

NAR Committee:

State and Local Issues Policy Committee

What is the fundamental issue?

Many localities in areas across the country are considering or adopting ordinances that limit or prevent the ability of property owners to rent out properties on a short-term basis. The dynamics of this issue are complex. The infringement upon property rights is a common theme when local governments limit the use of property. Property ownership includes the right to gain income from property; whereas local governments are granted the legal authority to regulate land use within their jurisdiction by police powers and/or zoning regulations.

[Read more](#) about Rental Restrictions in NAR's recently published Hot Topic Alert.

I am a real estate professional. What does this mean for my business?

Rental property especially in vacation destinations may become less desirable to buyers and investors if restrictions are placed upon the amount of time property may be rented or short-term rentals are banned all together.

NAR Policy:

NAR has not adopted an official position on this issue; however, state and local REALTOR® associations may adopt official positions for short-term rental ordinances and/or laws.

NAR's policy position on **Property Rights** is often referenced when proposals on this issue area are discussed and reads:

Governments shall not arbitrarily infringe on the basic right of the individual to acquire, possess and freely transfer real property, and shall protect private property rights as referred to in the 5th and 14th Amendments of the United States Constitution.

Private property rights include the right to gain income from property and the right to rent out property on a short-term basis. Local governments are granted the legal authority to regulate land use within their jurisdiction by police powers and/or zoning regulations. But the National Association of REALTORS® (NAR) believes local short-term rental regulations should focus on issues such as health, safety and noise mitigation, and respect the rights of private property owners.

Provisions in local code and regulations that are overly restrictive can be especially impactful in resort communities and vacation destinations, as properties in these areas may become less desirable to buyers and investors.

NAR supports legislative implementation of the 5th Amendment's guarantee of compensation when property rights are taken. Every person should have the right to acquire real property with confidence and certainty that the use or value of such property will not be wholly or substantially eliminated by governmental action at any level without just compensation or the owner's express consent.

In addition, NAR supports legislation which will provide property owners expeditious access to administrative and judicial systems at all levels – local, state and federal – to pursue Fifth Amendment takings claims or relief from other property rights violations.

NAR recognizes the need for all levels of government to be able to exercise legitimate police powers in the regulation of private property to protect the health, safety and general welfare of its citizens. However, when government actions or regulations are not founded within legitimate police powers, the government should be required to pay compensation for the inordinate burden levied on the property owner.

The federal government should not establish criteria for the use of eminent domain by state and local governments. Each state should establish its own rules and laws governing eminent domain without interference from the federal government.

Likewise, when a government entity exercises its eminent domain power to condemn private property for public use, the government should provide – as required by the 5th Amendment – “just” compensation to affected property owners that covers not only the value of the property condemned but also all other reasonable and necessary costs generated by the condemnation action including, but not limited to, hiring legal counsel, obtaining temporary housing, lost business revenue, severance damages.

Furthermore, when a government entity exercises its eminent domain authority, it should do so only when necessary to materially advance a real public use. The government should provide persuasive, objective evidence that the project, and the resulting public use, will in fact be realized.

Adopted, 2005. Revised, 2020.

Opposition Arguments:

Users of short-term rentals do not uphold existing community standards and can routinely violate public nuisance laws. Therefore, these short-term renters place additional costs on the local government and existing property owners without being held accountable for their actions on the property. In some cases, investors are buying several properties and operating mini-hotels. The increased popularity of short-term rentals have created an unfair level playing field with established hotels, while also decreasing the amount of lodging and sales taxes local governments collect.

Legislative/Regulatory Status/Outlook

There are no federal legislative or regulatory proposals. NAR's [Land Use Initiative](#) provides review of active state and local proposals on this issue area. [Read recent memos on this issue by visiting the Memo Database.](#)

Current Legislation/Regulation (bill number or regulation)

[Current legislative activity can be found here.](#) *(as of February 2023)*

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