fla. Admin. Code r. 61C-3.001(5).
- If the establishment is 3 or more stories tall, have an automatic sprinkler system and approved listed single-station smoke detector active in each guest room. Fla. Stat. § 509.215.
- Handling, cleaning, and sanitizing of glassware, tableware, and utensils in public lodging establishments occur in compliance with the State Food Code, as adopted by reference in Fla. Admin. Code r. 61C-1.001, or provide an explicit notice that they have not been sanitized according to federal and state standards for public food service establishments. Fla. Admin. Code r. 61C-3.001(1).
- Provide ice-dispensing utensils. Fla. Admin. Code r. 61C-3.001(3).

Additionally, Florida imposes a 6.00% transient rentals tax on persons who engage in the business of renting transient accommodations. Anyone engaged in the business of renting or leasing living quarters or sleeping or housekeeping accommodations in hotels, apartment and rooming houses, motels, tourist or trailer camps, multiple unit structures (duplex, triplex, condominiums), single family dwellings, garage apartments, beach houses or cottages, cooperatively owned apartments, mobile homes, or timeshare resorts must register as dealers and collect and remit taxes. Each room or unit within a multiple unit structure is an accommodation. Fla. Stat. § 212.03; Fla. Admin. Code r. 12A-1.061. Transient rentals are also subject to discretionary sales surtaxes, local option tourist development taxes and convention development taxes imposed by various counties.

Unfortunately, we see nothing in these regulations that would create an economic hardship or an Airbnb provider, or which would be inconsistent with their business model. While undoubtedly a number of providers do not comply with these regulations, we see no reason why they could not.

Interestingly, Airbnb's website contains information on regulatory requirements in the different localities where they do business. Immediately below is a link to the Orlando page.

<https://www.airbnb.com/help/article/874>.