

Goodmans^{LLP} Update

What You Need to Know About Toronto's New Short-Term Rental By-Laws

This week, the Local Planning Appeal Tribunal (LPAT) dismissed an appeal of two City of Toronto zoning by-laws that regulate short-term rentals, such as those arranged through Airbnb and VRBO. The zoning by-laws were originally passed by City Council in December 2017, but their implementation was delayed pending an appeal to the LPAT by a group of short-term rental operators. As a result of the LPAT's decision, the zoning by-laws are in force and the City has stated that it will provide further information about the implementation of the new regulatory regime in December 2019.¹

The following provides an overview of the City's new rules governing short-term rentals. The new regime permits short-term rentals in the principal residence of any owner or tenant in residential and mixed-use zones, subject to a number of restrictions that are intended to balance a variety of competing policy objectives, including the City's concerns about a lack of private rental housing.

Background

According to the City, Toronto's vacancy rate for private rental housing in 2017 was 1.3%, its lowest for the past 10 years. The vacancy rate for condominiums was even lower, at 1%. In Toronto and other major metropolitan areas, such low vacancy rates, combined with busy tourist seasons, have led to significant increases in short-term rentals. With the rise of companies such as Airbnb and VRBO, it has become easier for owners and renters to connect and enter into private rental arrangements. Airbnb disclosed to the City that from 2014 to 2016, the number of Airbnb listings in Toronto tripled.

In 2016, City staff estimated that there were approximately 3,200 properties rented on Airbnb that were not the principal residence of the operator. City staff concluded that adding even half of those units back into the long-term rental housing market could improve Toronto's rental vacancy rate.

With the foregoing considerations in mind, the City decided to implement a regulatory regime governing short-term rentals.

The Short-Term Rental By-Laws

The City's short-term rental regime is comprised of three elements: (i) zoning by-laws, (ii) a licensing and registration program for short-term rental operators and companies, and (iii) taxation of short-term rental operators.

Zoning By-Laws

The short-term rental zoning by-laws only allow persons or companies to operate "short-term rentals" in a prescribed set of circumstances.

A "short-term rental" is defined as all or part of a dwelling unit that is (i) used to provide sleeping

¹ The LPAT decision remains subject to a potential appeal to the Divisional Court, with leave of that Court, or a request for review by the Chair of the LPAT.

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accommodations for a rental period not exceeding 28 days, and (ii) that is the “principal residence” of the party operating the rental. A “principal residence” is defined as a “dwelling unit owned or rented by an individual person, either alone or jointly with others, where the individual person is ordinarily resident.” Both homeowners and tenants are permitted to rent their principal residence on a short-term basis.

Subject to potentially unresolved issues relating to legal non-conforming uses (discussed below), the requirement that a short-term rental unit be a “principal residence” is significant because it prohibits a person from purchasing or leasing a dwelling unit for the *sole purpose* of offering it for short-term rental accommodation year-round. It also prevents a person from maintaining multiple listings on Airbnb or VRBO.

A short-term rental is a “permitted use” if the rental is for the entire residence or up to three bedrooms within a principal residence. Short-term rentals are also permitted in secondary suites, provided that the secondary suite is the operator’s principal residence. A short-term rental operator is only permitted to rent out their entire residence up to a maximum of 180 nights per year.

Licensing and Registration of Short-Term Rentals

Any person who intends to advertise or offer their principal residence for rent on a short-term basis is required to register and obtain a licence to do so from the City of Toronto’s Municipal Licensing and Standards department. Each licence will be valid for one year and will need to be renewed within 90 days of the renewal date.

To register a property for short-term rental use, the operator is required to provide some basic information to the City, make a declaration that the rental address is their principal residence, and keep records of all short-term rental activity, which must be provided to the City upon request. The operator must also provide emergency information to all guests, provide contact information of a person available by phone 24 hours a day, and pay an annual registration fee of \$50.

Short-term rental companies, such as Airbnb and VRBO, are subject to additional requirements. A short-term rental company must ensure that each of its listings has a valid registration number, develop a procedure to mitigate nuisances, and provide information to the City about short-term rental activity. Short-term rental companies are also required to pay a \$5,000 one-time licence application fee and a \$1 fee for each night booked.

Taxation of Short-Term Rental Operators

Short-term rental operators and short-term rental companies are required to pay a 4% Municipal Accommodation Tax on all rentals for a period of less than 28 consecutive days. Short-term rental companies that maintain a number of listings, such as Airbnb, are permitted to come to an agreement with their individual operators to collect the tax on the operators’ behalf.

The Unresolved Issue of Legal Non-Conforming Use

One issue that appears unresolved is whether dwelling units that were used for short-term rentals at the time the new zoning by-laws came into force are exempt from the new regulations on the basis that those dwelling units are operating as a legal non-confirming use under the *Planning Act*.

Pursuant to section 34(9) of the *Planning Act*, no new zoning by-laws can be applied to prevent the continued use of a piece of land, building or structure if that land, building or structure was used lawfully for that purpose on the day the new zoning by-laws came into force. The LPAT denied the appellants’ request to make a finding in this instance as to whether existing short-term rentals could be considered legal non-confirming uses. Rather, the LPAT concluded that it did not have jurisdiction to make such a finding in this appeal and that the issue of legal non-confirming use “must be based on the unique circumstances of each case”. In doing so, the LPAT may have left the door open for persons who operated short-term rentals at the time the new short-term rental amendments were enacted to argue that their units meet the requirements for legal non-confirming use under the *Planning Act* and, therefore, are exempt from the application of the new short-term rental provisions.

Other Restrictions on Short-Term Rentals

Toronto's by-laws are not the only source of restrictions for those wishing to offer short-term rentals. Tenants remain subject to the terms of their lease agreements, which may include restrictions on assignment and sub-lease, including for short-term rental purposes. Further, condominium owners and tenants leasing condominium units may be subject to restrictions on short-term rentals under their condominium Declarations or the rules and by-laws enacted by their condominium corporation.

Section 58(1) of the *Condominium Act* empowers condominium boards to enact rules respecting the use of units that promote the safety or welfare of the owners and property of the condominium corporation, or prevent unreasonable interference with the use and enjoyment of the units or the common elements of the condominium. Such rules must be consistent with the *Condominium Act*, the condominium Declaration and the corporation's by-laws.

Any rules passed under a condominium Declaration must also comply with all applicable zoning by-laws. As a result, while a condominium's rules cannot be more permissive than municipal by-laws, they can be more restrictive, and Canadian courts have held that condominium rules may be used to prohibit short-term rentals, so long as the proposed rules are consistent with the condominium's Declaration. Accordingly, condominium owners and tenants must consider not only the new regulations but also their condominium's Declaration and rules when determining whether they are permitted to operate a short-term rental from their principal residence.

Consequences for Short-Term Rental Operators

Following the LPAT's decision, short-term rental operators will find their businesses subject to a variety of new rules, licensing requirements and costs. In particular, the requirement that a short-term rental unit be located in the operator's principal residence means that the use of a dwelling unit exclusively for short-term rentals will no longer be permitted. Additionally, the imposition of annual registration fees and the Municipal Accommodation Tax could make offering a short-term rental more expensive. Short-term rental companies, such as Airbnb and VRBO, will be subject to those base costs, in addition to the one-time \$5,000 application fee for each listing and the ongoing fee for each night booked. However, several issues remain unresolved, particularly whether dwelling units that operated as a short-term rental unit at the time the new by-laws were enacted are exempt from the new zoning restrictions on the basis that they are a legal non-conforming use. Condominium owners who are considering offering short-term rentals should consult the applicable municipal by-laws and any applicable rules passed by their condominium corporation.

For more information concerning Toronto's new regulatory regime, please contact any member of our [Litigation Group](#) or [Municipal Law Group](#).