

Lasser Law Group | Real Estate, Construction & Litigation Attorneys

Illegal Short-term Rentals

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Court Awards \$25,000.00 Due to Illegal Short-term Rental Based on Restrictions in Governing Documents

As you may have read in our prior Airbnb blog articles, short-term rentals of less than 30 days, in multiple dwelling buildings, have been illegal in New York since 2010. Furthermore, in response to continued short-term rentals, despite their illegality as of 2010, the law was further amended in 2016 to prohibit the advertising of short-term rental services on services such as Airbnb, HomeAway, and Vrbo. Unfortunately, the government agencies responsible for enforcing these laws have not done so except under extreme circumstances where entire buildings or floors of buildings are being carved up and rented out like hotel rooms. This has left condominiums and HOAs to fend for themselves and having to rely on their governing documents to police such illegal conduct, often without being able to obtain adequate relief through the court system.

However, a recent court decision demonstrates a potential shift in the judicial remedies available to prevent and stop existing short-term rentals in condominiums and HOAs, which often become a nuisance. In a HOA located on the shores of Lake George, the Mayfair Resort Homeowners Association and its residents became victims of a homeowner's continued short-term renting of his home to large groups who held loud parties, littered the surrounding community, and were responsible for the destruction of personal and community property. Despite the HOA's governing documents limiting rentals to one-year terms and unequivocally prohibiting daily, weekly, or monthly rentals, one homeowner, the eventual defendant, continued to rent his home on a short-term basis. Despite numerous attempts by the HOA to have the defendant discontinue the practice, the short-term rentals continued, and the HOA was left with no other recourse but to file a lawsuit to block this behavior.

The court in the Mayfair case granted a temporary and eventual permanent injunction preventing the defendant from engaging in short-term rentals in violation of the HOA's governing documents and, when the defendant ignored the court injunction and continued to rent his home on a short-term basis, the HOA took him back to court and the court then ruled that the defendant was in contempt and required the defendant to reimburse the HOA's attorney fees and criminally fined the defendant an amount equivalent to his rental income of \$25,000.00.

In light of this new precedent penalizing a homeowner for his illegal short-term rental, boards should evaluate their governing documents to ensure they have restrictions against short-term rentals or should consider amending them if they are deficient and, if warranted, take legal action.

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