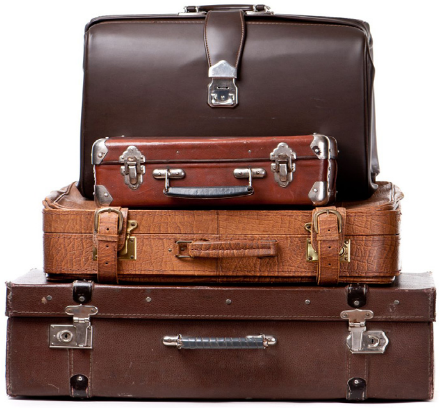
THE LONG AND SHORT OF SHORT-TERM RENTALS



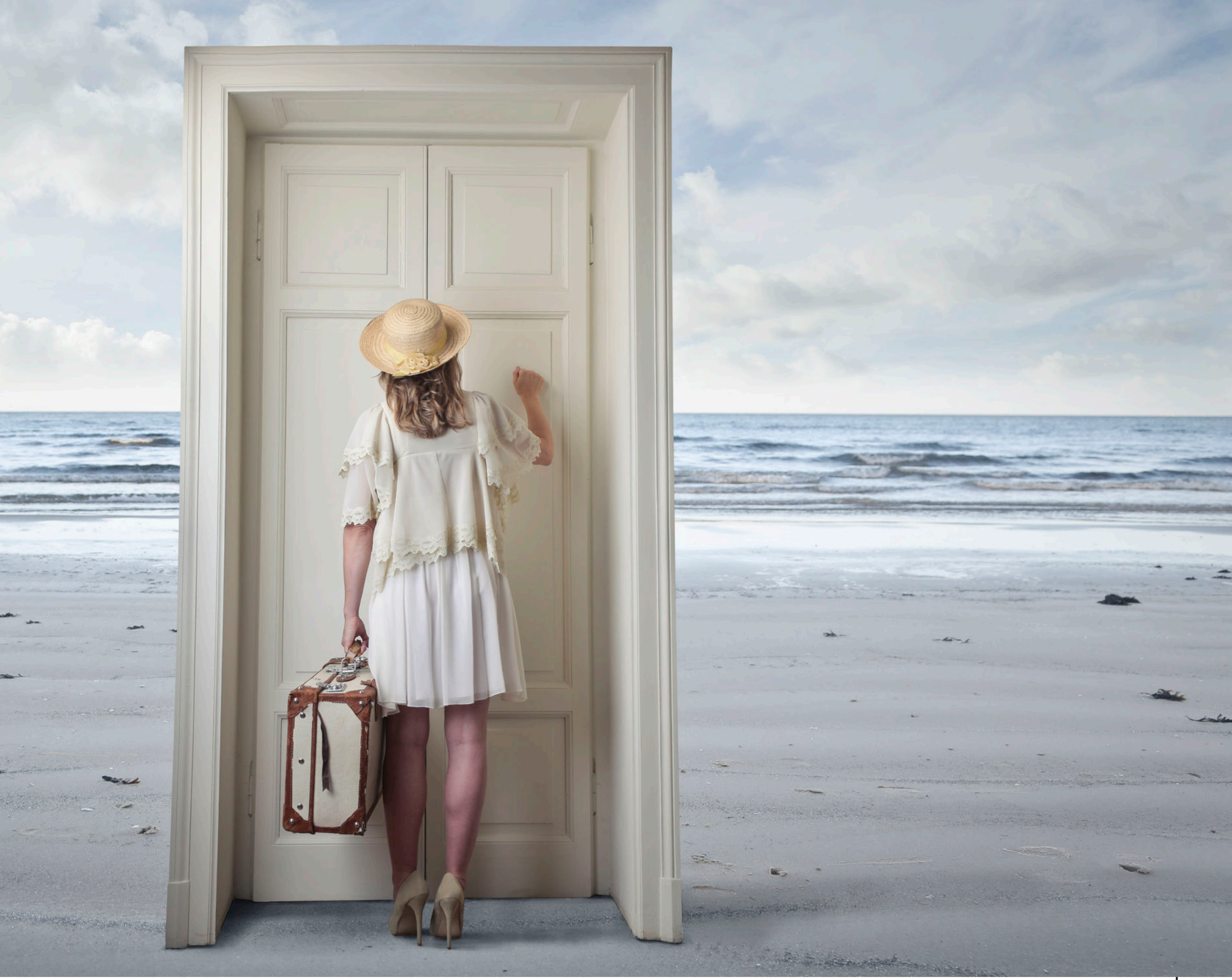
By Nadine S. Soliman, Esq.

Amusement parks, beaches, concerts, ultimate shopping experiences and a relaxed, friendly, and welcoming vibe attract millions of visitors to California each year. Thanks to the growing popularity of short-term rentals, all the comforts of home (someone else's) now await travelers on the darling adventures they have planned.

Short-term rentals, usually defined as rentals for 30 days or less, are the ticket to the next vacation for many, who book their rentals through a variety of websites such as Airbnb, VRBO or Homeaway. These websites provide users with an opportunity to take part in "asset sharing" or "share economies." "Share economies" are economic models where one individual is able to borrow or rent assets owned by someone else. Homeowners can rent out their entire home while they are gone or they can rent out a spare room for a few days or weeks at a time and gain excited tenants and income at a higher rate than they could get for a long-term rental.

So where's the catch? What appeals to the homeowners may not always appeal to the community as a whole. When a homeowner rents out all or part of his home to vacationers that are just there for a few days, the transient renters may not adhere to the association rules and may become a nuisance by, for example, creating traffic problems, playing loud music or littering.

Before homeowners embark on the short-term rental trend and make room for visitors and some extra cash, they might want to "check-in" with their association and their city.

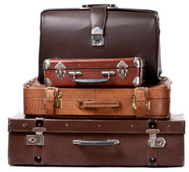


ASSOCIATIONS

Some associations do not impose restrictions on short-term rentals. After all, it is just a way for homeowners to generate income. Other associations have limits or outright bans. The CC&Rs may have a "residential use" restriction, and depending on the interpretation of this restriction, it may prohibit short-term leases which are considered a "business use." In one case an owner's serial rental of rooms to multiple persons in a single family dwelling was held by the court to violate a restriction limiting the home's use to "single family dwelling purposes."

The association can also impose restrictions such as minimum number of rental days and can ban single room rentals. In the March 2015 case *Watts v. Oak Shores*, the court decided that "experience and common sense" placed the matter beyond debate: short-term renters cost the association more than long term renters. As such, associations are permitted to adopt reasonable rules and impose various fees on members in relation to short-term rentals, as long as they are reasonable, comply with the law, are not prohibited by the governing documents, and the governing documents provide the association with the power to impose such restrictions and fees.

Although an association can have a complete ban on rentals, it must ensure that this ban does not violate the law. For example, a total ban on rentals could violate the California Civil Code if it is imposed on owners that purchased the property when the ban was not



in place. A total ban on rentals in a project could also violate the Fair Housing Act if it has a discriminatory effect even if it was adopted without a discriminatory intent.

So, if the association does not allow short-term rentals, homeowners can say *au revoir* to their short-term rental plans. But, if a homeowner has checked the governing documents and the association embraces short-term rentals, should the homeowner pack his bags and say hello to the extra income? Is short-term rental income the new passport to wealth? Not so fast.

CITIES

Cities appear to be confused by how they should handle short-term rentals. They will likely continue to change their laws as they struggle to address issues caused by an influx of short-term renters, such as unpermitted vacation rentals, increased traffic, parking shortages, fire hazards, littering and complaints from neighbors. On the other hand, several cities are deriving a significant portion of their funds from transient occupancy taxes. This is probably why there is so much inconsistency throughout the State. In Orange County, Newport Beach allows short-term rentals but requires an application and a fee, whereas its next door neighbor Huntington Beach has an outright ban on any short-term rentals of 30 days or less. In April 2013, the city of Dana Point, seeking to earn revenue from the rentals, approved a new ordinance allowing short-term vacation rentals with short-term rental permits. On the other hand, Laguna Beach, which has allowed short-term rentals since 1999, imposed a temporary moratorium on short-term rentals in May 2015 due to a substantial increase in the number of unpermitted short-term rentals, a substantial increase in complaints relating to the use of short-term units, difficulties in enforcement of existing regulations governing short-term rentals, and an increase in applications filed to allow short-term rentals. The home of Disneyland, Anaheim, whose revenue from transient occupancy taxes far exceeds other cities in the County, has imposed a moratorium on new permits for short-term rentals amidst tension between the City's dual identity as a major tourist destination and a residential city. Many other cities, including San Clemente and Aliso Viejo, have recently imposed restrictions and bans on short-term rentals.

The massive increase of online marketing of short term lodging has many cities considering the pros and cons of allowing these rentals and different options for regulating them. When in doubt, homeowners should check with their associations and their cities before they list the property to ensure compliance with any restrictions, taxes and permit requirements.

Home-sharing models, just like ridesharing models, have many advantages and are likely to continue to grow in popularity. Because of this recent growth of popularity, associations should continue to analyze and monitor the costs and benefits of short-term rentals and modify policies and rules to ensure compliance with new laws as they emerge, and address the changing needs of their respective communities.

This article was written and submitted by Nadine S. Soliman, Esq. of The Perry Law Firm, APLC.