



Regulating Short-term Rentals. What Towns can & can't do

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Market & Demand

- Home owners seeking supplemental income
 - Can assist with mortgage payments allowing home affordability
 - Multiple home owners desire rental income from seasonal rent
- Popular in tourist areas or “event” locations
 - Unique experience – memorable to the buyer
 - Affordable to the buyer (value)
 - “Closer to the Action”



Protecting Public Health, Safety and Welfare



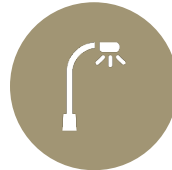
MAINTAIN
NEIGHBORHOOD
CHARACTER



ENSURE BUILDING
SAFETY



PREVENT OVER
OCCUPANCY



CONTROLLING
NUISANCES (NOISE,
LIGHTING, ETC.)



IMPACTS ON
AFFORDABLE
HOUSING



SERVICE CAPACITIES:
SEWER/SEPTIC, WATER,
PARKING
ACCOMMODATIONS

Legal Landscape: 2017 WI Act 59

- Sought to address competing interest surrounding the short-term rental of properties
- Prohibits governments from restricting short-term rentals (allows for reasonable use of the property by the owner)
- Allows counties and municipalities to regulate short-term rentals through zoning and licenses
- Attempts to provides structure to achieve the win/win

Legal Landscape: Formalized in WI Stats 66.1014

- Definition of “Residential Dwelling”
 - Means any building, structure or part of the building or structure, that is used or intended to be used as a home, residence or sleeping place, by one or by 2 or more persons maintaining a common household, to the exclusion of all others”. **Does this mean it’s the owner’s primary residence??**



Legal Landscape: Formalized in WI Stats 66.1014

- Municipalities **cannot** prohibit the rental of a residential dwelling for seven consecutive days or longer.
- However, municipalities **can enforce** ordinances that prohibit the rental of a residential dwelling for 6 days or less (“transient clause”). Should be a point of discussion in development of your ordinance.
- Municipalities **can limit** total consecutive days they rent (180 minimum).
- If rented for more than 6 but fewer than 29 consecutive days, the municipality **may limit the total number** of days within any consecutive 365-day period that the dwelling maybe rented, but not fewer than 180 days.
 - Cannot specify the period of time during which the residential dwelling may be rented, but may require that the maximum number of allowable rental days within the 365, run consecutively.
 - The first renter must notify the municipality in writing when the first rental within the 365 day period begins.

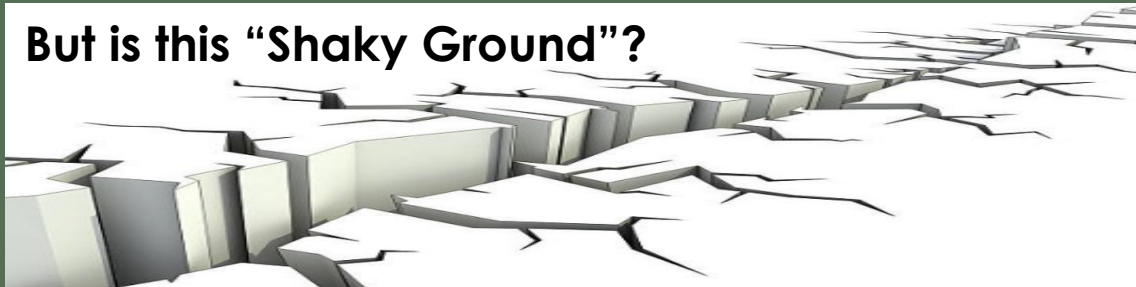
Legal Landscape: Formalized in WI Stats 66.1014

- Any person who maintains, manages or operates a short-term rental as defined for more than 10 nights each year shall:
 - Obtain from DATCP, a license as a tourist rooming house, as defined in s.97.01 (15k).
 - Obtain a license from the municipality for conducting such activity if an ordinance requiring a license is adopted.
 - *Question: What about approval from the County Health Departments?*

Approving a “Local License” for STR’s

- The Law does not specify the ways and means to which a local license for STR’s is issued. What the law does is specify the **do’s and don’ts** of what your ordinance can include to determine the issuance of the permit.
- What about other health, safety and welfare concerns other than duration of rentals? For comparison sake, let’s say items a municipality would review as part of a Conditional or Special Use Permit.

But is this “Shaky Ground”?



Approving a “Local License” for STR’s



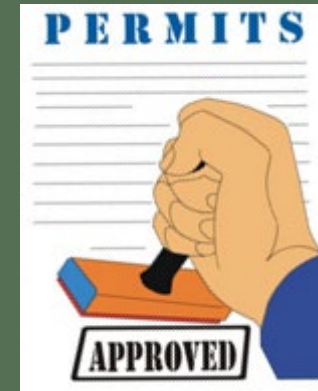
- The Law has recently been challenged on several fronts:
 - Vilas County zoning ordinance creating a “Residential/Lodging” (RL) District for transient lodging. The County contended the STR should only apply there. The court supported the law in that short and long term rentals of single family dwellings (permitted) in the R-1 could not be prohibited.
 - **But the court** supported the specification of what “rental of residential dwelling unit” means in the context of transient lodging when specified in a district (i.e. a one month time limitation). **However, what does that really mean in the context of drafting ordinance language?**
 - My interpretation is that any zoning district which allows residential dwelling units as a use (permitted or conditional), the law applies.

Approving a “Local License” for STR’s: Big Case Pending



- Good Neighbor Alliance vs Town of Holland, Sheboygan County (circuit Court Case No. 2019CV000269)- Case Outcome Pending.
- Lawsuit filed May 2019. Briefs to be filed in October. Decision may not occur until January 2020. Case challenges town’s amended Ordinance being inconsistent with ss 66.1014 including such provisions as:
 - Property Manager requirements (reside within 35 miles)
 - Size of signs
 - Liability Insurance requirement
 - On-site parking required
 - Site plan diagram required
 - Violation provisions
 - And others.....

Approving a “Local License” for STR’s



- If Law does not specify the ways and means to which a local license for STR’s is issued and only addresses the do’s and don’ts of what your ordinance can include, future court case outcomes will likely determine what your ordinance could include.
- For example, could the issuance of a STR “license” be tied to the approval of a Conditional Use Permit?

Possible Ordinance Language (Could be a license or zoning ordinance)



- **State license.** Anyone who maintains, manages, or operates an STR for more than 10 nights each year is required to obtain a tourist rooming house license from the Wisconsin Department of Agriculture, Trade & Consumer Protection (DATCP).
- **County license.** Prior to the establishment of a STR, the operator shall obtain a license from the County Health Department and maintain such license for the life of the use or until the department no longer requires such license. (Overreach?)

Possible Ordinance Language



- **Type of dwelling.** An STR shall only occur within a residential dwelling as defined by 66.1014.
- **Maximum stay.** Rentals shall not exceed 29 consecutive days. Rental activity shall be limited to 180 consecutive days within any consecutive 365-day period.
- **Meet ATCP 72 Requirements.** DATCP administers permits, inspections, building codes, sleeping room size, smoke detection, locks plus more.

Possible Ordinance Language

- **Conditional Use Permit (CUP) as part of Zoning.** All STR structures require a onetime Conditional Use Permit as an accessory use to Residential as the Principal Use. (Overreach?)
 - However, any prior STR use could be considered “legal non-conforming”.
- **A CUP** can be transferable between property owners. (Overreach?)

Possible Ordinance Language



- **Residency requirement.** The operator or owner of a STR shall maintain the residential dwelling as their primary residence during the time period when rooms are offered. (Law does not specify between owner or renter – Overreach?)
- **Exterior character of the dwelling unit.** The exterior appearance of the building shall not be altered from its residential appearance. Signage shall conform with the standards identified in the Conditional Use Permit. However, the sign shall not exceed (?) Sq. ft. in size. (Overreach?)

Possible Ordinance Language

- **Food preparation.** No food preparation or cooking shall be allowed in guest rooms. (Overreach?)
- **Meals.** Meals shall only be offered to overnight guests. (Overreach?)



Possible Ordinance Language



- **Required inspection for public safety.** Before the issuance of any license, an inspection of the residential structure shall occur by the Town's Building Inspector. All STR rooms for rent shall be UDC (Uniform Dwelling Code) compliant. Inspections shall occur every five years at a minimum. (Overreach or just require compliance with ATCP 72?)
- **Parking.** All vehicle parking (home owners and renters) must occur on site. No on-street parking. (Overreach?)

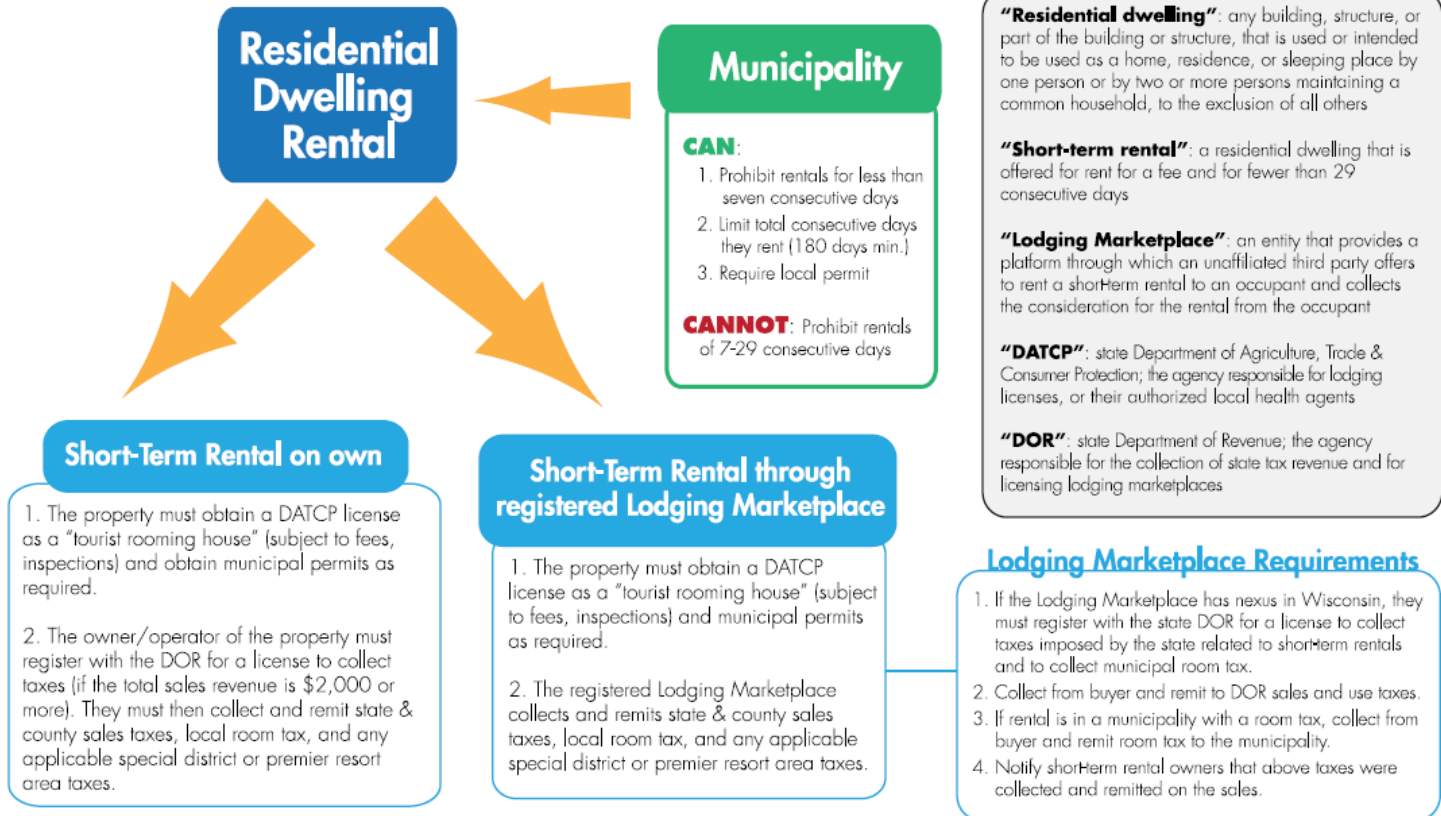
Possible Ordinance Language



- **Tax Filing.** All local, state and federal tax must be filed with the appropriate agencies. STR's must comply with the provisions of the Municipal Code hotel and motel room tax (If applicable).
- **Guest Registry?** Required by ACTP 72.15 anyway. Issues with privacy of information.

NEW SHORT-TERM RENTALS LAW

Wisconsin Act 59 - September 2017



provided by:



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262/782-2851 | Wisconsinlodging.org
Contact: Trisha A. Pugal, CAE, President/CEO | pugal@wisconsinlodging.org
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Suggestions for Avoiding Future Litigation

- ▶ Continue to monitor case law that will define ordinance parameters. Start with the knowns and amend as law get further refined.
- ▶ Consult with your legal counsel in their comfort in wording provisions.

RISK

Is the uncertainty worth the risk?

SAFETY

- Understand and communicate with the Wisconsin Department of Agriculture Trade and Consumer Protection (DATCP).
- Understand that overly aggressive regulations may be challenged. Likely more test cases will surface to define.

Thank You!

Questions?

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