

City of Fort Pierce

Planning Board Workshop
Regulation of Vacation Rentals

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Regulation of Vacation Rentals

State Overview -Vacation Rentals Generally

- A vacation rental is classified as any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit, not a timeshare project, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, or advertised to the public as a place regularly rented to guests. (See, *Fla. Stat. § 509.013(4)(a)1.*)

Regulation of Vacation Rentals

- The Division of Hotels and Restaurants within the **Department of Business and Professional Regulation (DBPR)** is charged with enforcing the provisions of Chapter 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. The Department **licenses vacation rentals within the state, and has the power to inspect a licensed vacation rental.** (See, *Fla. Stat. § 509.241, F.S.*)
- DBPR requires each vacation rental to be readily available for inspection, but **vacation rentals are not subject to the inspection requirements of other transient public lodging establishments and the Division only inspects a vacation rental if there is a complaint.** (See *Rule 61C-1.002(3), F.A.C; Fla. Stat. § 509.032(2)(a), (stating “[p]ublic lodging units classified as vacation rentals are not subject to this [inspection] requirement but shall be made available to the division upon request”*)



Preemption Authority

- Home Rule Authority Complete
- Prior to June 1, 2011, local governments regulated vacation rentals (also referred to as resort dwellings in many local laws) based on their classification as vacation rentals. Local governments could restrict or prohibit vacation rentals up to, and including, banning the use of residential properties as vacation rentals.
 - But see *Fla. Stat. § 509.032(7)(a)* – preempting inspections to the State, except for compliance with Florida Building Code and Fire Prevention Code

2011 Legislation

- In 2011, Chapter 2011-119, Laws of Florida, preempted vacation rental regulation to the state, and prevented local governments from enacting any new law, ordinance, or regulation that prohibited, restricted the use of, or regulated vacation rentals based on classification, use, or occupancy.
- The legislation exempted (grandfathered) any local law, ordinance, or regulation that was enacted by a local government on or prior to June 1, 2011. (See Chapter 2011-119, Laws of Florida; codified in Fla. Stat. § 509.032(7))



2011 Legislation

- Florida Statute § 509.032(7)(b):

“A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.”



Short Term Vacation Rental Legislation And Effects

What did the 2011 Legislation do?

- No more restriction on use or prohibition of vacation rentals, and no more treatment of them based on their classification, use or occupancy.
- If a community wanted to regulate them, they would essentially have to fall under a program that regulated all types of rentals, e.g., landlord licensing programs.
- Allowed single-family homes to fall within the short term vacation rental preemption, along with two-family or four-family house or dwelling unit. (See, Fla. Stat. § 509.242(1)(c))
- No mandatory inspections of these homes by the Department of Business and Professional Regulation (“DBPR”) for compliance with state regulatory requirements. (See, Fla. Stat. § 509.032(2))



2014 Revision To Legislation

- In 2014, Chapter 2014-71, Laws of Florida, narrowed the scope of the preemption by preventing local governments from prohibiting, or regulating the duration or frequency of, vacation rentals.
- As a result, current law allows local governments to regulate vacation rentals, provided those regulations do not prohibit, or regulate the duration or frequency of, the vacation rental. The grandfather provision is maintained. (See Chapter 2014-71, Laws of Florida; codified in Fla. Stat. § 509.032(7)(b))

2014 Revision To Legislation

- Florida Statute § 509.032(7)(b):

~~“A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate the duration or frequency of rental of vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.”~~

- Senate Bill originally restored full home rule. House of Representatives greatly watered it down.
- Legislative history supports intent to restore power to regulate, but not power to prohibit.



2014 Legislation Restores Some Regulatory Powers

- The definition of a vacation rental, sometimes called short term vacation rental or a resort dwelling, did not change. (*See, Fla. Stat. § 509.013(4)(a)*)
- “Vacation rentals” are a type of “transient public lodging establishment” which are rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.
- DBPR standards did not change.



2014 Legislation Permits Adoption Of Local Government Regulations

- Limited To Implementation Of Various Public Health, Safety And Welfare Concerns
- Safety – fire, carbon dioxide, pool, evacuation, communication
- Impacts of incompatibility – noise, trash, parking, changing character of neighborhood
- Accountability – local registration, contact, inspections, enforcement, fines and suspensions, tenant notification, tax payments
- Although local governments are permitted to enact regulations to accomplish such legitimate goals, regulations may not conflict with a controlling provision of state law.

2016 Attorney General Opinion

- The Attorney General released an opinion on October 5, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a proposed ordinance in light of the preemption regarding vacation rentals. (See **AGO 2016-12**, Municipalities -- Vacation Rentals – Zoning October 5, 2016)
- The Attorney General opined that the preemption **allows local governments some regulation of vacation rentals**, but **prevents** local governments from **prohibiting** vacation rentals. Consequently, the Attorney General noted that **a municipality may not impose spacing or proportional regulations that would have the effect of preventing eligible housing from being used as a vacation rental.**

2016 Attorney General Opinion

Take Away Lesson:

- An ordinance requiring certain distances between vacation rentals or limiting their numbers in areas within the City could result in a prohibition against using eligible units as vacation rentals when other existing units have already satisfied the spacing or percentage formula.
- *“Although the proposed ordinance would not absolutely forbid vacation rentals in the City, a distance separation requirement and a numerical or percentage limitation have the express purpose of prohibiting units above a certain threshold from being used as vacation rentals, which is contrary to Section 509.032(7)(b), Florida Statutes.”*

City Regulations

- Enacted Prior to June 1, 2011
- Dwelling Rentals of less than 6 months (including Short Term Dwelling/Vacation Rentals) are permitted in all residential zoning districts pursuant to a **Conditional Use Permit.**
- City Code Section 22-76 “Procedure for the review and approval of conditional uses”

Section 22-76(3) – *“In permitting a conditional use or the modification of an existing conditional use, the city commission may impose, in addition to those standards and requirements expressly specified in this chapter, any condition which it finds to be necessary to protect the best interest of the surrounding property of the city.”*

Limitation On Conditions

- Conditions imposed or placed upon Conditional Use Permits approving Vacation Rentals are limited pursuant to scope of state preemption under *Fla. Stat. § 509.032(7)(b)*.
- Conditions must be reasonable and rationaly related to mitigation of public health, safety and welfare concerns (negative secondary effects).
- Imposing unreasonable conditions or conditions having the effect of prohibiting a statutorily-eligible housing unit from being used as a vacation rental would likely exceed the regulatory authority granted in *Fla. Stat. § 509.032(7)(b)*.



Exceeding Scope Of Regulatory Authority- Potential Liability For City

- Current case law is highly volatile at this time
- Area of law is continuing to evolve due to litigation from competing interest (home rule powers vs. investment property and ownership rights vs. homesteaded property rights)
- Takings
- Bert J Harris Act Claims

Proposed 2018 Legislation

Florida Vacation Rental Act (Local Government Preemption)

- **SB 1400** (Steube), titled the “*Florida Vacation Rental Act*,” preempts all regulation of vacation rentals to the state and nullifies any local regulations, including those adopted prior to June 1, 2011. The bill requires each vacation rental to obtain a license through the Department of Business and Professional Regulation (DBPR), requires an annual renewal and allows for multiple properties to be combined under one license. The bill caps license fees at no more than \$1,000 per license and directs these fees to the Hospitality Education Program.



Proposed 2018 Legislation

SB 1400 Florida Vacation Rental Act

- The bill establishes fines for noncompliance and directs all revenue associated with fines to the Hotel and Restaurant Trust Fund. The bill clarifies that fines may not subsequently be used for payment to any entity performing required inspections under contract with the state, and that administrative fines may be used to support division programs. The bill authorizes DBPR to fine, suspend or revoke the license of any vacation rental for certain offenses, such as using the space for unauthorized gambling purposes, prostitution or illegally dealing in controlled substances.



Proposed 2018 Legislation

- SB 1400 Florida Vacation Rental Act
- The bill specifies that vacation rentals, like other transient rentals, are subject to Chapter 212, Florida Statutes, and exempt from Chapter 83 for tax purposes. Inspections of vacation rentals are preempted to the state, with DBPR having sole jurisdiction to conduct them, but inspections are not mandatory unless they are in response to an emergency or epidemiological condition. Finally, the bill prohibits DBPR from adopting any regulation governing design, construction, erection, alteration, modification or repair of any vacation rental.



Proposed 2018 Legislation

Vacation Rentals (Local Government Preemption)

- **HB 773** (La Rosa) prohibits cities from establishing ordinances specific to short-term vacation rentals. Instead, the law would require that all residential properties be treated the same, regardless of whether the property is being used as a rental or not. The bill would allow cities with vacation rental ordinances in place prior to June 1, 2011, to amend their ordinance, as long as the amendment makes the regulation of vacation rentals less restrictive.

Proposed 2018 Legislation

Vacation Rental Requirements

- SB 1640 (Simmons) is a comprehensive proposal providing more state oversight over short-term rentals, while also allowing for additional local regulation in certain circumstances. The bill requires vacation rentals to be licensed with the state and that certain licensing information be included in any advertisements or listings. The bill establishes penalties for failing to display this information. The bill defines “commercial vacation rental” as a property managed by one licensed agent under a single license for five or more vacation rental units or is part of five or more vacation rental units under common ownership, control or management. The bill establishes higher regulatory standards for commercial vacation rentals than non-commercial vacation rentals. The bill defines “hosting platform” and requires state registration and the payment of a registration fee of no more than \$1,000. The bill establishes biannual inspection requirements for commercial vacation rentals.



Proposed 2018 Legislation

SB 1640

Vacation Rental Requirements

- The bill preserves ordinances in place prior to June 1, 2011, and allows for these ordinances to be amended if the amendment is less restrictive. The bill allows for local government regulations specific to vacation rentals that are in single-family residences, where the owner is not personally occupying at least a portion of the residence where vacation rental activities are occurring. Vacation rental owners are required to submit a copy of their vacation rental license, a copy of the certificate of registration with the Department of Revenue, and the owner's emergency contact information to the city. The bill prohibits a city from charging a fee for the submission of this information and specifies that it is for informational purposes only.

Proposed 2018 Legislation

SB 1640

Vacation Rental Requirements

- Finally, the bill requires hosting platforms to maintain records listing each transient public lodging establishment that it serves, the name of the operator, the transient public lodging establishment's license number and physical address, each period of rental reserved through the platform, and the itemized amounts collected from the guest by the platform for the rental, taxes and all other charges. These records must be maintained by the hosting platform for a period of three years and must be transmitted to the Department of Business and Professional Regulation (DBPR) every three months in an electronic format. The bill authorizes DBPR to fine a hosting platform for failure to comply with these provisions. Fine amounts cannot exceed \$1,000 per offense.



Proposed 2018 Legislation

Listings for Vacation Rental Property

- **HB 789** (Stevenson) requires each person operating a short-term vacation rental to display a valid certificate of registration number in each rental listing or advertisement. The bill establishes a \$50 per day fine for first-time violators. Repeat offenders are subject to a \$100 per day fine for noncompliance.

Other Bills of Interest

- **SB 1624** (Rader) and **HB 1243** (Abruzzo) – Public Lodging Safety Regulations



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Discussion and Questions