

Airbnb: Legal tips for property owners

If you have looked at booking holiday accommodation recently chances are you have come across Airbnb or maybe you know someone who rents out their spare room and is always talking about the extra money they are making.

But what is Airbnb exactly, how does it work and what are the potential pitfalls and legal implications of making money out of your spare room on a casual basis?

What is Airbnb?

Airbnb styles itself as a “Community Built on Sharing” and an easy way in which people can make money from their extra space. The idea of making money out of spare space or an empty property is not new. The difference with Airbnb is that both hosts and guests must create a profile which is rated after every stay. So both hosts and guests are rated.

Airbnb started in San Francisco in 2008 and from quite modest beginnings has grown to a worldwide network of both hosts and guests with in excess of 2 million listings in over 34,000 cities worldwide. Airbnb claims to have had in excess of 60 million guests use its services.

So how does it work?

Both hosts and guests start by creating an Airbnb profile. If you are planning to host you then add details of the accommodation you wish to offer.

Accommodation options currently offered on Airbnb range from rooms in private home with shared facilities through to sole use of a castle and everything in between.

The price for the accommodation is set by the host and Airbnb add a service fee to every booking.

Is it legal?

When you sign up as a host on Airbnb you agree, under the terms and conditions that any accommodation you list will not breach any lease or rental agreements or any homeowners’ association rules and that you are complying with all applicable zoning laws that govern the renting of residential properties. But is this true?

At the present time whether you are likely to run into strife with your local council will depend on where you live and whether your neighbours lodge a complaint about you, as Mr Wally Salinger, a resident in the popular inner west suburb of Annandale in Sydney recently found out.

Mr Salinger recently received a notice from his local council threatening him with a \$1.1 million fine for using his home as an Airbnb rental after a neighbour lodged a complaint. Mr Salinger sought advice from the council as to what he needed to do to make sure his property could be legally rented out on Airbnb but met with a brick wall in terms of any clear solution.

Presently different council areas have different rules governing what they will and won't allow in terms of home sharing and short term rentals. There is pressure on state governments to clarify the rules around home sharing so that there is consistency. Some councils will allow bed and breakfast arrangements (with appropriate approvals) and some councils prohibit these types of short term rentals altogether.

In Victoria and other states there is also a similar level of uncertainty. Although a recent decision of the Victorian Civil and Administrative Tribunal ("VCAT") may bring some comfort to would be Airbnb hosts.

VCAT recently held that the owner's corporation at the Watergate Apartments located in Melbourne's Docklands area did not have the power to make a rule which prohibited stays of less than 30 days paving the way for Airbnb style rentals to be permitted in that particular complex.

What about insurance?

While noting on its website that it provides a "Host Guarantee" for certain types of damage done to a host's property, Airbnb's terms and conditions stress that any agreement between a host and a guest is strictly between those parties and that Airbnb is simply a limited authorised payment collection agent for the host for the purpose of accepting the guest's payments.

Airbnb recommends that hosts obtain appropriate insurance for any accommodation they are offering and also that hosts review their insurance policies to make sure the insurance coverage extends to the property when it is being rented out.

Importantly, the Host Guarantee is not insurance and should not be considered to replace the host's own home or renters insurance. The Host Guarantee does not protect cash and securities, pets and personal liability and certain types of property such as jewellery and artwork have more limited protection than say furniture.

What if someone is injured while staying at an Airbnb property?

A recent tragedy at an Airbnb rental in Texas highlighted the potential issues that can arise with this type of rental. In a tragic accident a man died after a tyre swing that he was sitting on fell when the tree trunk that it was tied to broke in half and fell on the man's head.

In that particular instance the man's family did not pursue a claim against Airbnb as the host's homeowner's insurer responded to the claim and there was no commercial activity exclusion on the policy. If the host's insurance policy had not responded then the host could have faced potential financial ruin if a claim had been made by the family. Whether a claim against Airbnb would have succeeded remains untested.

It is always best to check first

If you are thinking of renting your home out for short term accommodation it is important to sort out all necessary insurances and permits before you offer the accommodation to potential guests. As regulations vary widely between local government areas it is always a good idea to seek legal advice first rather than waiting until a complaint or some other problem arises.

If you or someone you know wants more information or needs help or advice, please contact us on (03) 9459 5764 or email admin@rtlegal.com.au.