

OPLA RESEARCH REQUEST MEMO

To: Members of the Commission to Increase Housing Opportunities in Maine by Studying Land Use Regulations and Short-term Rentals

From: Kristin Brawn, Legislative Researcher

Date: September 30, 2022

RE: Information on New York Multiple Dwelling Law that Impacts Short-Term Rentals

Dear Commissioners:

At the last meeting on September 23, 2022, the Commission requested more information on New York State's Multiple Dwelling Law (MDL) that impacts short-term rentals (STRs). Following is a brief history of the law and legal challenges to the law, as well as information on how the law may have impacted STRs in the state.

History and Legal Challenges

New York's only statewide regulation of STRs is contained in the state's MDL ([N.Y. Mult. Dwell. Law §§1 to 367](#)), which only applies to cities with a population of 325,000 or more. However, smaller cities and towns are permitted to adopt the standards of the MDL. The law establishes four classifications of dwelling units:

- Private dwellings, which are either (1) single-family private dwellings or (2) two-family private dwellings; and
- Multiple dwellings, which are either (3) Class B multiple dwellings, which are transient or temporary abodes, such as hotels, rooming houses and dwellings with five or more boarders, roomers or ledgers in one household; or (4) Class A multiple dwellings, which include all residential buildings that are not Class B dwellings, such as tenements, apartment houses, studio apartments, duplex apartments and garden-type maisonette dwelling projects.

In 2010, [section 4](#) of the MDL was amended to its current form to restrict the use of Class A multiple dwellings to "permanent residence purposes," defined as "occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more." This law only applies to Class A multiple dwellings and not to private single-family or two-family dwellings. The law does provide for two exceptions for shorter stays than 30 days:

- Occupancy by house guests or lawful boarders, roomers or lodgers living within the household of the permanent occupant; or
- Incidental and occasional occupancy by other natural persons when the permanent occupants are temporarily absent for personal reasons such as vacation or medical treatment, provided that there is no monetary compensation paid to the permanent occupants for such occupancy.

[Practical Law states](#) that the exception for house guests or lawful boarders, roomers or lodgers could allow a host to create an STR arrangement for a bedroom or other part of the unit, as long as the host remains physically present in the unit.

The sponsor of the 2010 legislation, Senator Liz Kreuger, [stated that the law was not designed to target Airbnb and other STR hosting platforms](#) or hosts who rent out their place while they travel for a few days. Rather, the target was businesses such as landlords who advertise their apartments on several STR platforms, including Airbnb.

In October 2016, the MDL was further amended, adding [section 121](#), which prohibits advertising that promotes the use of dwelling units in a Class A multiple dwelling for other than permanent residence purposes. The law also imposes a civil penalty of no more than \$1,000 for the first violation, \$5,000 for a second violation and

\$7,500 for the third and subsequent violations. For cities with a population of 1 million or more (New York City), the law also directs the mayor's office of special enforcement to enforce the law.

Within hours after the enactment of the 2016 law, Airbnb filed a [lawsuit](#) against the State of New York on the grounds that the new law violated its constitutional rights to free speech and due process, and that it was inconsistent with Section 230 of the Communications Decency Act, 47 U.S.C. § 230, ("CDA") which protects online intermediaries that host or republish speech from a range of liabilities. However in December 2016, Airbnb [agreed to drop the lawsuit](#) as long as New York agreed to enforce the law against hosts only and not fine Airbnb for illegal advertisements.

Impact of Law on STRs

Despite the enactment of the 2010 and 2016 laws, studies have shown that illegal STRs continue to exist in the state. However, New York City, where a majority of STRs in the state are listed, has begun to address the STR issue by filing lawsuits against illegal rentals and enacting ordinances to require STR booking services to provide data regarding STRs and for STR hosts to register their rentals with the city.

A [2018 report by the McGill University School of Urban Planning](#) which analyzed Airbnb activity in New York City and the surrounding areas during the three-year period of September 2014 to August 2017 found that two-thirds of revenue from Airbnb listings was likely to be illegal. Entire-home/ apartment listings accounted for 75% (\$490 million) of total Airbnb revenue and represented 51% of total listings. The analysis determined that an estimated 87% of entire-home reservations were illegal under New York State law, which meant that 66% of revenue (\$435 million) and 45% of all New York Airbnb reservations for the previous year were illegal.

In October 2021, [a press release from the New York City Mayor's Office](#) announced that the Mayor's Office of Special Enforcement had secured more than \$1.2 million in settlements in three illegal short-term rental lawsuits. The lawsuits involved over 225 units in 35 buildings across Manhattan. More recently, in July 2022, the [Office of Special Enforcement announced another lawsuit](#) against an illegal STR operation in the Turtle Bay neighborhood of Manhattan. This lawsuit represents the first action taken against an illegal STR operation since the city [enacted an ordinance in 2020](#) to require STR booking services, such as Airbnb, to provide the city with a quarterly report of transactions associated with qualifying listings for which the booking service charged, collected or received a fee, including for each transaction the physical address of the STR, contact information for the STR host, the number of days the unit was rented, whether the whole unit or a portion of the unit was rented and other required information. The city also recently enacted [an ordinance to require the registration of all STRs](#) operating in the city, which will become effective in January 2023.