

THOUGHT LEADERSHIP

LEGAL UPDATES

PUBLISHED: AUGUST 30, 2022

Industry

Real Estate,
Development, &
Construction

Professional

JOSEPH S. DIEDRICH
MILWAUKEE:
414.978.5425
WASHINGTON:
202.378.2300
MADISON:
608.255.4440
JOSEPH.DIEDRICH@
HUSCHBLACKWELL.COM

Fifth Circuit Strikes Down New Orleans Ordinance Aimed at Short-Term Rental Properties

The U.S. Court of Appeals for the Fifth Circuit (which covers Texas, Louisiana and Mississippi) recently struck down a City of New Orleans short-term rental (STR) ordinance provision that required STR license holders to be Louisiana residents. The city's STR ordinance required that to qualify for an STR license for a property in a residential neighborhood, the owner must reside on the property as the owner's primary residence, with the requirement being enforced by having to show a homestead exemption on the property.

In *Hignell-Stark v. City of New Orleans*, the Court held that the "primary residence" requirement violated the U.S. Constitution's dormant Commerce Clause, which prohibits states and local governments from restricting interstate commerce. Writing for the panel, Circuit Judge Smith opined that a discriminatory ordinance is invalid unless "it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." The Court also analyzed whether the city had reasonable, nondiscriminatory alternatives to the "primary residence" requirement to achieve its policy goals. Here, the Court reasoned that such alternatives were available, including, for example, by changing development regulations to incentivize new housing supply or by imposing a cap on the number of units that could be used as STRs.

The Mayor of New Orleans reacted to the *Hignell-Stark* decision by hinting at new STR regulations, and on August 29 the City Council followed through by calling for the creation of an interim zoning district to prohibit new STRs until it could promulgate new permanent rules. It also prohibited the processing of new residential STR applications, while allowing existing permits and

applications to remain valid through March. Other municipalities in the Fifth Circuit will likely follow suit and modify their own STR regulations.

What this means to you

We expect to see in the Fifth Circuit and elsewhere a new wave of STR lobbying efforts in other cities, efforts by owners in residential subdivisions to impose new deed restrictions, and efforts by HOAs to impose new rules—along with the litigation that will inevitably follow.

Contact us

If you have questions or would like additional information regarding the laws and regulations governing short-term rentals, please contact a member of our Real Estate, Development & Construction team or your Husch Blackwell attorney.