

The State of Short-Term Rentals in Colorado

April 2022

Regulatory Overview

STRs are governed by layers of state and local laws and regulations, and through private leases and covenants enforced by homeowners' associations (HOAs). STRs are generally defined as residential properties available for rent for a period of fewer than 30 days.¹ STRs may include all or a portion of a property and range from entire luxury homes to single rooms. STR owners and/or authorized property managers must typically obtain an STR-specific license and a sales and lodging tax or business license.²

In recent years, and especially in the last few months, state legislators and local officials have introduced a rash of legislation, ballot initiatives, and local regulations aimed at controlling the growth of STRs and, in some cases, curbing or banning them altogether.³

Legislative Initiatives

During the 2020 legislative session, the Colorado General Assembly passed HB 20-1093, which authorizes counties to adopt ordinances to license and regulate STRs.⁴ The bill became effective September 14, 2020.

Legislators have also attempted to increase taxes on STRs in recent years. Legislation was introduced in 2020 proposing to reclassify residential properties leased as STRs, which are currently taxed at a

lower rate, to “nonresidential” (i.e., commercial) properties that are taxed at a rate more than three times higher than residential properties.⁵ A similar bill was introduced by the General Assembly’s Legislative Oversight Committee Concerning Tax Policy and Task Force in 2021.⁶ While the 2020 and 2021 bills were ultimately rejected, a bill to reclassify the tax status of STRs is expected to be introduced in the 2022 legislative session.

Ballot Initiatives

Ballot initiatives to increase taxes on STRs to support initiatives to offset or counteract the effects of STRs have become increasingly popular. These efforts are particularly popular in mountain towns, which face critical housing shortages for resort workers. For example, in November 2019 Telluride voters approved a 2.5% tax on all STRs, effective January 1, 2020, to be applied to an affordable housing fund.⁷

In 2021, voters in Avon, Crested Butte, Leadville, and Ouray considered similar taxes. Avon voters approved a 2% tax on STRs.⁸ The proceeds from the tax, which went into effect on January 1, 2022, are earmarked for community housing funds and expected to generate between \$1 and \$1.5 million in revenue annually.⁹ Crested Butte voters approved a 2.5% increase on STRs, increasing the total excise tax on STRs to 7.5%,¹⁰ to support workforce housing.¹¹ Leadville voters approved a 4.92% accommodation tax on STRs units, among other accommodations,¹² to fund affordable and community housing.¹³ Ouray voters approved a 15% excise tax to support workforce housing and wastewater treatment facilities.¹⁴

In 2021, Telluride voters also raised the business license fees for STRs, with the increased revenue to be dedicated to Telluride’s Affordable Housing Fund.¹⁵ In addition, Telluride voters considered two

competing ballot initiatives on capping STR licenses. Voters rejected a cap on short-term rental licenses at 400 and an annual lottery system for permits,[16](#) which would have cut the existing number of licenses nearly in half.[17](#) Instead, Telluride voters approved a cap to limit the number of STR licenses to the number that had been issued as of election day, November 2, 2021.[18](#)

Local Rules and Ordinances

Even before boards of county commissioners were handed specific authority to license and regulate STRs, municipalities regulated them by requiring licenses or permits to rent STRs and collecting taxes on the rentals.[19](#) Local and county requirements vary substantially. For example, unincorporated Eagle County has no restrictions on STRs, and unincorporated Routt County bans them altogether.[20](#) Durango and Breckenridge cap STR permits and have long permit waiting lists.[21](#)

Many other counties and municipalities have similar ordinances and rules. As noted above, STRs are typically defined as rentals of residential dwellings for less than 30 consecutive days. Some jurisdictions add occupancy limits[22](#) and parking requirements to the duration requirement.[23](#) In counties and municipalities that require STR licenses or permits, those licenses and permits are typically effective for one- or two-year terms and must be renewed before such period expires.[24](#) Proof of insurance is typically required,[25](#) as is designation of a point person who must be available 24 hours a day to respond to emergencies.[26](#)

Some municipalities engage third-party companies that monitor STRs to identify illegal STR operations within the municipalities and to ensure compliance. [27](#)

Notwithstanding the breadth of regulations, the STR market continues to expand, with more companies competing with giants such as Airbnb and VRBO to attract both listings and renters. Local realtors also participate in brokering STRs. Not to be left behind, the traditional hospitality industry also has a presence in the STR market through platforms such as Homes & Villas by Marriott International.²⁸ And aggregator and property management sites offer strong analytical tools to sell data to subscribers about everything from nightly pricing to the STR market strength in particular locations.²⁹

Yet local governments must balance the competing and conflicting desired policy outcomes of various players. Some constituents want less STR regulation to benefit STR operators and listing owners, tourism, and the resulting STR-generated tax dollars. Others want more regulation to limit STRs based on the perceived negative impact STRs have had on housing prices in general, the affordable housing market, neighborhood safety, and the character of communities that are not designed for tourists. The push for increased regulation is driven in part by studies indicating the negative effects of STRs. For example, according to several studies, the conversion of leases for periods over 30 days into STRs has exacerbated the housing crisis,³⁰ which may have created worker shortages as workforce housing evaporates in some communities. A study in Boston concluded that “home sharing is increasing rents by decreasing the supply of units available to potential residents.”³¹ This study also concluded that an increase in Airbnb listings relative to total housing units is correlated with a decrease in the number of non-STR units offered for rent.³² Thus, the increase in municipal tax proceeds resulting from spending by STR renters, versus the negative impacts STRs have on communities where they’re located, continues to be a policy and legal struggle for local governments, police departments,

and other regulators. Accordingly, local governments around the state have imposed a range of regulations, and some have either capped or suspended the issuance of new STR licenses.

Tax Issues

In 2019, the Colorado Legislature passed HB 19-1240, which assigned sales tax collection responsibilities to “marketplace facilitators,” who must collect and remit sales tax for sales made by “marketplace sellers” on the marketplace facilitator’s marketplace.¹³³ As a result of this legislation, STR facilitators must now collect and remit Colorado sales tax. According to the Colorado Department of Revenue, “[o]wners and managers of units rented for less than 30 consecutive days are required to collect and remit sales taxes. Applicable state, special district taxes, county lodging and local marketing district taxes, [and] all state-collected local and county sales taxes are also due on the rental price.”¹³⁴ Although the legislature has considered the issue, Colorado has not passed a change in the property tax classification of property used for STRs.¹³⁵

HOA Issues

STR-related issues may also be regulated by HOAs, which struggle with many of the same issues that local governments face. HOAs do not enjoy the power that local governments have over STR issues because the Colorado Common Interest Ownership Act¹³⁶ governs most HOAs and limits their ability to make regulations that differ from the recorded covenants and declarations establishing the HOA community. For example, CRS § 38-33.3-205(1)(l) requires that any restrictions on the use, occupancy, and alienation of units be contained in the recorded declaration. CRS § 38-33.3-217(4.5) requires that no amendment may change the uses to which any unit is

restricted in the absence of a vote or agreement of at least 67% of owners, or any larger percentage specified in the declaration. As a result, declarations that permit STRs must be amended to change the provisions in the declaration governing STRs, to the extent the HOA community desires to prohibit or limit STRs.

The Colorado Court of Appeals has upheld the statutory provisions, stating that “[f]or short-term vacation rentals to be prohibited, the covenants themselves must be amended. . . . [T]he board’s attempt to accomplish such amendment through its administrative procedures was unenforceable.”¹³⁷ From a practical standpoint, practitioners drafting new documents for an HOA or amending existing documents should discuss STR issues with the developer and HOA board, including the differences between a covenant that runs with the land and a rule or regulation that may be amended by the board, because HOA boards lack authority to change covenants in the declaration through rules.

Lease Considerations

Given the potential profitability in rental arbitrage, when drafting residential leases for clients, practitioners should encourage clients to consider including either a prohibition of STRs or, alternatively, a specific permitted use. Although many jurisdictions surveyed in this article require the owner’s written consent as part of the application for a third party to obtain a license (whether a property manager or tenant), third-party facilitators do not ask for verification that the person creating the listing has permission to list the property as an STR. If the premises are located in an area with an HOA, the lease’s STR terms should be consistent with those in the HOA documents, because the property owner must answer for any violations.

Practice Tips

STR regulation is a constantly changing area. Practitioners advising clients on owning or operating an STR should

- review local government regulations and determine if additional updates are pending.
- advise the client on tax compliance issues. Notably, third-party facilitators must now collect the taxes on behalf of the listing party, but if the third-party facilitator fails to perform, the owner becomes liable for complying with the tax regulations.
- understand applicable HOA requirements. Only some local government license application processes include confirmation that the property is not subject to HOA regulations pertaining to STRs, so attorneys should review HOA documents before advising the client on whether an STR is permitted at the property.
- confirm that there are no additional applicable covenants recorded against the property or rental restrictions in the deed.

Ultimately, the property owner retains liability for compliance with all regulations and covenants, as STR platforms and facilitators to date have faced no liability for listings that do not comply with government regulations. Further, when a potential client informs the attorney that the client's property was successfully listed on an STR platform, the attorney should not assume that the client has complied with the regulations or covenants governing the property.