

Sharing Economy 600:600

Emerging Areas of Practice Series | This article was reviewed by author(s), and the law is current as of April 18, 2019.

Sharing Economy

Steven G. Wood, Esq., Gray·Duffy, LLP

The Globalization of the “Access-Sharing Economy” Is a 21st Century Reality

Silicon Valley

The status of the sharing economy (sometimes referred to as the “access economy”) (see Eckhardt and Bardhi, Harvard Business Review, “The Sharing Economy Isn’t About Sharing at All” (January 28, 2015), from Silicon Valley to Switzerland to Bangalore, India, as well as countless places in between, has become a viable business paradigm, which is validated in some measure by the success of the leading symbols embraced by venture capitalists in Silicon Valley, and the increasing global impact of the “soaring unicorns.”

Airbnb's most recent internal valuation conducted in preparation for its IPO is around \$38 billion. And Lyft's IPO last week valued that company around \$20 billion.

Denise Lee Yohn, Forbes (online) April 2, 2019, 05:36am, “Why the Corporate Valuations of Rent the Runway, Airbnb and Lyft May Be Completely Wrong.”

[<https://www.forbes.com/sites/deniseleeyohn/2019/04/02/why-the-corporate-valuations-of-rent-the-runway-airbnb-and-lyft-may-be-completely-wrong/#1db0fbef6453>]

Even discounting such valuations and those of other unicorns being hyped by the media, distorted by private fundraising, and unwarranted by conventional valuation metrics, such as price-to-earnings, as Ms. Yohn explains in her article, the globalization and impact of the “access or sharing phenomena” is undeniable.

Switzerland

The Swiss newspaper, *Handelszeitung* (English), in January 2019, reported that:

San Francisco is considered the birthplace of the world's first co-working space. The fact that the first office of this kind was opened in 2005 not far from Silicon Valley is no coincidence: the new form of work corresponds to digitalization. In the meantime, countless coworking spaces are springing up in all metropolises around the globe. The temporary jobs are particularly popular with freelancers, the self-employed, founders in the creative and hipster scene. But large corporations have also discovered the flexibly usable external jobs. Novartis, for example, has rented half a dozen startups in San Francisco from WeWork, the world's largest provider of co-working spaces.

The article's author, Pirmin Schilliger, further explained:

Coworking specialist Impact Hub, on the other hand, is one of the leading providers in Switzerland with six and soon seven locations, and is also one of the largest players worldwide. “In contrast to larger companies such as WeWork and Spaces, who see coworking primarily as an innovative real estate investment, we focus on the community, where exchange and collaboration are the main focus,” explains Viktor Vogt, Communications Manager at the Impact Hub Zurich. More than four-fifths of the 17,000 Impact Hub members worldwide have committed themselves to the UN sustainability goals, he continues. “So it's not just about a new form of work, but also about shared values,” says Vogt. The Impact Hubs therefore also include various programs to promote and network start-ups.

Bangalore, India

The publication, *strategy+business*, is a business magazine that focuses on management issues and corporate strategy. Headquartered in New York, it is published by certain member firms of the PricewaterhouseCoopers network. The *strategy + business* article entitled, “Designing a Future for the Untethered Workforce—The gig economy—and the growing group of digital nomads within it—requires a wider variety of new products and services than businesses and governments are currently prepared to deliver,” dated July 18, 2018, reported:

Accommodations for digital nomads are also experiencing an interesting paradigm shift around the world. Airbnb has already challenged the hotel industry with its offerings, based on the sharing economy, and a new crop of hotel alternatives for nomadic workers is no less significant. From Berlin to San Francisco, communal housing—in the form of revamped hostels and dorms targeting nomadic professionals—is becoming the accommodation of choice of solopreneurs, remote teams, and locals.

In Bangalore, India, two-year-old Construkt hostel has become popular among the “hackpacker” set. Billing itself as an alternative to the business hotel, Construkt is a hybrid co-living, coworking space that caters to digital nomads, visiting entrepreneurs, investors, and traveling creatives. “There is a deep inclination in the millennial startup tribe to flock together, and hence, who you stay with becomes more important than where you stay,” explains Shashikiran Rao, Construkt's cofounder. “Earlier, businessmen patronized business hotels mainly to meet others of [their] ilk, discover new opportunities, etc. The business hostel is the millennial answer to that.”

Sixty percent of Construkt's residents are early-stage founders who have no qualms about trading their privacy for bunk beds and shared bathrooms. On any given morning over breakfast, a casual chat with fellow guests can create important opportunities—an introduction to an investor, feedback on product, or partnership with a fellow entrepreneur's startup. Spontaneous peer-led events, such as Meet the Startups, can offer feedback, advice, and resources. [<https://www.strategy-business.com/article/Designing-a-Future-for-the-Untethered-Workforce?gko=d0baf>]

The ubiquity of the economic access/sharing phenomena, in particular among the Millennial Generation (25-39), likely to be followed in earnest by Gen Z (4-24), ensures that government agencies (the I.R.S., land use authorities, etc.), the financial sector, and, of course, the legal profession, must recognize, then resolve, both the benefits and burdens of the increasing shifts from a “me” to “we” marketplace, in particular, for the control and use of real property.

Seeds of Sensible Density are being Sown (or Lost) in Vanguard U.S. Markets

San Francisco

In the hospitality sector, for example, hotel and other lodging operators face various internal and external regulations to ensure both the habitability and availability of housing for its residents. San Francisco's Municipal Code (“the Code”) provides minimum standards for hotels to meet health and safety mandates. [http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1).

Premises are inspected regularly to ensure that guests are not subject to safety and health risks, and personnel are prepared to respond to on-site emergencies. *Id.*

The Code also mandates exit routes (ventilation and lighting), sanitation, security, enclosures (stairways and elevators), sprinklers, and smoke detectors. *Id.* The Housing Code, a subset of the Building Inspection Commission Codes, also regulates dwellings including hotels and other lodging. See Nat'l Ctr. for Healthy Housing, City of San Francisco, California Housing Code Healthy Homes Provisions (2008). The Housing Code aims to prevent substandard and unsanitary dwelling units that are unsafe for human occupancy. *Id.* at 1.

These requirements provide minimum standards to ensure the safety and welfare of travelers who stay in San Francisco. To protect San Franciscans, its visitors, and the character of the city, the city also regulates relating to rent and zoning ordinances. The Administrative Code mandates zoning regulation of the rental market and short-term rentals to ensure permanent residents of the city have access to housing. See Code.

New York

New York tries to ban rentals of less than thirty days in multiple-unit buildings when the tenant is not present, which properties are deemed illegal hotels. To suppress such activity, the city imposes fines on homeowners who illegally advertise their property on major home sharing platforms. *N.Y. Mult. Dwell. Law § 121 (McKinney 2016)*.

Politicos argue that such short-term rentals compromise affordable housing and deny communities significant revenue from uncollected hotel and other taxes, and this “lost revenue” is eventually borne by local taxpayers. Lovett, “Airbnb to File Suit after Cuomo Signs Threatening Bill,” Daily News (10/21/2016), <http://www.nydailynews.com/news/politics/airbnb-file-suit-cuomo-signs-threatening-bill-article-1.2839977>.

Advocates of access-sharing policy see the law as an arbitrary and economically prejudicial shield for local hotels that ignores the voices and personal and real property rights of New Yorkers. See Tuccille, “When the Hotel Industry Places a Hit on Airbnb, Politicians Happily Take the Contract,” Reason (2/14/17), <https://reason.com/2017/02/14/when-the-hotel-industry-places-a-hit-on>.

Airbnb filed a lawsuit alleging that the Multiple Dwelling Law was unconstitutional; however, the action was ultimately dismissed. *Airbnb, Inc. v. Schneiderman et al.*, Case No. 16-cv-8239 (S.D.N.Y. 10/21/16).

New Orleans

New Orleans, like New York, tried to completely ban short-term rentals. See New Orleans, La., Code of Ordinances § 54-491.1 (2004). However, after pervasive avoidance and repeated violations, the city eliminated the ban and adopted ordinances which amended both the city's comprehensive zoning ordinance and the city code to define and permit short-term rentals as well as implement a licensing process for renters. See Short Term Rental Administration, City of New Orleans at <http://www.nola.gov/short-term-rentals>.

Chicago

Chicago has imposed regulations governing online platforms, which opponents argue violates their constitutional rights. Chi., Ill., Ordinance, ch. 4-6, art. XXXI, § 4-6-400 (2016) (“Chi Ord.”). The law requires online platforms to share with the government all information about its Chicago users. *Id.* The information required in Chicago is similar to that currently required in Portland, OR. Compare Portland, OR., Zoning Code § 33.207.060 (2015). Property owners are often unaware of the plethora of information that the ordinances require and the penalties for noncompliance. See Chi Ord. “Sharing Hosts” must provide a significant amount of information when requested by city officials. See Chi Ord.

Denver

Under Denver's short-term rental ordinance, landlords who fail to abide by licensing requirements are subject to fines. Denver, Co., Revised Municipal Code CH. 33, art. III (2016). Albeit, requiring homeowners to obtain licenses can aid licensing officials' efforts to eliminate illegal rentals and reduce lodging tax evasion. The city gives owners time to adapt to the new ordinance, warns those who fail to acquire a license, and mails licensing instructions. Murray and Blevins, “As Denver Starts Licensing Short-term Rentals, How Many Residents Will Comply?”, *Denver Post* (7/14/16), <http://www.denverpost.com/2016/07/02/denver-starts-licensing-short-term-rentals/>.

Denver used a six-month roll-out before homeowners could be fined for noncompliance. With access-sharing burgeoning, the city altered its regulations to provide for homeowners' rights and to protect the city from illegal short-term renting. *Id.* Denver previously prohibited short-term rentals, but eventually comprised with homeowners, requiring them to acquire licenses. *Id.* Although the city is now more lenient on short-term rentals, it only permits individuals to rent out their primary residence or separate dwelling units upon that same property. Denver, Co., Revised Municipal Code CH. 33, art. III (2016).

Examples of Smaller Municipalities

Tillamook County, OR (besides producing fabulous cheese) implemented an onerous process to obtain a short-term renters permit. Tillamook County, OR., Ordinance 69 (10/28/09). Owners must fill out an application, notify their neighbors that they are seeking to use their property for short-term rentals, submit a site plan, provide proof of liability insurance, fill out a lodging tax registration form, and pay inspection and permit fees and all short-term rentals must be certified by a building inspector as meeting all requirements. *Id.* at § 6(a). One must wonder whether cheese production requires such bureaucratic machinations.

Some municipalities arbitrarily limit the number of short-term rental permits which may be distributed. See, e.g., Santa Fe, N.M., City Code § 14-6.2(A)(6)(a)(i5)(b)(v) (2009). Santa Fe caps the number of short-term rental permits (350) to be distributed. Other municipalities seek to maintain a specific ratio of short-term to long-term rentals. Mendocino County, Cal., Zoning Code § 20.748.020(A) (1995), which allows one short-term rental permit for every thirteen long-term permits that are granted. *Id.* Such approaches significantly infringe upon an owner's use of their property as they choose.

The foregoing regulations are the proverbial “tip of the iceberg” of approaches to deal with the unique economic shift within the access-sharing real estate industry. Describing the multitude of other short-term rental regulations, which

encroach upon homeowners' abilities to use their property within the peer-to-peer market, would require a book rather than an article.

While governments' interests in housing, tourism, taxation—to name just a few issues involved in the “access-sharing economy” in the 21st century—are substantial, owners should be able to benefit from property ownership by engaging in the sharing economy. See Smith, “Short Term Rentals: Homeowners and Businesses Benefit,” San Diego Union Tribune, dated 2/1/17, <http://www.sandiegouniontribune.com/opinion/commentary/sd-smith-short-term-vacation-rentals-20170201-story.html> (although short-term rentals sometimes may pose policy or social problems, the benefits to the community and property owners, should motivate regulators to monitor careless short-term operators rather than suppress the average short-term owner).

One usually cannot regulate human behavior that is not obtrusively dangerous or harmful to oneself or others; one can only mitigate its effects. The enforcement of Prohibition failed because most Americans didn't want it, so alcohol production and use went underground. So it will go with the access-sharing economy in the 21st century. The People on *both* the demand and supply sides want it so they will have it.

Repressive Zoning Eventually Must Adapt to Economic and Social Dynamism

Existing zoning laws may be obstacles to building more housing units in cities like San Francisco and New York. Regulation can alter the supply/demand curve. Numerous studies show that restrictive zoning regulations drive up the price of housing, making housing in such cities unaffordable to the middle class. See, e.g., Glaeser & Gyourko, “The Impact of Zoning on Housing Affordability” (Nat'l Bureau of Econ. Research, Working Paper No. 8835, March 2002), <http://www.nber.org/papers/w8835>.

Repressive regulations ignore the advantages of easier short-term rentals to those who need/want to visit rather than live in a location and those who wish to maximize the value of their property. Enhancing travel opportunity and affordability can help equalize the life experiences of the rich and the rest of society.

How to weigh such advantages against higher housing costs for locals who want to live in the same place may pose difficult questions (query: why not streamline the permitting and funding pipelines for new or retrofitted housing for all economic strata?), but the compelling socio-economic advantages of the access-sharing paradigm must be weighed when restricting the sharing economy in housing. Just like during Prohibition, the inexorable forces of supply and demand will slowly but surely diminish, then eviscerate, forced government control.

The implications of the access-sharing economy should help frame the debate over housing inequality, since the access-sharing paradigm can create important equalizers between the wealthy and most of the rest of society, since both the demand and supply created by the sharing economy redounds particularly to those who are not rich. They can now summon quality rides from the comfort of their homes, and gain access to meals and housing in the center of places they would love to be. Who will enjoy the consumer surpluses of the sharing economy is yet another issue that should factor into framing the equality equation.

Postscript: The Access/Sharing Economy and the Wave of Immigration

Although beyond the scope of this article, it is worth noting that the access/sharing economy can and has helped ameliorate the strain of the burgeoning influx of immigrants (legal or illegal) that stretches resources in some Southwestern U.S. communities to a breaking point. Anyone interested, let alone concerned, about this growing economic and social problem, can and should read the brochure entitled, “Immigrants sharing homes: opening doors to opportunity,” National Immigration Forum, December 2016 at https://immigrationforum.org/wp-content/uploads/2016/12/Airbnb_Home-Sharing_Full_Report_Final.pdf.

One need neither posture about nor protest the underlying immigration conundrum that America faces with the ever-increasing numbers of immigrants entering its borders. The author has family living in El Paso, TX. The problems are very real, notwithstanding posturing from both sides of the political spectrum.

What seems also very real is the potential solutions (at least partial) to be realized by releasing the dynamism of the access/sharing economy to ameliorate socio-economic pressures created by the wave of new immigrants, who are entering and likely will continue to enter the United States. Hopefully, land use regulators around the country use zoning and other regulatory tools to work in the solution rather than dwell solely, or at least consistently, in the problem.

About the Author



Steven G. Wood is Of Counsel in Gray·Duffy, LLP's Redwood City office and heads the firm's real estate practice. He may be contacted at 650.365.7343 and swood@grayduffy.com.

© 2019, Stevn G. Wood

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.