



Condominiums and Short- Term Rentals

(Risky Business? ... Are You Prepared?)



The short-term condominium rental market is not a new fad or phenomena. It has been around for decades in North America. With the growth of condominiums, particularly in the Greater Toronto Area (GTA), the demand and competition for such product is getting very aggressive and everyone has an opinion; good, bad, and sometimes ugly.

Background

Historically, short-term rentals were arranged and managed through a few sources such as realtors and specialized placement firms. Condominium by-laws, rules and municipal laws were often mute on the issue.

Developers saw the growing trend especially in Toronto and capitalized by building, 'specific use' short-term rental condominiums and mixed use condominium hotels. These developments are specifically designed, zoned and created for this

purpose. The designated use is disclosed in advance to all buyers and outlined in the condominium declaration. Accordingly, these sites are considered legitimate short-term use properties.

Current State

The trend of short-term use rentals has grown substantially worldwide as a natural alternative to hotels and licensed bed and breakfast establishments. Websites marketing condominium units, underground parking spaces and even lockers to the general public are readily available.

Given the sustained growth in the population of the GTA, the trend of short-term rentals will only become more prevalent. Affecting this trend even further are events such as: the upcoming Toronto PanAm Games in July 2015; and the popularity of the Toronto events such as the International Film Festival, the Canadian National Exhibition, the Caribbean Car-

nival Parade, and the Gay Pride Parade.

Needless to say, the hotel and licensed B&B industries are not happy with the prevalence of short-term rentals edging into condominiums. Neither are condominium property managers nor governing boards that have to deal with the complaints and aftermath of such rentals in buildings where prohibited. The rewards can be good and sometimes great. The risks can be high. However, the question begs, "Is this practice legal?"

Gerry Miller is the managing partner of Gardiner, Miller, Arnold LLP and a subject matter authority on condominium law in Ontario. His firm manages a large portfolio of condominium corporations in the GTA. Mr. Miller states,

"We get this question a lot from our clients. It is not a question of whether short-term rental companies are legal. Companies that engage in marketing

short-term rentals are legitimate businesses legally operating to capitalize on these growing markets.

However, a condominium board of directors has a duty and obligation to enforce the declaration, by-laws and rules of their condominium community. Part of the board's duties and that of the corporation's property manager is to analyze all risks and protect their communities from the negative impacts of those risks. That is why virtually all condominium corporations have rules as it relates to the leasing of units.

The problems arise when owners, and sometimes tenants without the knowledge of owners, rent out condominium units on a short-term basis in buildings where there are specific prohibitions against short-term rentals and/or do not register the tenants with property management.

Condominiums with time limitations on rentals have communities that expect stable, longer-term tenancies. It's up to the boards and property managers to ensure compliance, meet the expectations of their communities and to manage risk.

In buildings with prohibitions on short-term rentals, it is recommended to condominium owners that they avoid engaging in this type of activity and it is further advised that the boards and property managers have zero tolerance if owners or tenants are breaching the corporation's rules or declaration and to be aware of the consequences of allowing such activity to occur."

What's Next?

There is no doubt that this trend will not only continue, but will grow. In 2011, New York City implemented a ban on all short-term rentals (aka: the "Illegal Hotel Law") in any residence less than thirty days. Quebec has also implemented similar measures. Heavy fines and other measures have not only been levied against the owners/tenants involved, but condominium corporations as well for allowing it to occur.

It is highly likely and anticipated that GTA authorities from all levels of government will follow their counterparts in larger cities around the world and start clamping down on people who engage in such enterprises in areas where it is prohibited.

The Impact of Short-term Rentals on Condominium Communities

The Good

Where allowed and after full disclosure to all owners through the declaration, by-laws and rules, short-term rentals provide an environment that assists municipalities in accommodating travellers and visitors. It also engages individual unit owners as participants in the growing urban landscape. It also can provide snowbirds with income while they are away. Managed properly and professionally, the consensus is that this type of business adds a lot of value to municipalities and communities.

The Bad

In communities where prohibited, even uttering the words, 'Short-term Rental' to a property manager, a board member or security provider can send shivers up their spines. Why? Frankly, it's all about risk.

Negative consequences of illegal short-

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term rentals can stigmatize communities, negatively affect the brand of a condominium, create ill feelings, even provoke lawsuits between residents with competing agendas, and leave frustrated neighbours with a sense of helplessness in dealing with the high frequency unknown neighbours.

Regardless of the trend towards anonymity in major urban communities worldwide, people feel more comfortable when there is a greater sense of safety and security. Short-term rentals can create a, 'hotel-like'/'bed and breakfast' atmosphere that is not consistent with the intended use, zoning or the expectation of the population of a condominium community. The anonymity and transient feel that can be associated with shorter term rentals is often unwelcome in these communities. High resident turnover and increased community anxiety is the unfortunate negative result of illegal short-term rentals.

The Ugly

Unauthorized short-term renters are often not prequalified by the property owner/ tenant, are not known to anyone in the community and almost always remain unregistered with property management. Unbeknownst to some property owners and property managers, tenants have re-rented units, parking spaces and even lockers to non-residents.

There are an alarming number of stories revealing a disturbing and ugly underbelly of this type of business especially in communities where such activity is strictly prohibited. Countless cases have been reported worldwide to police, municipalities, tax agencies, insurance companies, mortgagees, landlords, etc. where, albeit with the best intentions, things have gone very wrong.

Damage to property, amenities, and neighbouring properties, wild parties, voiding of insurance, neighbor complaints, police attendances, fights, domestic related violence, prostitution, renter refusals to leave, noise complaints, disorderly activity, and criminal behavior are just some of the reported occurrences.

Potential renters in some cases are not

what they appear to be. There are cases, albeit rarely disclosed, where condominiums are being rented by the hour and used as bawdy houses for prostitution. These are not in seedy areas but in some of the A+ buildings in the GTA.

And what about the renters? What about their rights? In cases that occur more often than not, the people that rent out short-term rental units report becoming

unknowing victims themselves when arriving at condominiums communities that prohibit such activity and who have a plan in place to bar access to the building. Trying to find accommodation after being barred entry, particularly in a saturated market because of a major event, can ruin a vacation.

The hangover is often a very time consuming, costly and embarrassing affair.



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Insurance

Condominiums in Ontario have multi-layered insurance policies to protect the corporation, the owner and the tenant.

All three have different requirements and coverage needs. In all cases, disclosures to the insurer must be made on the designated use of the property.

The primary use of a condominium unless otherwise zoned and municipally approved, is strictly for single family use designation. In most condominiums, property managers require insurance policies from all owners who elect to rent out their units. The question often asked is, “Does a deviation in the intended use of a condominium void insurance?”

Gary Strange is an independent insurance broker with First Durham Insurance and Financial Ltd. He is a 32 year veteran of the insurance industry and specializes in condominiums in the GTA. He advises,

“Condominiums are unique and unlike any other type of property when it comes to insurance. Each insurance policy has statutory conditions outlining the intended use of the property among other things.

In cases where a designated use is changed, it must be reported in advance to the insurer (e.g. from owner occupation to a rental property). Where the actual use is prohibited or not disclosed, this could result in a material misrepresentation or nondisclosure and unfortunately an insurance claim could be denied. This includes condominium corporations that have insurance but, regardless of prohibitions on short-term rentals, allow such activities.”

Other Considerations

The following are important factors to consider before engaging in short-term rentals:

Mortgages

Lenders to condominium purchasers require the designated use of the property to be disclosed prior to funds being cleared and advanced. Any change of a designated use must be disclosed to the mortgagee.

Tax Compliance

There is an urban myth that engaging in short-term rentals is tax exempt; report-



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ing such an activity is unnecessary, as the activity is more hobby than business, and no one is tracking these smaller businesses. Before anyone engages in such an activity, the best advice comes from legal and tax experts.

Such considerations include:

- HST on rentals
- HST on the purchase / sale of a unit
- Income tax
- Municipal taxes (more expensive for commercial properties)
- Capital gains

Residential Tenancies Act

This is a provincial law that governs residential tenancies in Ontario. This law specifically prohibits current tenants from re-renting (subletting) a property without advising the property owner:

97. (1) A tenant may sublet a rental unit to another person with the consent of the landlord. 2006, c. 17, s. 97 (1).

A growing trend is forming where tenants re-rent (a form of subletting) condominium units on a short-term basis without the knowledge or consent of the owner or notifying property management.

Regulatory Compliance & Licensing (Hotel / B&Bs)

Short-term rentals often are considered a ‘bed-and-breakfast’ or ‘hotel-like’ style accommodation. The hotel/ B&B industry in Ontario is heavily regulated in Ontario.

Health and safety compliance as well as licensing and the registering of guests feature prominently in the mandate of hotels and B&B’s. Municipal licensing is also required to operate hotels and B&B businesses. Noncompliance with any of these municipal and provincial requirements can result in substantial consequences to the owner of a condominium unit and possibly the corporation.

Zoning

Municipalities designate or, ‘zone’ areas and specific properties before they are developed and built. Any change to the designated use of a property must be approved by the municipality. The consequences of short-term rentals may impact the zoning of an individual unit and a community. Levies and fines may apply set out by municipalities.

Conclusion

It is inevitable that the discussions and opinions regarding short-term rentals will continue and that this type of business will grow. The question that has to be asked is, “What type of community do you want?”

Board members and property managers should be ready for the highly likely circumstances of short-term rentals occurring at their sites and should reach out to lawyers and subject matter experts on this topic for advice. Plans should be finalized well in advance to address this issue. The time to start preparing for and addressing short-term and unregistered rentals in your community is not when they actually occur. **CV**