



# MCLE Self-Study Article: Is the Popularity of Short-Term Rentals Sustainable, or Will Regulations Weaken Their Current Stronghold?

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### I. INTRODUCTION

Like many other sectors in the “sharing economy,”<sup>1</sup> short-term rentals of residential property<sup>2</sup> (“STRs”) have become a ubiquitous part of the national economy. Often labeled as one of the biggest disrupters in the travel industry, STRs are particularly impactful on the United States tourist sector, with one estimate putting the size of the domestic vacation rental market at \$100 billion.<sup>3</sup> The STR industry is young and, while not yet fully crystallized, flush with growing demand.<sup>4</sup> The number of consumers utilizing STR options has burgeoned exponentially since 2011,<sup>5</sup> with a reported seven in ten millennial business travelers preferring to stay in local host rentals over more traditional lodging options.<sup>6</sup>

The rapid evolution of the STR market, once a cottage industry, can be attributed in large part to new technology that is changing the industry and providing new and efficient means for consumers to access alternative accommodations. Online rental platforms such as Airbnb, Vacation Rentals by Owner (“VRBO”),<sup>7</sup> FlipKey, and hundreds of other rental websites significantly decrease the time it takes to find lodging and facilitate connections between hosts and travelers. They also enable both parties to leverage the power of peer-to-peer reviews.<sup>8</sup> These platforms allow consumers to find accommodations specific to their needs, and allow hosts to obtain assurances about the people requesting accommodation in their properties. Consequently, this new niche market has unwittingly ushered a tremendous number of new hosts and consumers into the hospitality industry.

The emergence of such online marketplaces has created a global boom in the STRs of personal residences. In the U.S., this phenomenon has spread from coast-to-coast.<sup>9</sup> Indeed, the number of available STR units has grown at a forty-five percent annual rate over the past five years, and there is no reason to believe that this growth will slow down in the foreseeable future.<sup>10</sup> As a result of the market's momentous popularity, consumers are flocking into previously undisturbed (and perhaps, undesirable from a traveler's perspective) residential neighborhoods for home-based, transient lodgings.<sup>11</sup>

While the staggering popularity of STRs may appear to be a clear path forward for vacation rentals, the future of STRs in California is far from certain. STRs are central to vigorous debates at local and state levels. STRs pose major issues for local governments and homeowners associations (“HOAs”) because a greater influx of transient residents into traditionally residential areas has resulted in increased municipal and

homeowner demand for regulations and enforcement efforts.<sup>12</sup> Local governments may feel that they are losing their share of tax dollars by failing to effectively regulate this new industry.<sup>13</sup> HOAs are increasingly asked to respond to nuisance complaints and to request government enforcement of rental restrictions such as those found in a development's covenants, conditions, and restrictions ("CC&Rs").<sup>14</sup> Due to the headaches over these and other issues, homeowners, local governments, community groups, and certain state policymakers are waging wide-ranging and comprehensive campaigns with the goal of severely restricting STRs. Nonetheless, the market share of STRs in the travel sector continues to grow.<sup>15</sup> With the backing of local entrepreneurs, businesses, and online platforms like Airbnb and VRBO, it is unlikely that STRs will go down without a fight.

STR regulations are complex and constantly evolving. This article provides a broad overview of the considerations a real property owner may encounter when contemplating whether to establish an STR. The first section addresses the advantages and disadvantages of STRs for the local community. The second section examines limited state STR-related regulations, various local land use approaches, the legality of previously enacted STR-related land use controls, and other governmental agency responses. The third and last section discusses the ability to further regulate STRs in common interest developments ("CIDs") via CC&Rs and HOA enforcement actions. This article does not address every nuance associated with land use controls, regulations, and/or negotiating a lease with a third party for either long- or short-term rentals.

## II. ADVANTAGES AND DISADVANTAGES OF STRS FOR THE LOCAL COMMUNITY

Short-term renting may impact a community's economic and residential stability<sup>16</sup> and its security.<sup>17</sup> Whether a community has a legitimate concern about STRs often depends on the characteristics of the particular community and whether the STR units operating there do so respectfully and avoid negatively impacting the community. Given all of the competing interests, local governments bear the difficult charge of finding appropriate ways to regulate STRs so as to protect neighborhoods while preserving homeowners' property rights.

### A. Advantages of STRs

At their best, STRs provide a welcome alternative to the hotel industry with potentially cheaper rates and simpler booking processes for consumers. For some jurisdictions, STRs can boost a sagging tourism sector. For example, the price

advantage of STRs to consumers can cause less-popular tourist destinations or areas that lack adequate hotel accommodations to become more attractive.<sup>18</sup> Local governments in locations with an established tourist industry also benefit from STRs.

Studies show that STRs can positively impact a local economy in several ways. First, they can provide a municipality with additional income through tax revenues.<sup>19</sup> Second, STR guests tend to spend money on local visitor-related amenities such as restaurants, bars, and museums, thus providing a large economic benefit to the community. For example, research conducted in the City of San Diego ("San Diego") in 2015 demonstrated that, during a one-year period, STR guests spent \$86.4 million on visitor-related activities compared to money spent on the lodgings subject to transient occupancy taxes ("TOTs").<sup>20</sup> Third, a study on the effects of the sharing economy found a direct correlation between STRs and job creation in the tourism sector.<sup>21</sup> In San Diego alone, STRs support 3,109 jobs.<sup>22</sup> Moreover, hosting an STR space can help local residents who are hosts supplement their income. They in turn can further contribute to the local economy when they spend this revenue locally. The total economic impact in San Diego, including the visitor-related activities, has been estimated at \$482 million.<sup>23</sup>

Lastly, the proliferation of STR units increases the supply of travel accommodations, making travel more affordable, benefiting consumers, and encouraging more travel.<sup>24</sup> STRs increase the supply of short-term travel accommodations, lower prices, and can be more cost-effective for families.<sup>25</sup> This price reduction is often attributable to not only the theory of supply and demand, but also the fact that STR platforms are not encumbered by hotel costs such as staffing, furnishings, property maintenance, and other business-related regulations.<sup>26</sup> STRs can thus pass those savings on to consumers and offer lower rates than those of traditional tourist accommodations.<sup>27</sup>

### B. Disadvantages of STRs

Many argue that STRs are detrimental to a community's character. Those who oppose STRs believe that, as rental properties become an increasingly attractive investment opportunity, a large number are being operated as de facto hotels that disrupt communities, consume potential affordable housing units and sites that could be used as permanent or semi-permanent residences instead, drive rent prices skyward, and leave government regulators with heartburn.<sup>28</sup> While STRs are considered a boon to consumers, the hotel industry claims that the STR business model offers unfair economic advantages.<sup>29</sup> The hotel industry also argues that local service jobs can be jeopardized due to unfair competition

from unregulated and untaxed STRs, and that STRs reduce demand for local bed and breakfast establishments, hotels, and motels.<sup>30</sup> In these ways, STRs are considered to be disruptive for the traditional lodging industry.<sup>31</sup>

STRs are mainly located in residential areas, so people who oppose STRs argue that tourists are renting spaces that otherwise might be used for long-term renters, upsetting a stable rental market and decreasing the availability of long-term housing.<sup>32</sup> This impact is greater in large cities with pre-existing affordable housing issues such as San Francisco and Los Angeles.<sup>33</sup> This instability could eventually contribute to an increase in rent and housing prices.<sup>34</sup> Many smaller jurisdictions in California, such as the City of Long Beach, are expressing concerns about the spread of STRs as well.<sup>35</sup>

Opponents of STRs argue that increased tourist traffic from short-term renters could slowly transform residential communities into “communities of transients” with decreased community involvement and engagement. Local residents worry that the “infestation” of STRs in their neighborhoods will change their character and transform the residents’ quality of life.<sup>36</sup> Residents express concern that short-term renters may not always know let alone comply with local laws and regulations and could result in public safety risks, excess noise, trash, and parking problems for nearby residents.<sup>37</sup> The lack of proper regulation or limited enforcement of existing ordinances can also cause tension or hostility between short-term landlords and their neighbors.<sup>38</sup>

### III. GOVERNMENT LAND USE CONTROLS

#### A. Limited State Regulations

In California, STRs are generally regulated by the local city or county. As discussed below,<sup>39</sup> the specific rules vary by jurisdiction. However, a few statewide regulations also relate to STR units.

The State of California imposes recordkeeping requirements for transient occupancies.<sup>40</sup> Such persons must also comply with all collection, payment, and recordkeeping requirements of local TOT ordinances if applicable to the occupancy.<sup>41</sup> The state also requires rental listing platforms such as Airbnb or VBRO to post a notice advising tenants who are listing a room or home to review their leases and insurance policies for restrictions on such activity.<sup>42</sup>

While land use controls have traditionally been left to the local governments, a bill is currently pending in the California State Legislature that would set strict limits on STRs in certain coastal neighborhoods.<sup>43</sup> Assembly Bill (“AB”) 1731,<sup>44</sup> written

by Assemblywoman Tasha Boerner Horvath, who represents northern beach cities in the city and county of San Diego, bars vacation rental platforms like Airbnb and VRBO from listing San Diego County-based STRs that are within both residential and state coastal zones on their sites for more than 30 days each year unless a full-time resident lives at the property.<sup>45</sup> The legislation, which is currently in committee, would dramatically curb rentals outside of commercial areas.<sup>46</sup> The bill’s original intent was to curtail year-round rentals across California but after pushback, Assemblywoman Boerner Horvath amended it to focus solely on San Diego County including coastal areas within the city.<sup>47</sup> Despite the pushback, AB 1731 remains a test case for the rest of California and has deeply divided the local communities and state political machines impacted by it.<sup>48</sup>

#### B. Local Land Use Controls

Local governments may regulate what they deem the appropriate use of land within their boundaries.<sup>49</sup> This authority stems from a local government’s police power, its inherent power to provide for the peace, order, health, morals, welfare, and safety of its citizens.<sup>50</sup> Land use regulations are a manifestation of the local police powers conferred by Article XI, Section 7 of the California Constitution, and not the state’s delegation of authority.<sup>51</sup> California Constitution Article XI, Section 7 provides that “a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”<sup>52</sup> This police power is broad, elastic, and constantly expanding to keep pace with our changing society.<sup>53</sup>

Under the police power, local governments have enacted a wide variety of regulatory controls including a range of land use regulations particularly when new issues and controversies enter the real property space. Courts have upheld the following land use controls, among others: (1) building height limitations;<sup>54</sup> (2) setback requirements;<sup>55</sup> (3) zoning ordinances creating exclusive single-family residential districts;<sup>56</sup> (4) rent control;<sup>57</sup> (5) growth management measures;<sup>58</sup> (6) limits on off-site commercial billboards for aesthetic purposes;<sup>59</sup> and (7) prohibitions against “monotonous” development.<sup>60</sup>

Similarly, courts have upheld regulations related to STRs of residential property as proper exercises of the police power.<sup>61</sup> However, the surge in STRs is forcing local governments to decide how to strike a balance between protecting neighborhoods and allowing the alienability of property, or the right of an owner to separate him/herself from the property and deed or lease it to another person. Yet, as with many zoning regulations, those provisions related to or restricting

STRs are jurisdiction-specific, and vary from city to city, county to county.<sup>62</sup> The specific regulations run the gamut from severe; making most STRs illegal, fairly liberal,<sup>63</sup> or non-existent.<sup>64</sup> California's various STR regulations typically address the following matters:

- taxation;<sup>65</sup>
- minimum rental periods;<sup>66</sup>
- geographic limitations;<sup>67</sup>
- occupancy limits;<sup>68</sup>
- residency;<sup>69</sup>
- maximum number of total rental days;<sup>70</sup>
- property monitoring and management;<sup>71</sup>
- notice to neighboring property owners;<sup>72</sup> and
- licenses and permits, including caps on the number of STR-related licenses issued.<sup>73</sup>

Also entering the fray, the California Coastal Commission ("Coastal Commission" or "Commission") has taken an interest in local STR regulations when they have the potential to affect access to the coast.<sup>74</sup> The Coastal Commission repeatedly has expressed support for STRs over the years. It claims that the restriction of STRs serves to limit access to the beach and makes it harder for people with average or below-average incomes to vacation on the coast.<sup>75</sup> Therefore, after a coastal municipality has passed an STR-related ordinance, it must forward the ordinance to the Coastal Commission for a determination that the regulations comply with the California Coastal Act.<sup>76</sup> The Coastal Commission can, and has,<sup>77</sup> invalidated local government-approved STR regulations as too restrictive. It has found, for instance that the Coastal Commission can preempt an ordinance if it conflicts with Coastal Act policies, either because the ordinance amends the city's local coastal program and which must first be certified by the Commission, or because it constitutes a "development" under the Coastal Act that requires a Commission. The Commission can also invalidate an ordinance if the ordinance conflicts with the Coastal Act's enumerated goals of protecting coastal access and encouraging lower cost visitor and recreational opportunities.<sup>78</sup>

AB 1731, as discussed in Section III, aims to provide an exception to avoid the Coastal Commission's repeated demands that local governments accommodate STRs that can serve as lower-cost alternatives to hotels in beach communities.<sup>79</sup> As currently written, AB 1731 provides that properties listed

in accordance with the state's "Lower Cost Accommodations Program" can be utilized as an STR year-round.<sup>80</sup>

Despite the controversy surrounding STR operations and regulations, restrictions on STRs, like those described herein, are haphazardly enforced.<sup>81</sup> Typically, local governments lack the resources to diligently pursue code enforcement actions against illegal STR operators.<sup>82</sup> Indeed, most often municipalities are unaware of illegal STR operations and enforcement efforts are usually undertaken, if at all, only when neighbors lodge nuisance complaints.<sup>83</sup>

### C. Determining Whether a Restriction Constitutes a Taking

It is well established that an excessively restrictive land use regulation may constitute a taking of property for which compensation must be paid under the California Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.<sup>84</sup> Determining whether a regulation constitutes a taking where there has been no permanent physical invasion and the regulation has not deprived the owner of all economically beneficial use of its property requires a balancing of the public and private interests by weighing the following three factors: (1) the economic impact of the regulation on the property owner; (2) the extent to which the regulation interferes with the property owner's distinct investment-backed expectations; and (3) the character of the governmental action (i.e., physical invasion versus economic interference).<sup>85</sup> This three-factor balancing test could possibly be applied to STR restrictions.

When reviewing an STR operator or owner's challenge to an STR restriction alleging that the regulation amounts to taking, a court is required to "compare the value that has been taken from the property with the value that remains in the property."<sup>86</sup> "[W]here an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking because the aggregate must be viewed in its entirety."<sup>87</sup> In *Penn Central Transportation Co. v. New York City*,<sup>88</sup> the United States Supreme Court observed:

Zoning laws generally do not affect existing uses of real property, but 'taking' challenges have also been held to be without merit in a wide variety of situations when the challenged governmental actions prohibited a beneficial use to which individual parcels had previously been devoted and thus caused substantial individualized harm.

Therefore, as a practical matter, it may difficult to argue that an STR prohibition denies the owner of all economically



viable use of his land, particularly where longer-term rentals are still allowed.<sup>89</sup>

#### IV. CIDS MAY ENFORCE STRICTER STR REGULATIONS, BUT SUCH REGULATIONS ARE STILL LIMITED

CIDs<sup>90</sup> are sophisticated combinations of privately and commonly held interests in a real estate development or neighborhood in which lots or units are individually owned. CIDs are governed by a recorded declaration of CC&Rs, bylaws, and often, owner/developer-imposed rules.<sup>91</sup> They have an established HOA that is charged with enforcing the CC&Rs and acting in a reasonable, fair, and nonarbitrary manner.<sup>92</sup> CC&Rs regulate certain property uses and activities that are distinct from zoning ordinances regulating land use.<sup>93</sup> CC&Rs must also be reasonable and nonarbitrary.<sup>94</sup> They are considered an equitable servitude on the land; characterized as follows:

[A]n equitable servitude will be enforced unless it violates public policy; it bears no rational relationship to the protection, preservation, operation or purpose of the affected land; or it otherwise imposes burdens on the affected land that are so disproportionate to the restriction's beneficial effects that the restriction should not be enforced.<sup>95</sup>

CIDs, with their CC&Rs and HOA enforcement rights, inherently possess the framework necessary to regulate STRs above and beyond the local government's regulations.<sup>96</sup> CC&Rs may restrict individual owners' rights to lease their units. These restrictions may absolutely prohibit leasing,<sup>97</sup> partially restrict leasing,<sup>98</sup> or restrict tenants' rights.<sup>99</sup> Although many documents contain leasing restrictions,<sup>100</sup> few California cases interpret them as they relate to STRs. How far HOAs may go in regulating short-term rentals remains unsettled as illustrated by the following cases.

- In *Mission Shores Ass'n v. Pheil*,<sup>101</sup> the court upheld the validity of amendments to the development's declaration that: (i) added a requirement that any rental of a residence be for 30 days or more; and (ii) granted the association the right to evict a tenant for breach of the governing documents, and to recover from the owner-landlord the costs and attorney fees incurred in such an action.<sup>102</sup>
- In *Colony Hill v. Ghamaty*,<sup>103</sup> the application of a condominium association's "single-family residence" CC&R provision to prevent serial renting of rooms

in an owner's home was upheld in the face of a constitutionality defense based on privacy rights.

- In *Watts v. Oak Shores Community Ass'n*,<sup>104</sup> the court upheld a board-adopted rule requiring a minimum seven-day rental period and imposing fees on owners using their property for such STRs. The court stated that "evidence and common sense" placed beyond debate the concept that short-term renters cost an HOA more than long-term renters or permanent residents.<sup>105</sup>
- In *Greenfield v. Mandalay Shores Community Ass'n*,<sup>106</sup> homeowners in a beach community in the coastal zone made a prima facie showing sufficient to warrant the issuance of a preliminary injunction that stayed the enforcement of an STR ban implemented by the CC&Rs and HOAs. The court granted the injunction because the STR ban violated the Coastal Act by causing a change in the intensity of use of or access to land in a coastal zone.<sup>107</sup>

It must also be noted that any leasing restriction that violates fair housing laws or is determined to be an unreasonable restraint on alienation will be void.<sup>108</sup>

In restricting and regulating STRs, HOAs rely on arguments that such action is necessary to prevent or mitigate the negative impact that can result from STRs. Most HOAs take the position that retaining the quality of the HOA's residences, preserving quiet enjoyment of property, and keeping costs down within the community is reasonable justification for enforcing regulations and restrictions on STRs.<sup>109</sup>

For CIDs without an express CC&R on STRs, HOAs may argue that STRs or similar activities violate the residential use required by the CC&Rs.<sup>110</sup> STRs may not per se violate the CC&Rs, but depending upon the features of a particular use, it may be a commercial venture, instead of a residential use. Such a determination may be based upon the frequency of rental activity, indicia of business, and government business tax or license requirements applicable to STRs in the jurisdiction.<sup>111</sup> To a certain extent, STR enterprises resemble traditional lodging establishments in that STR units may be subject to tax and licensing requirements; the properties are advertised online; and provide the same services, commodities, and amenities that would be found in a hotel. An HOA may use these facts to demonstrate that whenever a property is not being used as a permanent or long-term residence, its purpose is to conduct STR business, and is, therefore, a violation of a residential-use CC&R.<sup>112</sup>

## V. CONCLUSION

While STRs provide substantial benefits to their proprietors, local government coffers, and the platforms that host the rentals, STRs also cause problems related to abatement of nuisances, the housing market, and local communities. Local governments and CIDs have tried to regulate STRs to varying degrees, with both often stymied by roadblocks and dueling constituents. California, as a premier vacation destination, is sure to continue to grapple with the rapidly evolving legal landscape governing STRs. Interested real estate owners and investors should reevaluate and reposition their real estate investment strategies to legally capitalize on this burgeoning industry. Effective representation of these types of commercial clients requires an attorney to employ a similarly disciplined strategy—one that concentrates on continuously monitoring the shifting STR regulations that govern land use and real estate controls.

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### Endnotes

- 1 The sharing economy is an economic model defined as a peer-to-peer based activity of acquiring, providing, or sharing access to goods and services that is often facilitated by a community-based online platform. Derek Miller, *The Sharing Economy and How it is Changing Industries* (June 25, 2019), <https://www.thebalancesmb.com/the-sharing-economy-and-how-it-changes-industries-4172234>. Aside from short-term vacation rentals, examples of the sharing economy include crowdfunding (Kickstarter), ridesharing (Uber, Lyft), shared working spaces (WeWork), and online reselling/trading (eBay, Craigslist).
- 2 A “short-term rental” most commonly refers to a furnished rental property rented for fewer than thirty consecutive days. See e.g., Carlsbad Mun. Code § 5.60.020; Santa Monica Mun. Code § 6.20.010(f.) Unlike a lease, which is a sort of “long-term rental,” an STR does not involve the grant of an estate in the land being rented. Cai Roman, *Making a Business of “Residential Use”: The Short-Term-Rental Dilemma in Common Interest Communities*, 68 Emory L.J. 801, 806 (2019). Rather, an STR is a license, which is “an agreement which merely entitles a party to use the land of another for a specific purpose, subject to the management and control retained by the owner.” 49 Am. Jur. 2d *Landlord & Tenant* § 20; Rachael Ann Neal Harrington, *Vacation Rentals: Commercial Activity Butting Heads with CC&Rs*, 51 Cal. W.L. Rev. 187, 193-97 (2015). An STR can provide lodging for entire families while providing hotel amenities, including complimentary Wi-Fi, toiletries, bedding, towels, and the added benefits of a fully equipped kitchen, private dining space and, sometimes, a private pool. Lori Weisberg, *Airbnb Spawns Vacation Rental Confusion*, The San Diego Union-Trib. (Mar. 8, 2015), <http://www.utsandiego.com/news/2015/mar/08/airbnb-vacation-rental-growth-causing-confusion/>. An STR is often used as an alternative to hotels, motels, and the like.
- 3 Nat’l Univ. Sys. Inst. of Policy Research, *Short-Term Rentals in the City of San Diego: An Economic Impact Analysis* (Oct. 2015), [http://www.nusinstitute.org/assets/resources/pageResources/NUSIPR\\_Short\\_Term\\_Rentals.pdf](http://www.nusinstitute.org/assets/resources/pageResources/NUSIPR_Short_Term_Rentals.pdf); Dennis Schaal, *How the Vacation Rental Land Grab Stacks Up: HomeAway vs. Priceline vs. Airbnb*, Skift (April 4, 2015), <http://skift.com/2015/04/07/how-the-vacation-rental-land-grab-stacks-up-homeaway-vs-priceline-vs-airbnb/>.
- 4 Jeremiah Jensen, *In the Pipeline: Short Term Rentals are the Future of Commercial Real Estate*, Housing Wire (Aug. 8, 2018), <https://www.housingwire.com/articles/46393-in-the-pipeline-short-term-rentals-are-the-future-of-commercial-real-estate>; Carolyn Said, *After Tangle with City, HomeAway CEO Talks Vacation-Rental Growth*, SFGATE (Feb. 20, 2015), <http://www.sfgate.com/business/article/After-tangle-with-city-HomeAway-CEO-talks-6092937.php>.
- 5 Johanna Jainchill, *Big Growth Expected in Vacation Rental Market*, Travel Wkly. (June 5, 2011), <http://www.travelweekly.com/travel-news/hotel-news/big-growth-expected-in-vacation-rental-market>.
- 6 Peter L. Allen, *How the Sharing Economy is Transforming the Short-Term Rental Industry*, Knowledge @ Wharton

- (Feb. 14, 2019), <https://knowledge.wharton.upenn.edu/article/short-term-rentals-the-transformation-in-real-estate-and-travel-set-to-check-in/>.
- 7 VRBO was acquired by HomeAway, another vacation rental platform, in 2006.
- 8 Short-Term Rentals in the City of San Diego: An Economic Impact Analysis, *supra* note 3, at 2.
- 9 Host Compliance, LLC, *Home-Sharing and Short-Term Rentals Regulations FAQ*, <https://hostcompliance.com/short-term-vacation-rental-faqs>. Host Compliance, LLC is a San Francisco-based company that helps cities and counties enforce STR laws. The company has worked with about fifteen cities, including Vancouver, Pasadena, Los Angeles, and Truckee (a resort town near Lake Tahoe, California). The company compiles local STR listings and sends notices to hosts on behalf of the municipalities. It might tell the operator to register or pay taxes, or inform them of other applicable local rules. It has a hotline for neighbors to report issues, such as noise or parking, and then it gathers evidence to back up the claim for local governments to take action.
- 10 *Id.*
- 11 Nathan P. Bettenhausen, Esq., *There Goes the Neighborhood: Regulating the Growing Short Term Rental Industry*, Orange Cty. Law., vol. 57, at 16 (July 2015), <http://www.fiorelaw.com/regulating-the-growing-short-term-rental-industry/>.
- 12 *Id.*
- 13 *Id.*
- 14 *Making a Business of "Residential Uses": The Short-Term Rental Dilemma in Common Interest Developments*, *supra* note 2, at 816.
- 15 *Home-Sharing and Short-Term Rentals Regulations FAQ*, *supra* note 9.
- 16 Charles Gottlieb, *Residential Short-Term Rentals: Should Local Governments Regulate The "Industry?"*, 65 Plan. & Envtl. Law 4, at 5 (2013) (implying that there are consequences that come along with unstable renting).
- 17 *See id.* at 6 (noting that transients lack commitment, which creates unstable communities).
- 18 Host Compliance, *Six Ways Short-Term Vacation Rentals Are Impacting Communities*, <https://hostcompliance.com/how-do-short-term-vacation-rentals-impact-communities>; WLOS Staff, *City of Brevard Approves Short-term Rentals*, WLOS (Mar. 23, 2017), <https://wlos.com/news/local/city-of-brevard-approves-short-term-rentals>.
- 19 Adrian Rodriguez, *Mill Valley Continues Airbnb-style Host Registry*, The Marin Indep. J. (July 19, 2018), <https://www.marinij.com/2017/03/08/mill-valley-continues-airbnb-style-host-registry/>.
- 20 Short-Term Rentals In the City of San Diego: An Economic Impact Analysis, *supra* note 3, at 1.
- 21 *Six Ways Short-Term Vacation Rentals Are Impacting Communities*, *supra* note 18.
- 22 Short-Term Rentals In the City of San Diego: An Economic Impact Analysis, *supra* note 3, at 5.
- 23 *Id.*
- 24 Josh Bivens, *The Economic Costs and Benefits of Airbnb*, Econ. Pol'y Inst. (Mar. 26, 2019), <https://www.epi.org/publication/the-economic-costs-and-benefits-of-airbnb-no-reason-for-local-policymakers-to-let-airbnb-bypass-tax-or-regulatory-obligations/>.
- 25 *Id.*; Stephen Fisherman, *Pros and Cons of Airbnb, VRBO, and Other Short-Term Rentals*, <https://www.nolo.com/legal-encyclopedia/pros-cons-airbnb-vrbo-other-short-term-rentals.html>.
- 26 *Six Ways Short-Term Vacation Rentals Are Impacting Communities*, *supra* note 18.
- 27 *Id.*
- 28 *See Making a Business of "Residential Use": The Short-Term Rental Dilemma in Common Interest Communities*, *supra* note 2.
- 29 George Zervas, Davide Proserpio & John W. Byers, *The Rise of the Sharing Economy: Estimating the Impact of Airbnb on the Hotel Industry*, B.U. Sch. of Mgmt. Res. Paper No. 2013-2016, at 16 (Nov. 18, 2016), <http://people.bu.edu/zg/publications/airbnb.pdf>.
- 30 *Home-Sharing and Short-Term Rentals Regulations FAQ*, *supra* note 9.
- 31 *How the Vacation Rental Land Grab Stacks Up: HomeAway vs. Priceline vs. Airbnb*, *supra* note 3.
- 32 *Six Ways Short-Term Vacation Rentals Are Impacting Communities*, *supra* note 18.
- 33 *Id.*
- 34 In the City of Los Angeles, several tenants have been suing their landlords and Airbnb for evicting them from apartments. I-Chun Chen, *L.A. Apartment Tenants Sue Airbnb, Landlord for Their Eviction*, L.A. Biz (Jan. 10, 2017), <https://www.bizjournals.com/losangeles/news/2017/01/10/l-a-apartment-tenants-sue-airbnb-landlord-for.html>. A report on the relationship between short-term rentals and Los Angeles's affordable housing crisis has shown that the density of Airbnb listings overlaps with higher rental prices and lower rental vacancy. Dayne Lee, *How Airbnb Short-Term Rentals*

*Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations*, 10 Harv. L. & Pol'y Rev., at 229 (2016).

35 Courtney Tompkins, *Should Long Beach Allow Airbnb and Other Short-term Rentals?*, Press Telegram (Mar. 24, 2017), <https://www.presstelegram.com/2017/03/24/should-long-beach-allow-airbnb-and-other-short-term-rentals/>.

36 Hailey Branston-Potts & Tracey Lien, *Protesters Storm Airbnb's San Francisco Headquarters a Day Before Vote on Regulations*, L.A. Times (Nov. 2, 2015), <https://www.latimes.com/local/lanow/la-me-ln-airbnb-protest-20151102-story.html>; *Ewing v. City of Carmel-By-The-Sea*, 234 Cal. App. 3d 1579 (1991) (Vacation rentals have adverse impacts on local communities, "including, but not limited to, increased levels of . . . vehicle traffic, parking demand, light and glare, and noise detrimental to surrounding residential uses and the general welfare of the City." Additionally, "[s]uch commercial use may increase demand for public services, including, but not limited to, police, fire, and medical emergency services, and neighborhood watch programs.").

37 Joel Grover, Matthew Glasser & Cole Sullivan, *Short-Term Rentals Turn Into Nightmares Next Door*, NBC4 LA (Mar. 1, 2017), <https://www.nbclosangeles.com/news/local/I-Team-Investigation-Short-Term-Rentals-Property-Airbnb-415128373.html>.

38 *Home-Sharing and Short-Term Rentals Regulations FAQ*, *supra* note 9.

39 Section III.B.

40 Cal. Civ. Code § 1864, which reads as follows:

Any person or entity, including a person employed by a real estate broker, who, on behalf of another or others, solicits or arranges, or accepts reservations or money, or both, for transient occupancies described in paragraphs (1) and (2) of subdivision (b) of Section 1940, in a dwelling unit in a common interest development, as defined in Section 4100, in a dwelling unit in an apartment building or complex, or in a single-family home, shall do each of the following:

(a) Prepare and maintain, in accordance with a written agreement with the owner, complete and accurate records and books of account, kept in accordance with generally accepted accounting principles, of all reservations made and money received and spent with respect to

each dwelling unit. All money received shall be kept in a trust account maintained for the benefit of owners of the dwelling units.

(b) Render, monthly, to each owner of the dwelling unit, or to that owner's designee, an accounting for each month in which there are any deposits or disbursements on behalf of that owner, however, in no event shall this accounting be rendered any less frequently than quarterly.

(c) Make all records and books of account with respect to a dwelling unit available, upon reasonable advance notice, for inspection and copying by the dwelling unit's owner. The records shall be maintained for a period of at least three years.

(d) Comply fully with all collection, payment, and recordkeeping requirements of a transient occupancy tax ordinance, if any, applicable to the occupancy.

(e) In no event shall any activities described in this section subject the person or entity performing those activities in any manner to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code. However, a real estate licensee subject to this section may satisfy the requirements of this section by compliance with the Real Estate Law.

41 *Id.*

42 Cal. Bus. & Prof. Code § 22592.

43 Lisa Halverstadt & Sara Libby, *Sacramento Report: Bill Would Sharply Limit Short-Term Rentals in Beach Neighborhoods*, Voice of San Diego (Apr. 19, 2019), <https://www.voiceofsandiego.org/topics/government/sacramento-report-bill-would-sharply-limit-short-term-rentals-in-beach-neighborhoods/>.

44 [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB1731](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1731). This bill would add Business and Professions Code section 22596.

45 *Id.*

46 *Id.*

47 *Id.*

48 Danny Freeman, *Bill Placing Days-Per-Year Limit on STVR Properties Moving Through Sacramento*, NBC7 San Diego (June 19, 2019), <https://www.nbcsandiego.com/news/local/Bill-Placing-Days-Per-Year-Limit-on-STVR-Properties-Moving-Through-Sacramento-511545452.html>.



- 49 McQuillin, *The Law of Municipal Corporations* §§ 24.01-24.92a (3d ed. 1980); *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.*, 56 Cal. 4th 729 (2013).
- 50 *Berman v. Parker*, 348 U.S. 26 (1954); *Euclid v. Ambler Realty*, 272 U.S. 365 (1926).
- 51 Cal. Const. art. XI, § 7; *Scrutton v. Cty. of Sacramento*, 275 Cal. App. 2d 412 (1969); *DeVita v. Cty. of Napa*, 9 Cal. 4th 763, 768 (1995).
- 52 Cal. Const. art. XI, § 7; *Griffin Dev. Co. v. City of Oxnard*, 39 Cal. 3d 256 (1985); *Santa Monica Pines, Ltd. v. Rent Control Bd.*, 35 Cal. 3d 858 (1984).
- 53 *Consolidated Rock Prods. Co. v. City of L.A.*, 57 Cal. 2d 515, 522 (1962); *Miller v. Bd. of Pub. Works*, 195 Cal. 477, 485 (1925).
- 54 *Welch v. Swasey*, 214 U.S. 91, 29 S. Ct. 567 (1909).
- 55 *Eubank v. City of Richmond*, 226 U.S. 137, 33 S. Ct. 76 (1912).
- 56 *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114 (1926); *Miller*, 195 Cal. 477.
- 57 *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129 (1976) (voiding the subject rent control law, but stating that such laws generally are within the police power); *Foster v. Britton*, 242 Cal. App. 4th 920 (2015).
- 58 *Constr. Indus. Ass'n v. City of Petaluma*, 522 F.2d 897 (9th Cir 1975).
- 59 *Metromedia, Inc. v. City of San Diego*, 26 Cal. 3d 848, 860 (1980), *rev'd on other grounds in Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 101 S. Ct 2882 (1981).
- 60 *Novi v. City of Pacifica*, 169 Cal. App. 3d 678 (1985).
- 61 *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579 (1991). Florida appears to be the only state to have enacted legislation limiting the authority of local governments to regulate or prohibit STRs. Gray Rohrer, *Florida House Targets Airbnb As It Moves to Preempt Local Rules on Home Rentals*, Orlando Sentinel (Mar. 26, 2019), <https://www.orlandosentinel.com/politics/os-ne-airbnb-bill-preemption-20190326-story.html>. It is conceivable, however, that the Florida law may become a model for other states. This would appear most likely to occur in those states where STRs comprise a meaningful segment of the tourist lodging industry.
- 62 *Estates at Desert Ridge Trails Homeowners' Ass'n v. Vazquez*, 300 P.3d 736, 747 (2013); Stephen Fisherman, Esq., *Legal Restrictions on Renting Your Home on Airbnb or Other Rental Services*, <https://www.nolo.com/legal-encyclopedia/legal-restrictions-renting-your-home-airbnb-other-rental-services.html/>.
- 63 Oceanside City Code, chapter 24 establishes inspections, occupancy limits, parking requirements, imposition of fees, increased code enforcement, and compliance with the “Good Neighbor Policy.” However, it only requires a two-night minimum stay and does not include a cap on total rental days per year.
- 64 In July 2018, the City Council for the City of San Diego passed two ordinances related to STR regulations. The following month, a referenda petition, seeking to put the ordinances to the voters, was filed. The petition alleged that the ordinances “undermine private property rights” and negatively impact tourism. It also claimed that they “hurt local residents who rely on home sharing to stay in their communities.” The petition needed 36,000 signatures to put the issue on the ballot, and received over 62,000. Polling at the time suggested that voters were in favor of allowing STRs to operate relatively freely. On October 22, 2018, the city council voted 8-1 to repeal both ordinances, leaving San Diego without direct STR regulations. Lori Weisberg, *San Diego Rescinds Tough Airbnb Regulations, Reopening Debate on How to Rein in Short-term Rentals*, San Diego Union Trib. (Oct. 22, 2018), <https://www.sandiegouniontribune.com/business/tourism/sd-fi-airbnb-regulations-council-20181022-story.html>; Ashley Rollins, *Palo Alto Profiting from Unauthorized Short-Term Rentals*, Peninsula Press (Oct. 30, 2018), <http://peninsulapress.com/2018/10/30/palo-alto-profiting-from-unauthorized-short-term-rentals/>.
- 65 Some local governments impose short-term rental occupancy taxes on STRs. For example, in the City of Berkeley, only primary residences are eligible for short-term rental stays of fourteen days or less. Hosts are required to register with the city and obtain a zoning certificate (includes application fee), collect a TOT, and pay an additional enforcement fee. Non-hosted rentals are capped at ninety days per year. Hosts also must notify adjacent property owners of short-term rental status and carry a minimum of \$1,000,000 liability insurance. Additional dwelling units (“ADUs”) constructed after April 1, 2017, or used as long-term rentals since April 1, 2007, are not eligible for short-term rentals. Neither below-market rent units nor any unit with a no-fault eviction in the last five years are eligible to qualify as STRs. Berkley City Code, ch. 23C.22, Short-Term Rentals.

- 66 Restrictive statutes are broad and prescribe length-of-stay terms anywhere from one to thirty days, with a maximum number of rental days annually. In the City of Calistoga, all STRs of less than thirty days are banned in residential zones. Press Release, City of Calistoga, Unlawful Vacation Rentals (Mar. 1, 2016), <http://www.ci.calistoga.ca.us/home/showdocument?id=21807>. In a recently settled case, an unlawful operator was fined \$17,842, plus an additional \$10,000 in suspended fees and \$2,633 in reimbursement costs.
- 67 Zoning regulations that restrict STRs in residential areas have been upheld where the restrictions are found to be substantially related to land use impacts in the area. *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579, 1589 n.37 (1991); *Homeaway.com, Inc. v. City of Santa Monica*, 918 F.3d 676 (9th Cir.) (municipal regulation of short-term rentals, including prohibiting booking transactions for residential properties not listed on the city’s registry does not violate the Communications Decency Act; the First, Fourth, and Fourteenth Amendments of the U.S. Constitution; or the Stored Communications Act); *Young v. County of San Mateo*, 2005 WL 3454106 (N.D. Cal. 2005) (upholding validity of ordinance that prohibited hosting conferences, meetings, or social events at bed and breakfast establishments). Per San Luis Obispo Code section 23.08.165, an STR is not permitted within 200 linear feet of a different and separate STR. In the City of Santa Barbara, STRs are defined as “hotels” that can only operate in designated zones, and then only if all necessary approvals are obtained. Santa Barbara Mun. Code §§ 28.04.395, 28.21.005.
- 68 The City of Pacific Grove limits the density of STRs. Pacific Grove Mun. Code § 23.64.350. The City imposes serious fines for violations of the STR regulations—penalties equal 100% of the total revenue earned through illegal hosting, assessed beginning the day the illegal activity begins, and accruing until the activity ceases. Additionally, operators of illegal STRs are barred from obtaining another license for two years.
- 69 Some regulations require that the property be a primary residence for the operator to prevent investors who do not live on the property from renting out a unit or an entire property as an STR. In the City of Piedmont, the STR must be a primary residence. A permit to operate an STR is required, which triggers notification of adjacent neighbors. Permittees must maintain general liability insurance of at least \$1,000,000.00. The minimum stay is two consecutive nights, but there is an annual cap of sixty rental nights. ADUs are not eligible to qualify as STRs. STRs are required to provide a smoke detector, carbon monoxide detector, and fire extinguisher. No events, parties, or gatherings are permitted. Violations are fined at \$1,500 for the first offense and \$5,000 for each subsequent offense. The city collects TOT. Piedmont City Code § 17.40.030. In the City of Los Angeles, hosts must register with the city. Hosts are limited to registering only one property with the city at a time, which must be their primary residence where they live at least six months out of the year. Rentals are limited to a 120-day annual cap, and rent-stabilized units may no longer be used for home-sharing, even if the host owns the unit. L.A. Mun. Code § 12.22.
- 70 In the City of Cloverdale, a residential unit used as an STR is limited to an annual 120-night cap, while individual rental periods cannot exceed thirty consecutive days. All property owners and occupants within 200 feet of the STR shall be provided with (a) the contact information of the property owner of the STR in the case of disturbance, and (b) notice prior to the residential unit being listed as an STR. Cloverdale Mun. Code § 18.09.265. The City of San Francisco enacted an ordinance legalizing STRs in the city. Before this, San Francisco banned residential rentals of less than thirty days in multi-unit buildings—a ban that effectively made most STRs illegal. The current law imposes a number of restrictions on STRs including: a cap of ninety total rental days per year; a requirement that the property owner live in the property at least 275 days per year; a requirement that the owner be on the premises while the unit is being rented; and a requirement that the rental unit must be the property owner’s primary residence and not a secondary home. S.F. Admin. Code, ch. 41A, Residential Unit Conversion and Demolition.
- 71 The City of Palm Desert requires units that are rented for twenty-seven or fewer days to register as an STR. Hosts are not required to be on the premises of the rental while the visitor is staying, but they must provide a round-the-clock contact person who can respond to calls within thirty minutes. Permitting of new STRs in residential neighborhoods is prohibited and previously permitted STRs in certain residential zones will terminate effective December 31, 2019. Palm Desert, Cal., Muni. Code ch. 5.10, Short-Term Rentals. City of Redwood STR operators must register with the city, get a business license, and collect TOT. Hosts must

provide on-site parking for guests and designate a local contact person who will respond to complaints while the host is absent. STRs are only allowed in homes that are primary residences, and rentals are limited to no more than 120 days per year when the host is not present. STR properties may not host special events, such as weddings or corporate retreats. Redwood Mun. Code, ch. 3.13, Short Term Rental Uses Incidental to Primary Uses.

72 City of Redwood, Redwood Mun. Code, ch. 3.13, Short Term Rental Uses Incidental to Primary Uses.

73 The operation of any business, which can include the rental of property, may trigger a license or permit requirement. In addition, a jurisdiction may also require an STR license or registration (with a fee) and attestation that the property meets health and safety requirements (e.g., smoke and carbon monoxide detectors, fire extinguishers, etc.), code compliance, zoning laws, and minimum insurance requirements.

The City of South Lake Tahoe requires owners of vacation home rentals to apply for a Vacation Home Rental Permit and agree to abide by rules and regulations, including posting notices about noise, parking, trash pickup, number of guests, and identifying a local contact for guests or neighbors to reach. South Lake Tahoe City Code, ch. 3.50, Transient Lodging.

In the City of Napa, STRs of less than thirty-one days are prohibited without a vacation rental permit. Only forty-one permits for non-hosted STRs are available for the entire city. Under the applicable regulations, “Non-Hosted Accommodation” means a vacation rental business for which the owner (or authorized agent) is not required to reside at the vacation rental unit. Only sixty permits are available for hosted STRs in which the owner resides on-site and a maximum of two bedrooms can be rented out for these hosted rentals. All permits have been issued and there is currently a wait list for new applications, which the city expects will move *very* slowly as existing permits can be transferred when a legal STR is sold to a new owner. Napa Mun. Code § 17.52.515.

In the City of Santa Cruz, there is a permanent citywide cap of 250 STR permits available. To operate an STR, a permittee must obtain an STR permit and TOT certificate. The city will not issue new permits for units where the resident resides less than six months per year. This does not apply to “grandfathered” STR units. Only residents who reside for at least six months per year can apply for new STR permits. STR permits will not be issued for

ADUs unless “grandfathered.” Lastly, the permittee must enroll in the city’s Rental Inspection Service and remit to the city TOT. Santa Cruz Mun. Code, ch. 24.12, pt. 18.

74 [V]acation rental regulation in the coastal zone must occur within the context of your local coastal program (LCP) and/or be authorized pursuant to a coastal development permit (CDP). The regulation of short-term/vacation rentals represents a change in the intensity of use and of access to the shoreline, and thus constitutes development to which the Coastal Act and LCPs must apply. We do not believe that regulation outside of that LCP/CDP context (e.g., outright vacation rental bans through other local processes) is legally enforceable in the coastal zone, and we strongly encourage your community to pursue vacation rental regulation through your LCP.”

Letter from Steve Kinsey to Coastal Planning/Community Development Directors re Short-Term/Vacation Rentals in the California Coastal Zone (Dec. 6, 2016), [https://documents.coastal.ca.gov/assets/la/Short\\_Term\\_Vacation\\_Rental\\_to\\_Coastal\\_Planning\\_&\\_Devt\\_Directors\\_120616.pdf](https://documents.coastal.ca.gov/assets/la/Short_Term_Vacation_Rental_to_Coastal_Planning_&_Devt_Directors_120616.pdf).

75 Phil Diehl, *Coastal Commission Tells Del Mar to Expand Short-term Rentals*, San Diego Union Trib. (June 17, 2018), <https://www.sandiegouniontribune.com/communities/north-county/sd-no-short-rentals-20180614-story.html>.

76 Cal. Pub. Res. Code §§ 30000-30900.

77 Marisa Moret, *A Ban on Short-term Rentals Would Violate the California Coastal Act*, The Orange County Reg. (Dec. 14, 2017), <https://www.ocregister.com/2017/12/13/a-ban-on-short-term-rentals-would-violate-the-california-coastal-act/>; *Coastal Commission Tells Del Mar to Expand Short-term Rentals*, *supra* note 75; Keith Hamm, *Coastal Commission Rejects Limiting Short-Term Rentals*, Santa Barbara Indep. (Aug. 18, 2018), <https://www.independent.com/2018/08/20/coastal-commission-rejects-limiting-short-term-rentals/>.

78 Cal. Pub. Res. Code §§ 30213, 30222; Talia Edelman, *Cities Can Stem the Tide of Short-Term Coastal Rental Homes*, SCOCABlog (Apr. 16, 2019), <http://scocablog.com/cities-can-stem-the-tide-of-short-term-coastal-rental-homes/>.

79 *Sacramento Report: Bill Would Sharply Limit Short-Term Rentals in Beach Neighborhoods*, *supra* note 43.

80 *Id.*

81 Barbara Wood, *Atherton Will Consider Allowing Airbnb-type Short Term Rentals*, The Almanac (Mar. 2, 2017),

- <https://almanacnews.com/news/103/02/atherton-will-consider-allowing-airbnb-type-rentals>.
- 82 *Legal Restrictions on Renting your Home on Airbnb or Other Rental Service*, *supra* note 62.
- 83 *Id.*
- 84 *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 107 S. Ct. 3141 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309 (1994); *Ehrlich v. City of Culver City*, 12 Cal. 4th 854 (1996). As it relates to alternative Constitutional-related allegations, in *Rosenblatt v. City of Santa Monica*, No. 17-55879 (2019), the Ninth Circuit recently approved the dismissal of a putative class action against the City of Santa Monica and Santa Monica City Council alleging that the city's STR ordinance violates the dormant commerce clause.
- 85 *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 98 S.Ct. 2646 (1978).
- 86 *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 497, 107 S. Ct. 1232, 1248 (1987).
- 87 *Andrus v. Allard*, 444 U.S. 51, 65-66, 100 S. Ct. 318, 327 (1979).
- 88 438 U.S. 104, 125-27, 98 S. Ct. 2646, 2659-61 (1978).
- 89 *Cope v. City of Cannon Beach*, 855 P.2d 1083 (1993).
- 90 As defined by Davis-Stirling Common Interest Development Act (Cal. Civ. Code §§ 4000-6150).
- 91 *Making a Business of "Residential Uses": The Short-Term-Rental Dilemma in Common Interest Developments*, *supra* note 2, at 816.
- 92 *Ironwood Owners Ass'n IX v. Solomon*, 178 Cal. App. 3d 766, 772 (1986).
- 93 *Vacation Rentals: Commercial Activity Butting Heads with CC&Rs*, *supra* note 2, at 216.
- 94 Cal. Civ. Code §§ 4350, 5975(a); *Nahrstedt v. Lakeside Village Condo. Ass'n*, 8 Cal. 4th 631 (1994).
- 95 *Lamden v. La Jolla Shores Clubdominium Homeowners Ass'n*, 21 Cal. 4th 249, 263 (1999).
- 96 *Making a Business of "Residential Uses": The Short-Term-Rental Dilemma in Common Interest Developments*, *supra* note 2, at 816.
- 97 *City of Oceanside v. McKenna*, 215 Cal. App. 3d 1420 (1989).
- 98 *Mission Shores Ass'n v. Pheil*, 166 Cal. App. 4th 789 (2008) (upheld amendment to declaration adding thirty-day minimum lease requirement and authorizing association to evict tenants that violate development's governing documents).
- 99 *Major v. Miraverde Homeowners Ass'n*, 7 Cal. App. 4th 618 (1992).
- 100 Effective January 1, 2012, a provision in a governing document that prohibits leasing or rental of a separate interest does not apply to those who owned the separate interest before the effective date of the leasing restrictions (unless the owner expressly consents to the prohibition). Cal. Civ. Code § 4740. Cal. Civil Code § 4740 addresses only "prohibitions" on leasing, not "restrictions" on leasing. To the extent leasing is not totally prohibited, it is unclear what rental restrictions a community might adopt and enforce retroactively. For example, limiting the total number of units rented at any given time is not a "prohibition" on leasing, nor is a requirement that an owner reside in the unit (or refrain from renting it for a specified period after acquisition). It cannot be said with certainty how restrictive a rental provision might be before a court would deem it a "prohibition." If the restriction takes the form of an owner-adopted CC&R amendment, the restriction should be entitled to the presumption of validity articulated in *Nahrstedt*. See *Nahrstedt v. Lakeside Village Condo. Ass'n*, 8 Cal. 4th 631 (1994). An owner must provide to the association verification of the acquisition date of the separate interest before rental of the separate interest. Cal. Civ. Code § 4740(d).
- 101 *Mission Shores Ass'n v. Pheil*, 166 Cal. App. 4th 789 (2008).
- 102 *Id.* at 795.
- 103 *Colony Hill v. Ghamaty*, 143 Cal. App. 4th 1156 (2006).
- 104 *Watts v. Oak Shores Community Ass'n*, 235 Cal. App. 4th 466 (2015).
- 105 *Id.* at 472.
- 106 *Greenfield v. Mandalay Shores Cmty. Ass'n*, 21 Cal. App. 5th 896 (2018).
- 107 Cal. Pub. Res. Code §§ 30600(a), 30106. The Coastal Act provides that "[a]ny person may maintain an action for declaratory and equitable relief to restrain any violation of this division.... On a prima facie showing of a violation of this division, preliminary equitable relief shall be issued to restrain any future violation of this division." *Id.* § 30803. In *Greenfield v. Mandalay Shores Community Ass'n*, the Greenfields had standing to pursue relief. The term "development" has been interpreted broadly. In this matter, the STR ban changed the intensity of use and access to single-family homes in the Oxnard Coastal Zone. STRs could not be regulated by a private actor when it affected the intensity of use or access to single-family homes in



a coastal zone. STR bans were a matter for the city and the Coastal Commission to address and decide whether a one-week rental created more neighborhood problems than a longer rental period. The HOA's STR ban affected 1,400 units across a wide section of beach properties that previously had been used as short-term rentals.

108 Cal. Civ. Code § 711.

109 Dana Palombo, *The Tale of Two Cities: The Regulatory Battle to Incorporate Short-Term Residential Rentals Into Modern Law*, 4 Am. U. Bus. L. Rev. 287 (2015).

110 *Making a Business of "Residential Uses:" The Short-Term Rental Dilemma in Common Interest Developments*, *supra* note 2, at 820-21 n.2.

111 *Id.* at 821.

112 *Id.*

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