

Jeannie Veegh

From: Christopher D. Lewis <lewis@texlaw.info> on behalf of Christopher D. Lewis
Sent: Monday, November 14, 2022 4:59 PM
To: townclerk@tiverton.ri.gov
Subject: Proposed regulations for short-term rental properties

Dear Madam,

Thank you for your time on the phone earlier this week. As we discussed, I have a client which involuntarily became the owner of a parcel of real estate in Tiverton over a year ago and has, for a variety of reasons, been unable to sell it. The draft regulations I found on the Internet raised some concerns that may not be obvious to those responsible for designing, approving, or implementing regulation on short term rentals.

The proposed regulations have a blank for the number of days per year the property owner will inhabit the short term rental property and the distance from the short term rental property the owner will live. I have practiced law for decades and I can confirm that estate planning, tax planning, and succession planning even for small family firms frequently involves the use of entities, especially for liability-generating assets such as real estate where it is possible for strangers to enter the property, even uninvited (e.g., vandals) and injure themselves. Once a parcel of real estate is held through an entity, the owner cannot “live” anywhere near the property because it does not “live” anywhere. Likewise, the owner could as easily be considered to use the property constantly as never at all: the use of an entity must be through the action of agents, and anyone including a rental tenant could be an agent. In short, family limited partnerships and limited liability companies and other business organizations frequently in use nationwide for estate planning and succession planning (and certainly within Rhode Island as in other states) would render meaningless concepts such as location of an owner's home or frequency of use by the owner. Regulation that might seek to look through business entities to the locations or conduct of the “owner” runs into the potential problem that there can be many owners, owners’ habitation may change through the course of a year, and the meaning of “owner” may be hard to interpret in the context of a limited liability company or trust in which equity interest and controlling interest may or may not have any overlap. (It’s also worth noting that regulations that look through an entity to the owners’ residence are at some risk of encountering legal challenges for the same reason as challenges facing residence and employment.)

One issue that should be addressed is whether a new permitting scheme should require permits to be held by an owner of record, or by the person or entity actually managing the short term rental property. Rhode Island’s regulation would issue permits to owners without ever asking who will operate the short term rental property, who will collect the short term rental income, and who will be paying the taxes due on sales to short term rental tenants. The operator may not be the owner, but may itself be a long-term tenant. This may be worth considering before making a final regulation.

My client did not acquire its Tiverton property to enter the short-term rental business. Rather, my client’s inability to sell its property using a local professional agent and the multiple-listing service that services the Tiverton area drove my client to consider short term rental as a stop-loss measure to offset holding costs. Property taxes come to approximately a thousand dollars per month and utilities are frequently hundreds per month. I had the opportunity in June of 2022 to visit the property, after it had been offered for sale and before it was made available to short term rental tenants. The next door neighbor expressed delight someone had finally taken the property seriously after it had been allowed to fall into disrepair following the death of its original owner in the 1980s. Apparently several different owners took turns buying the property, failing to repair it, and abandoning it while it was foreclosed by another lender. Had my client been aware of this history, it would not have lent money to a house flipper who promised to place it in marketable condition within one year back in 2019. The repair effort made by my client’s borrower was the fifth attempt that failed. That firm’s out-of-town Rhode Island manager not only failed to repair the property, despite borrowing from my client the funds budgeted to repair it, but also failed to pay the taxes, water bills, and even utilities. Eventually my client was

forced to foreclose in order not to lose its entire investment of hundreds of thousands of dollars to some bargain hunter at a foreclosure auction.

My client paid tens of thousands in back taxes and outstanding water bills, then engaged local contractors to complete the repair of the property five (5) different firms had failed to repair in the last thirty-plus years. More than a hundred fifty thousand dollars was spent paying local Rhode Island contractors and suppliers to repair the house before I visited it in June. When I did, I discovered why it had not sold: the punch list of items that still required repair was shockingly long. Unable to rely on my client's general contractor, who had erroneously represented that the house was ready for sale, I located and began hiring local Tiverton contractors on advice from a local Tiverton real estate agent. Between stays by short-term rental tenants, I have personally overseen another \$80,000 in repairs to that same property in Tiverton. In addition to approximately a thousand dollars a month paid in taxes, and the hundreds spend on utilities, my client pays about another thousand per month for housekeeping services between short-term rental tenants – income to Tiverton's economy that an owner-occupant would not pay.

Unlike an owner-occupant, my client also pays sales taxes to Rhode Island that are collected from each short-term rental by the firms that manage the bookings. None of this revenue would accrue to the state from an owner occupant, either.

My client has not yet had the property available to short term rental tenants for a full year and so is in no position to make a determination whether the property should be held for rental or should be sold. I can attest that many of the short-term rental tenants are in Tiverton for family functions such as reunions or weddings and prefer to have a house with full bathrooms and a full kitchen than to have a large party spread across multiple hotel units that have no common area to enjoy in private. The availability of this house to the short term rental market seems unlikely to have adversely impacted the availability of affordable housing, as this house is, in the view of the agent who marketed it last, a property whose comparable sales exceed nine hundred thousand dollars. The ownership of this house by an out of state limited liability company is not likely to reduce the availability of housing to Tiverton locals because it was never available to Tiverton locals for more than thirty years of dereliction and abandonment which no Tiverton local saw fit to remedy. The availability of this property to short term rental tenants improves access by Tiverton's guests to Tiverton's restaurants and shops, which would see less such traffic if houses were to become harder to rent within Tiverton and short-term rental tenants were driven by regulation to some other coastal community.

It may interest Tiverton's authorities and residents that this property is now exclusively cleaned and supplied by Tiverton locals, as my client has no physical presence anywhere near Tiverton. Any time any guest requires anything at the property, it is a Tiverton resident that is hired to solve the problem, repair the issue, supply the missing need, or otherwise handle any on-site requirements that the property requires as a rental but would be unnecessary were it operated by an individual owner for himself.

Although my client is a business entity, my client's owners have included such characters as an eighty-three year old pediatrician and a family of four educating two daughters. All of them are interested in visiting the property but none of them to date has been able. When they do visit they will spend money rather disproportionately in Tiverton restaurants and dessert shops with comparison to locals who begin each week with a stocked refrigerator. I expect most short-term-rental guests to behave similarly, to the benefit of Tiverton's local retail establishments.

I represent not a single slum lord. When my client instructed me to resolve the problems arising out of the failed Tiverton real estate loan I was given no instructions to harm anyone in Tiverton but have faithfully ensured the timely payment of every contractor engaged to resolve the numerous problems that have arisen in the house and which no prior owner had bothered to properly repair. This is not to say I have been instructed to make a plea for short term rental landlords; to the contrary. But as a longtime compliance attorney I feel obliged to share that some of the proposed regulations appear to be difficult to interpret in the case of quite a few of the owners I would expect to be involved in real estate investment, and as an attorney with years of experience with real estate investments I would express that willingness to invest hundreds of thousands of dollars to set aright a house that five prior owners had failed to remedy isn't a project for hobbyists: if Tiverton wants tough-to-solve real estate problems tackled with a sufficient budget and experience, Tiverton wants real estate investors in town.

My client not being a human, it will be in no position to attend tonight's meeting of the town council. I would appreciate it if you could make this communication available to participants either by printing it for their perusal or having it read into the minutes. Please let me know if this can be done.

If Tiverton does not want real estate investors in town, please tell me so I can inform my client. Neither my client nor I has any intention to be in business where we are not wanted, and I would expect my client upon receipt of such information to arrange the sale of the property promptly now that it has, after nearly 40 years, finally been fixed.

Very best regards,
Chris

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