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Legal considerations for online rentals in the Airbnb age

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Airbnb, a privately owned California-based corporation founded in 2008, has played a major role in revolutionizing the travel industry through the establishment of a user-friendly and secure Internet-based system for people to list, find and rent lodging in approximately 30,000 cities in 190 countries. With the alluring possibility of using websites such as Airbnb to find the perfect travel accommodations at extremely competitive rates, or to rent your own fabulous cottage or apartment that you're not using anyway, it's no wonder it has become common place to do so.

Indeed, renting out your apartment, ski chalet or spare bedroom seems like a wonderful idea: you can make some extra money, maximize the efficient use of your assets and meet travellers from all over the world. However, some scenarios make Airbnb-like rentals sound less ideal: what if your neighbour rents to loud, drunken out-of-towners every weekend? What if your new tenants set your home on fire? And finally, is it fair for the nice couple who have been saving for years to open a Bed & Breakfast and who must face a heavy regulatory burden to do so? As Airbnb and other short-term rental websites grow in popularity in Canada and worldwide, there has been an increasing amount of questions surrounding whether these "Airbnb rentals" are in fact legal. And attempts by Quebec legislators to clarify the legal framework surrounding vacation home rentals have sparked a heated debate as to how these sites and their users should be regulated.

1) Legislative framework

In Quebec, hotels, Bed and Breakfasts, etc, must hold a tourist accommodation certificate given out by the Ministry of Tourism. The *Act respecting tourist accommodation establishments*¹ (the "Act") and the accompanying *Regulation respecting tourist accommodation establishments*² set out the rules regarding these certificates. In particular, the definition of a tourist accommodation is "any establishment operated by a person who offers to rent to tourists, in return for payment, at least one accommodation unit for a period not exceeding 31 days". However,

“accommodation units rented on an occasional basis” are excluded from the certificate requirement.

The arrival of Airbnb-style rentals has focused the debate on the meaning of “occasional”. The above exception was most likely meant to allow people to rent out their home without a penalty for the occasional special event. However, the tourism industry has begun to complain about increased competition by “professional” renters, who either own homes specifically to rent them out full-time or rent out their own home on a regular basis, such as every weekend while they visit their chalet. These people, according to the tourism industry, are illegally avoiding the regulatory burden that comes with the certification process and provide unfair competition to traditional tourist establishments.

In this context, the Quebec legislature introduced Bill 67³ in an attempt to clarify the requirements and create a fair ground for all tourist accommodations. The Bill adds a definition of “Tourist”, which is “a person who takes a leisure or business trip, or a trip to carry out remunerated work, of not less than one night nor more than one year outside the municipality where the person’s place of residence is located and who uses private or commercial accommodation services”. In addition, municipal authorities are given the right to approve or deny any new certificate requests in accordance with local regulations. However, the Bill does little to address the ambiguity surrounding what constitutes an “occasional rental”.

Although some may be tempted to ignore the certificate requirement, non-compliance can have serious consequences. If a person is found to be operating a tourist accommodation without a certificate, they can be subject to a fine ranging from \$750 to \$2,250 for each day, and \$2,250 to \$6,750 per day for a repeat offense.⁴

In addition, renting out your home might warrant scrutiny by tax authorities. Income derived from renting out your home should be declared, just as any other source of income. And, if a person makes more than \$30,000 over a period of twelve months, they must be registered to collect provincial and federal taxes. Moreover, Quebec has a specific tax on lodging, which must be charged by all tourist accommodations as defined in the Act.

Finally, in renting out a residence, one should consider whether the renter’s insurance policy (and/or the website’s own insurance coverage) would cover any damage caused by temporary tenants. One

should also verify whether short-term rentals are prohibited by municipal regulations in the area in question.

2) Specific issues for co-ownerships and tenants

While renting out a home is often possible, subject to the above requirements, tenants and condominium owners face their own set of challenges.

As a tenant, renting your home to strangers for a weekend for profit is considered sub-leasing under Quebec law and, as such, requires your landlord’s consent, in theory, for every single person you bring into your home. Recent court decisions have shown that the courts take this requirement seriously. Although few tenants have been evicted, several decisions have issued stern warnings that the tenants would be evicted if their activities continued. In one instance, the Quebec rental board terminated a lease, and dismissed the tenant’s arguments to the effect that she was only occasionally renting, and her online availabilities only indicated seventeen days.⁵ Furthermore, if you are planning to rent a home for the sole purpose of renting it out short-term, please note that you will need your landlord’s consent in writing and you may be subject to the rules for commercial, non-residential leases.⁶

While you may think that, as an owner, you can do whatever you want with your home, condominium owners should bear in mind that their condo regulations may prohibit short term rentals. Your neighbours may not be comfortable with strangers being in the building, your temporary tenants may not always display the level of mindfulness expected in shared living spaces, and disputes between neighbours regarding short-term rentals of a condo unit can quickly turn bitter. In one case addressed by the court of Quebec,⁷ a woman operated an unofficial “B&B” and her tenants’ behaviour prompted her co-ownership to institute proceedings ordering her to stop. Although her declaration of co-ownership did not specifically forbid short-term rentals at the time, the court ruled in favour of the co-ownership, noting that the building’s “destination” (a legal concept which means the building’s purpose or intended use) was residential and that short-term rentals went against this clearly stated destination. Explicitly restricting or forbidding short-term rentals is a growing trend in declarations of co-ownership and condo by-laws, and is something condo administrators should bear in mind in order to ensure peaceful cohabitation.

3) Conclusion

While Airbnb and other similar websites can be fantastic tools to find pleasant accommodations, connect with people around the world, and efficiently use an extra bedroom or cabin, there are legal requirements to bear in mind. The Tourism industry in Quebec is heavily regulated. The increasing use of Airbnb-like websites by co-owners and residential tenants further warrants careful consideration when preparing both Declarations of Co-ownership and residential leases, in order to avoid unpleasant surprises.

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1. CQLR c- E-14.2.
 2. Ibid, r 1.
 3. Bill n° 67: *An Act mainly to improve the regulation of tourist accommodation and to define a new system of governance as regards international promotion*, assented to Dec 2, 2015.
 4. Section 38 of the Act.
 5. *Hamlet v. Khiari*, 2014 QCRDL 44275.
 6. *Achard c. Laberge-Ayotte*, 2015 QCRDL 15312.
 7. *Syndicat de copropriété Chateau Esplanade v. Carvalho*, 2013 QCCS 5952.

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