

# Top 5 Risks for Airbnb Landlords in the Hamptons

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It may seem homeowners have a money tree at their house. It's easy, just rent your house for the weekend and the dollars will shake into your bank account. Better yet, companies like Airbnb can facilitate the process and get landlords timely and secure payments, right? Making money is never so easy. Here are five risks of using Airbnb. In each, you need to decide if an Airbnb host is a residential property landlord or instead a hotel operator, in order to understand your exposure.

- 1. Hotel & Motel Sales Tax:** Throughout the east end of Long Island, hotels, motels, inns and bed and breakfast establishments are subject to New York State "sales tax on the room rate or rental charge for hotel occupancy." According to the New York State Department of Taxation and Finance a "room remarketer (such as an Internet travel site) is considered to be a hotel operator and must collect sales tax" on behalf of the hotel, but Airbnb's (i.e., the remarketer) website does not include New York in the areas that it affirms its procedure to collect and remit tax. See [airbnb.com/help/article/653](http://airbnb.com/help/article/653). Perhaps the reason that Airbnb doesn't collect this tax is that bungalows (i.e., single-family living) are not taxable where no housekeeping, food or other common hotel services are available. However, hosts (i.e., landlords) would be best served to speak to their accountants before determining whether their rental is subject to sales tax or instead can safely be classified as a bungalow. Landlords need not concern themselves with this tax, but if your property is being operated as a quasi-motel/bed and breakfast, your failure to pay tax could result in you finding yourself on the wrong side of a prosecution for tax fraud.
- 2. Bed Tax Fraud:** In Suffolk County, there is an additional bed tax and registration requirement, beyond the New York State Hotel & Motel Sales Tax, by way of the County's Hotel Motel Tax (i.e., Bed Tax). The tax is at the "rate of 3% of the per-diem rental rate (exclusive of sales tax)" and must be remitted to the County quarterly. The tax is applicable to "[a]ny facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as a 'bed-and-breakfast,' inns, cabins, cottages, campgrounds, tourist homes and convention centers" pursuant to §523-2 of the Suffolk County Code. Further, registration is required with the County Treasurer for the facility within 10 days of opening. Failing to either register or remit the tax is a misdemeanor punishable by a fine of up to \$1,000 and/or a year in prison plus there is a 5% penalty for untimely remittance of the tax and an additional interest payment due of 1% per month for each month that the tax is paid late. To learn more about the tax contact the Suffolk County Treasurer's Office at 631-852-1523. Landlords need not concern themselves with this tax, but if your property is being operated as a quasi-motel/bed and breakfast, your failure to pay tax could result in you finding yourself on the wrong side of a prosecution for tax fraud.
- 3. Income Tax Fraud:** If you use your house for 15 days or more while renting it out for less than 15 days there is no income tax due. Otherwise, income taxes are due on the money you generate from your rental (i.e., they are part of your taxable gross income). See IRC §208A(g). If income tax is applicable, you can deduct such items as "mortgage interest, real estate taxes, casualty losses, maintenance, utilities, insurance, and depreciation" according to the IRS. See Topic 415. However, if you also use the property for 15 days or more those deductions are limited and you should see an accountant to determine how to maximize your deductions under the law.

4. **Transient Rental Laws:** Transient refers to something that only lasts for a short time and many Towns and Villages on the East End have transient rental laws that preclude short-term rentals. A 2011 White Paper copyrighted to the National Association of Realtors and titled Short-Term Rental Housing Restrictions is the authority on the topic. This paper explains that such laws are in place to protect neighborhoods, the physical characteristics of property, to promote renter safety and to enhance the legitimacy of laws addressing licensed hotels, motels, inns and bed and breakfast establishments. Breaking down the East End's applicable laws:

In the Town of Southampton, rentals for 14 days or less are prohibited. This law applies to the Southampton hamlets of Bridgehampton, East Quogue, Eastport, Flanders, Hampton Bays, North Sea, Northampton, Noyac, Quogue, Remsenburg, Riverside, Sagaponack, Shinnecock Hills, Speonk, Southampton, Tuckahoe, Water Mill and Westhampton.

In the Town of East Hampton, rentals for 2 weeks or less are prohibited. This law applies to the East Hampton hamlets of Amagansett, East Hampton, North, Montauk, Northwest Harbor, Springs and Wainscott.

In the Town of Southold a pending debate exists as to whether the Town should set a 14-night minimum, but as of the date of the drafting of this article no transient law exists. So, in the Southold hamlets of Cutchogue, East Marion, Fishers Island, Laurel, Mattituck, New Suffolk, Orient, Peconic and Southold there is no transient rental law.

In the Town of Riverhead, rentals for 29 days or less are prohibited. This law applies to the Riverhead hamlets of Aquebogue, Baiting Hollow, Calverton, Jamesport, Laurel, Manorville, Northville, Riverhead and Wading River.

In the Town of Shelter Island, no transient rental law exists but there is a cap on bed and breakfasts in providing rentals for no longer than 14 days, and it can be argued that Airbnb stands for airbed and breakfast so this law may be applicable. So, in Shelter Island Heights and Shelter Island there are questionably no restrictions on transient rentals.

Remember, the Villages of East Hampton, North Haven, Quogue, Sag Harbor, Sagaponack, Southampton, Westhampton Beach and Westhampton Dunes, Greenport and Dering Harbor all can prescribe local transient laws, so if your property is located therein check with your local Village before renting on Airbnb.

5. **Rental Permit Laws:** While many critics of these laws point to their purpose as being solely a revenue generator (i.e., think tickets), every time I read about a tenant's death in a house fire there is always a note about there not being a valid rental permit on the property. Rental permits are designed to protect the health, safety and welfare of the public. The Towns of Southampton and Riverhead require rental permits while East Hampton and Shelter Island have no such requirement. The Town of Southold only requires a rental permit with respect to accessory apartments, which is "[a]n apartment created in a presently existing one-family dwelling unit or accessory structure."

Adapted from this [Dan's Papers](#) article.