

## AIRBNB: UNIQUE ACCOMMODATIONS AND UNIQUE INSURANCE ISSUES

By Ingrid Sapona

If you've not heard of Airbnb, chances are you will – soon. Airbnb is a “trusted community marketplace”<sup>1</sup> that allows travellers to search for and book “unique” accommodations around the world. The accommodations are offered by people (referred to as “hosts” by Airbnb and for purposes of this paper) who have a spare room, or more to rent for short periods of time.

Airbnb began in San Francisco (where else!) in 2008. It started as something for budget-conscious travellers who may be looking for little more than a couch to sleep on for a night. In half-dozen years or so it has become a popular mainstream alternative for seasoned travellers and those who might be looking to try something different. Just how popular is it? Well, as of November 2014 over 25 million travellers have used it and it has over 800,000 room listings available in over 34,000 cities worldwide.<sup>23</sup>

### How Airbnb Works

For travellers (“guests” for purposes of this paper), Airbnb accommodation is often less expensive than hotels or traditional bed and breakfasts. As well, because accommodation offered through Airbnb is typically in people's residences<sup>4</sup>, there is a tremendous variety, including accommodations in locations that might not have traditional accommodation. But beyond cost, many Airbnb guests report that staying in someone's home provides a more authentic experience of the city they're visiting.

For hosts, the appeal is the opportunity to earn income by renting out unused space effortlessly, as the Airbnb website touts. Of course, people have always been able to do that – but Airbnb makes it efficient. Hosts list accommodations for free. They pay Airbnb 3% when they accept a booking. The listing can include a description, photos, and if they want, they can include a profile of themselves. Hosts set the price of the accommodation.

Guests search the database and they book the accommodation through the secure website and enter their payment details. Guests pay a service fee of 6 to 12% on top of the cost for the reservation. The host receives the reservation and can accept it or decline it. When the host accepts the reservation, the payment is processed and charged to the guest. The host gets paid 24 hours after the guest checks in.

<sup>1</sup> So proclaims Airbnb's website: [www.airbnb.ca](http://www.airbnb.ca).

<sup>2</sup> Id.

<sup>3</sup> According to “Is Airbnb legal in Ontario?” by Mark Weisleder, published in the Toronto Star July 15, 2014, [http://www.thestar.com/business/personal\\_finance/2014/07/15/is\\_airbnb\\_legal\\_in\\_ontario.html](http://www.thestar.com/business/personal_finance/2014/07/15/is_airbnb_legal_in_ontario.html).

<sup>4</sup> People list more than just rooms in their homes – the website has a category for “other” accommodation, which includes: cottages, villas, dorm rooms, igloos, planes, RVs, boats, lighthouses, tipis, castles, yurts, treehouses, and huts, among other things. Of course, the destination may limit the type of accommodation. If you're looking for a treehouse in Yellowknife, you're out of luck, and no igloos in Honolulu.

Airbnb provides lots of support services for hosts too, including things like sending professional photographers at no charge, and tools for verifying the identity of guests before the host accepts a reservation, as well as a messaging system that lets hosts and potential guests communicate before booking.

Airbnb also offers something it calls Host Guarantee, which is meant to protect hosts in the event a guest causes damage to the host's property, though there are lots of exclusions. Apparently Airbnb introduced the \$1 million Host Guarantee after a host reported having her home ransacked and belongings stolen.<sup>5</sup> When the Host Guarantee was first introduced, there was some confusion about whether it is insurance. Airbnb now makes it clear that the Host Guarantee is not insurance and is not meant to replace the host's own homeowner's or renter's insurance.

Airbnb recently announced the introduction of Host Protection Insurance for hosts in the U.S. According to information on their website, it is designed to cover hosts in the event of third party bodily injury claims or third party property damage. The coverage is up to \$1 million per incident and is subject to a \$2 million cap per listing location. The Host Protection Insurance will be secondary to insurance the host has. The Host Protection Insurance program will begin in 2015 and, as noted, is being rolled out in the U.S. first, with plans to expand into other countries.<sup>6</sup>

### **Airbnb and Municipalities**

Though Airbnb is clearly a hit with users, it's not been universally embraced. As one might expect, some in the hospitality industry (read: folks who run hotels) feel threatened by Airbnb, much the way livery services feel about Uber. Some municipalities also have expressed concern over Airbnb. The city concerns range from loss of revenue (for example, tourism taxes, and licencing or business permits), to safety, to the loss of affordable long-term rentals, to the possibility of abuse of rent control laws.

Airbnb is on Vancouver City Council's radar, for example.<sup>7</sup> There the concerns relate to the issue of the impact of short-term rentals like Airbnb on the long-term rental housing market, the impact on hotel tax revenue, safety<sup>8</sup>, and the enforcement of a city zoning and development by-law that prohibits rentals of a "dwelling unit" or "housekeeping unit" for less than a month<sup>9</sup> unless it is a part of a hotel or bed and breakfast.<sup>10</sup> The city has indicated that it is continuing to watch what happens with short-term rentals and is also watching to see what other cities are doing with regard to Airbnb.<sup>11</sup>

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<sup>5</sup> "Terms & Conditions: Airbnb makes everything your problem," by Andrew Coutts, Nov. 4, 2014, <http://www.digitaltrends.com/web/terms-conditions-airbnb/>.

<sup>6</sup> <https://www.airbnb.com/host-protection-insurance>.

<sup>7</sup> "Airbnb's vacation home-sharing raises housing concerns, Worries popular vacation home rental site could cause rental shortages," CBC News Posted: Jul 06, 2014, <http://www.cbc.ca/news/canada/british-columbia/airbnb-s-vacation-home-sharing-raises-housing-concerns-1.2698275>.

<sup>8</sup> "Vancouver goes after online apartment rental site Airbnb," by Michael Mui, Monday, November 18, 2013, <http://vancouver.24hrs.ca/2013/11/18/vancouver-goes-after-online-apartment-rental-site-airbnb>.

<sup>9</sup> For the 2010 Olympics, Vancouver City Council specifically amended a by-law to allow homeowners to "become short-term landlords during the games", see "Olympic Fever Brings Coverage Concerns," by Terri Goveia in Canadian Insurance Top Broker, April 17, 2009, <http://www.citobroker.com/your-business/sales-strategies/olympic-fever-brings-coverage-concerns-324>.

<sup>10</sup> "Reasonable Doubt: Airbnb comes with legal obligations," by Kevin Yee, Sep 26, 2014, Straight.com, <https://www.straight.com/news/738226/reasonable-doubt-airbnb-comes-legal-obligations>.

<sup>11</sup> "Airbnb causing condo conflict in Vancouver, Lawyer says strata regulations, city bylaw enforcement haven't caught up to new online reality," by Margaret Gallagher, CBC News. posted Nov 18, 2014, <http://www.cbc.ca/news/canada/british-columbia/airbnb-causing-condo-conflict-in-vancouver-1.2839010>

Ironically, San Francisco, the birthplace of Airbnb, was less than welcoming of the service because the city prohibited short-term rentals.<sup>12</sup> The San Francisco Board of Supervisors had a number of public hearings about Airbnb. The issues the city debated were wide ranging.<sup>13</sup> On the one hand, they are concerned about the loss of hotel tax revenue (the city estimates they've lost about \$10 million since Airbnb<sup>14</sup> launched in 2008<sup>15</sup>), the idea that Airbnb could, in effect, rezone residential areas into commercial centres, the possibility of landlords forcing out tenants from affordable housing to cash in on the profits from short-term rentals, and concern over insurance coverage. On the other hand, the Board of Supervisors recognizes that the cost of home ownership is so high in San Francisco, earning income through Airbnb may help residents afford to stay in their home. As well, people staying in "atypical" places – places outside the traditional tourism areas – might be a boon to the local economies.

Finally, in the fall of 2014 a Supervisor proposed an amendment that would allow short-term rentals, but would regulate them – including provisions that require that the host must live in the place for at least nine months of the year and imposing a registration requirement (and fee) on hosts. After much debate, the Board of Supervisors approved changes that allow short-term rentals, like Airbnb, but people providing such accommodations will be subject to registration and the 14.5% hotel tax will also apply on short-term rentals. The mayor signed the law on October 28, 2014 and it goes into effect in February 2015.

A sampling of European cities shows that municipal reactions to Airbnb are mixed. Barcelona has fined Airbnb 30,000 Euros for breach of local tourism laws and Berlin has banned regular short-term letting of rooms without permission.<sup>16</sup> Amsterdam, on the other hand, has passed an Airbnb-friendly law that allows residents to rent out their homes for up to two months per year, though they will have to pay tourism taxes.<sup>17</sup> France also passed a bill in 2015 to allow short-term rentals of primary residences.<sup>18</sup>

Even in cities where Airbnb is not under fire, Airbnb hosts who don't bother to go through the proper hoops may find themselves facing fines. In Montreal, persons providing accommodations for less than 31 days are supposed to get a \$250 permit from la Corporation de l'industrie touristique du Quebec.<sup>19</sup> In addition, they must carry liability insurance and pay a host tax.<sup>20</sup> Hosts who don't satisfy these requirements face fines ranging from \$750 to \$6,750.<sup>21</sup>

Airbnb provides some information about local rules but puts the burden squarely on hosts to determine whether there are any local restrictions or rules that apply. Under Airbnb's Terms of Service, at the time their listing is activated, hosts must certify that they have followed local law and regulations.<sup>22</sup> So, if a host is fined, they can't seek compensation or recompense from Airbnb.

<sup>12</sup> "Issues over insurance, enforcement and taxation spur supervisors to review short-term rental legislation for Airbnb hosts", by Jason Shuch, Sept. 16, 2014, <http://www.govtech.com/local/City-Concerns-Halt-Airbnb-Law-in-San-Francisco.html>.

<sup>13</sup> "Effort to legalize Airbnb stalls at Board of Supervisors committee," by Joshua Sabatini, The Examiner, Sept. 16, 2014, <http://www.sfexaminer.com/sanfrancisco/effort-to-legalize-airbnb-stalls-at-board-of-supervisors-committee/Content?oid=2899818>.

<sup>14</sup> "Amid protest, SF mayor signs into law Airbnb legislation", by Joshau Sabatini, The Examiner, Oct. 28, 2014, <http://www.sfexaminer.com/sanfrancisco/amid-protest-sf-mayor-signs-into-law-airbnb-legislation/Content?oid=2910424>.

<sup>15</sup> "Issues over insurance, enforcement and taxation spur supervisors to review short-term rental legislation for Airbnb hosts", by Jason Shuch, Sept. 16, 2014, <http://www.govtech.com/local/City-Concerns-Halt-Airbnb-Law-in-San-Francisco.html>.

<sup>16</sup> "Airbnb's legal troubles: what are the issues?" by Will Coldwell, The Guardian, <http://www.theguardian.com/travel/2014/jul/08/airbnb-legal-troubles-what-are-the-issues>.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> "Property owners express concern over Airbnb rentals," by Monique Muise, The Gazette, August 6, 2014, <http://www.montrealgazette.com/business/Property+owners+express+concern+over+Airbnb+rentals/10098579/story.html>.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> "The Pros and Cons of Using Airbnb," by Jean Folger, Sept. 2, 2014, <http://www.investopedia.com/articles/personal-finance/032814/pros-and-cons-using-airbnb.asp?performancelayout=true>.

### **Call it What You Will – It’s Still a Short Term Rental**

Unwitting Airbnb hosts (or hosts that are in denial) may buy into the idea that they’re simply part of the “sharing economy” – with the stress on the term “sharing”. If they do, they may quickly gloss over the fact that it’s a commercial transaction. In other words, hosts ought to realize they are offering short-term rentals. As such, there are a slew of regulatory matters hosts might have to comply with. For example, hosts are running a business, so there are income tax implications. There might also be other tax considerations, including sales tax, hotel taxes, vacation rental taxes, and so on. Business licenses or permits may also be required.

### **Other Issues: Hosts’ Neighbors**

Issues around Airbnb get a bit more complicated when the host lives in a multi-unit building like a condo or co-op because such living arrangements typically come with strings attached in the form of condominium or coop bylaws and rules, or homeowner association rules. It’s not uncommon, for example, for condo corporations to have rules that prohibit short-term rentals.

Hosts who are renters may have additional restrictions imposed by the terms of their lease agreement or tenant associations. Lease agreements, for example, may prohibit subletting, which most landlords would argue includes short-term rentals of accommodations even where the tenant is present. If the lease forbids subletting and the landlord finds out a tenant is doing so, the landlord could have grounds for eviction.<sup>23</sup> Or, if not prohibited outright, the terms of the lease may require that the tenant get the landlord’s permission for such activity.

In addition to the specific terms of the lease, local laws may also prohibit tenants from subletting. In Ontario, for example, tenants who sub-let for more than what their landlord is charging them as rent are likely violating the Ontario Residential Tenancies Act.<sup>24</sup>

### **Insurance Issues Related to Hosting**

Other than Airbnb’s Host Protection Insurance, there hasn’t been a lot of talk in the insurance industry about coverage specific to people hosting on Airbnb. In fact, according to an Airbnb representative answering questions at a September public hearing held by the San Francisco Land Use Committee, there is no current insurance policy on the market to cover people who use Airbnb.<sup>25</sup> This conclusion is in line with what I found in my on-line research and discussions with a variety of Canadian insurance industry experts for this trends paper.

The New York based Insurance Information Institute has written a bit about the issue, especially in the context of people renting out their homes (or part of their homes) during major sporting events, like Superbowl weekend.<sup>26</sup> They describe Airbnb as “peer-to-peer home rental” or a “peer-to-peer financial arrangement”, which is a concept familiar to some insurers that provide coverage with respect to carsharing.<sup>27</sup> The Insurance Information Institute discusses the issue in very general terms, urging people that are considering providing accommodation to speak with their insurer before they do, to find out what the insurer’s policy might be. They note that if the rental is a one-time event, some insurers may allow policyholders to do so

<sup>23</sup> “Terms & Conditions: Airbnb makes everything your problem,” by Andrew Coutts, Nov. 4, 2014, <http://www.digitaltrends.com/web/terms-conditions-airbnb/>.

<sup>24</sup> “Is Airbnb legal in Ontario?” by Mark Weisleder, July 15, 2014, [http://www.thestar.com/business/personal\\_finance/2014/07/15/is\\_airbnb\\_legal\\_in\\_ontario.html](http://www.thestar.com/business/personal_finance/2014/07/15/is_airbnb_legal_in_ontario.html).

<sup>25</sup> See comments by David Owen in the article: “Airbnb hearing shows serious problems with taxes, enforcement,” by Tim Redmond, September 17, 2014, <http://48hillsonline.org/2014/09/16/airbnb-hearing-shows-serious-problems-taxes-enforcement/>.

<sup>26</sup> One of the reasons the Insurance Information Institute wrote about this was because 2014 was the first time the Superbowl was held in the New York City area. See, for example, “Insurance Tips for Homeowners Renting Out Their Homes for Super Bowl Week,” published Jan. 22, 2014, <http://www.iii.org/press-release/iii-insurance-tips-for-homeowners-renting-out-their-homes-for-super-bowl-week-012214>.

<sup>27</sup> See, for example, coverage provided by AXA for Buzzcar, <http://www.buzzcar.com/en/help/insurance/>.

without any special endorsement or change in policy. They do make the point of saying that every insurer is different and it is best to discuss the matter upfront.<sup>28</sup>

The Insurance Information Institute also notes that if a person plans to regularly provide short-term rentals, standard homeowners' policies do not provide any coverage for business activities conducted in the home and in such a situation they suggest a business policy covering a hotel or bed and breakfast would be required.<sup>29</sup>

### **Consider This Hypothetical**

Here's a hypothetical related to a homeowner who recently became a host on Airbnb:

Assume the Smiths have a standard homeowner's policy with InsuranceCo. They have had homeowners' insurance with InsuranceCo since they bought the house seven years ago. At renewal time in February, the Smiths' insurance broker called them to discuss the renewal and the only change was an increase in the property coverage to reflect some new furniture and some high-end electronics (including a 50 inch flat screen TV) they purchased. In May, the Smiths signed up as hosts on Airbnb, renting out a spare bedroom that has a three piece en suite bathroom. The Smiths live in a conveniently located downtown neighborhood and have gotten rave reviews from guests who have stayed with them. They enjoy hosting, and from July through September they had guests every Friday and Saturday evening, as well as on a number of Thursdays. After that, things quieted down, but they were still hosting about six nights a month.

In December, a guest who was staying for two nights caught his foot on a piece of furniture, causing a glass-topped end table to overturn, hitting him in the arm and causing a small table lamp and vase that was on the table to fly off, damaging the large screen TV that was on a nearby table. In the accident the guest suffered a severely twisted ankle, a broken arm, and a dislocated shoulder. The guest sued the Smiths seeking payment of his medical costs associated with the accident.

The Smiths contacted their broker to make a claim related to the property damage (broken lamp, vase, and damaged TV) and the amount they were sued for by the guest. The Smiths likely think their homeowners' policy covers the losses – after all, how different is this from them collecting rent from an adult relative living with them? Or a situation where someone who is house-sitting for them while they're in Florida for two weeks in January has an accident in their home. What do you think InsuranceCo.'s response will be?

Of course, the answer may depend on a number of factors, such as the length of the relationship between InsuranceCo. and the Smiths, the Smiths' claims history, and so on. But, the fact that the Smiths did not disclose that they engage in the business of offering short-term rentals is critical. Mark Weisleder, a Toronto lawyer who specializes in real estate, warns that if a homeowner rents out their home for short periods and does not advise their insurer, if something happens when they are hosting, their insurer may deny coverage.<sup>30</sup> The rationale the insurer would likely argue is that having a stranger using your home increases the risk.

Jim MacKenzie, FCIP (Hons) of Dusyk & Barlow Insurance Brokers Ltd., agrees that if the homeowner does not tell their insurer that they are hosting short-term tenants the insurer could deny the claim. "Normal homeowners' policies contemplate

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<sup>28</sup> , "Insurance Tips for Homeowners Renting Out Their Homes for Super Bowl Week," published Jan. 22, 2014,

<http://www.iii.org/press-release/iii-insurance-tips-for-homeowners-renting-out-their-homes-for-super-bowl-week-012214>.

<sup>29</sup> "What Type of Insurance Do I Need If I'm Renting Out My Home? ", Posted Aug 19, 2013 <http://www.iii.org/article/what-type-of-insurance-do-i-need-if-im-renting-out-my-home>.

<sup>30</sup> "Is Airbnb legal in Ontario?" by Mark Weisleder, July 15, 2014,

[http://www.thestar.com/business/personal\\_finance/2014/07/15/is\\_airbnb\\_legal\\_in\\_ontario.html](http://www.thestar.com/business/personal_finance/2014/07/15/is_airbnb_legal_in_ontario.html).

homeowners living in the home but doesn't contemplate tenancy," he says. "If the insurer would have legitimately declined the risk had it known about it, then there are grounds to deny the claim," he explains.

As for the Smiths' argument that this scenario is not much different from an accident involving an adult relative who is paying rent, or a person who is house sitting for them, MacKenzie says the key is how attractive the underlying risk is. "Most property insurers deem your family to be as attractive a risk, even if you're charging them rent," explains MacKenzie. "Similarly, someone housesitting is generally considered a good thing, as the assumption is they're there to look after the property, keeping it warm and so on." But strangers under a short-term rental are very different, according to MacKenzie

### **Coverage Issues**

In researching this trends paper, I contacted insurance professionals to find out under what circumstances a homeowners' policy might be adapted to a situation where the insured is hosting on Airbnb. Based on my research, which must be considered anecdotal, it seems that Canadian insurers would not offer coverage under a homeowners' policy.

Tyson Peel, Property/Casualty Manager at Burns & Wilcox, said that he had similar feedback from all the companies he canvassed on this issue. According to Peel, "They would not want to cover the Airbnb under the homeowners' policy. Adding this type of operation to a home is a commercial exposure and a commercial policy will be required to cover the exposures."

Victoria Hayes, Vice President, Sales and Market Development Manager at Aon Risk Solutions, said that the Specialty Market that she normally turns to for unusual risks has "heard of Airbnb but they aren't interested in them at this time."

One broker I spoke with about a scenario like the one described above indicated that she would expect that with an insured that had a standard homeowners' policy, a regular market insurance company would get off risk due to the material change in risk if it were notified of the change in occupancy. Furthermore, in her experience, regular market insurance companies would not take this on as new business.

### **Underwriting Considerations**

Assuming that a potential insured discloses their intention to provide short-term accommodation, when considering coverage, the types of information an underwriter would likely want includes things like:

- how often the person has guests – for example, is it strictly a seasonal thing
- how many rooms are being used in the rentals
- the number of guests the person has at one time
- is the host (or a member of the hosts family) normally there when there is a guest
- information about safety and security measures, such as smoke detectors, fire extinguishers or sprinklers, clearly marked exits, handrails on staircases, and so on
- whether there is a pool

### **Conclusion**

It seems inevitable that Airbnb and similar "sharing" services will become mainstream. (Indeed, with Toronto hosting the Pan Am and Para Pan Am games in 2015, the number of Airbnb listings in Toronto likely will skyrocket.) As a result, it also seems inevitable that the insurance industry will come up with products to respond. What those products will look like remains to be seen.

In the meanwhile, brokers should consider speaking with their clients about the risk they face if they don't disclose such activities. "We as an industry need to do a better job of educating our clients about stuff like this," says MacKenzie. "Clients may or may not talk to their brokers, and some people don't realize that a renting out their place can change the risk. We've got to reach out and ask them about this and explain to them that we want to make sure they're covered and that they have the right coverage," he said.