For rent… but mind the risks! Home Insurance in the age of the sharing economy

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Many people could hardly imagine planning their vacations without considering online vacation rental community platforms. And those who have property available for use might find it just as difficult to resist the temptation to increase their revenues by advertising their room, apartment, house or country home on sites like *Airbnb, Homeaway* and *Chaletsauquébec*. Given that these sites sometimes offer lower prices than comparable hotels, and hold out the allure of feeling at home away from home, it's not surprising that their users have been growing in number each year. However, the misalignment between residential insurance products available in Quebec and the realities of the sharing economy, plus the fact that hosts often do not understand the legal formalities associated with insurance, can result in some very unpleasant surprises for users of such online vacation rental community platforms.

Disclosing risks

The Civil Code of Québec provides that an insured must promptly inform his insurer of any circumstances likely to influence the insurer in setting the premium, appraising the risk or deciding whether to maintain a policy in force.[1] If this is not done, the insurer could be entitled to reduce the indemnity, exclude the claim, or even cancel the policy.

The Superior Court of Québec recently considered this question in a case involving a couple that had rented out their country home a few times without declaring it to their insurer.[2] Although the loss did not occur during such a rental, the Court confirmed that the insurer should have been informed that the property was being rented out, because this aggravated the risk. The indemnity paid to the insured couple was therefore reduced in regards to the shortfall in relation to premium the couple should have paid.

Given this landscape, hosts, and anyone interested in being a host, must not only consider the possible effects of their leasing activities on their home insurance coverage, but also ensure — since the law requires it — that they will indeed be covered for any damage that occurs while the property is being leased.

Stricter regulation

In April 2016, Quebec's *Regulation respecting tourist accommodation establishments* was amended as a result of the coming into force of the *Act mainly to improve the regulation of tourist*

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accommodation and to define a new system of governance as regards international promotion. The change was intended to respond to new market realities, including the arrival of new sharing economy players. Quebec legislation now makes a distinction between occasional offerings for rent and regular offerings for rent. The first type does not require a permit. However, in order to be occasional, the offer must clearly be exceptional in nature, and if the offer is repeated, it will be considered regular.

Hosts who regularly offer their residence via online residential rental community platforms must now comply with the rules for operating tourist accommodation establishments.[3] According to the new regulations, they must, among other things, obtain a certificate from the Corporation de l'industrie touristique,[4] and ensure that zoning by-laws authorize them to carry on that type of commercial activity.[5]

Furthermore, hosts must collect taxes from travellers and report their income. Lastly, it is now mandatory to obtain $2 million in civil liability insurance coverage for risks associated with the operation of the tourist accommodation establishment.[6]

Similar platforms, differing coverages

Of the most popular platforms, only Airbnb offers protection "by default" to its hosts. The "Host Guarantee", in effect since 2011, offers hosts up to $1 million in coverage in the event of property damage caused by travellers in their lodging, if the damage is not covered by the host's personal insurance. But this "Host Guarantee" comes with several conditions and exclusions. For example, the host must first have tried to contact the traveller to seek payment for the loss prior to asking to be indemnified under the Guarantee.[7]

Since October 22, 2015, Canadian Airbnb hosts have also been covered by the "Host Insurance" program, designed to protect them in the event of legal actions commenced by third parties for bodily harm or property damage that occurred during a stay.[8] In Canada, the limit is $1 million per occurrence, per year.[9] This means that the coverage is not currently sufficient to meet the new Quebec legislative requirements applicable to "regular" hosts, since such hosts are now considered to be operating a tourist accommodation establishment.

A market with some shortcomings

Legal requirements applicable to the operation of tourist accommodation establishments are getting more onerous. On its own, the "Host Insurance" program offered by Airbnb is not sufficient to bring "regular" operators into compliance with the new Quebec requirements concerning tourist accommodation.

Despite this, according to a recent survey conducted by the Léger polling firm for the Chambre d'assurance de dommages, 44% of Quebecers who take part in the sharing economy have not notified their insurance company of this fact.[10] There could be an explanation for this reticence: While hosts who own their lodging will find it relatively simple to adjust their residential insurance policies to take their rental activities into account, it's a lot more complicated for tenants. In fact, most insurance products offered to tenants provide no coverage for losses resulting from even occasional vacation subletting.

Conclusion

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The residential insurance market is still not quite adapted to the new realities of the sharing economy. Although certain insurance companies in Quebec and elsewhere are offering innovative products that respond to the specific needs of occasional hosts (e.g. insurance coverage only for the dates on which the property is being rented out) the major industry players, at least in Canada, have barely acknowledge this new market.

As for hosts, it is essential that they disclose any increase in risk and any change in the use of their lodging, especially since short-term regular vacation rental to tourists is considered a commercial activity in Quebec. Indeed, although certain platforms offer basic protection to their users, that protection could prove insufficient or event inapplicable in several situations.

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1. Art. 2408 CcQ.
2. *Leblanc v. Axa Assurances Inc*., 2014 QCCS 4393.
3. Establishments providing accommodation to tourists in return for payment. See section 1 of the *Act respecting tourist accommodation establishments*, and section 1 of the *Regulation respecting tourist accommodation establishments.*
4. Section 6 of the *Act respecting tourist accommodation establishments*. In addition, see the *Guide d'interprétation de la Loi et du Règlement sur les établissements d'hébergement touristique.*
5. *Guide d'interprétation de la Loi et du Règlement sur les établissements d'hébergement touristique.*
6. Section 11.1 of the *Regulation respecting tourist accommodation establishments.*
7. https://www.airbnb.ca/terms/host_guarantee?locale=en
8. https://www.airbnb.ca/host-protection-insurance?locale=en
9. *Ibid.*
10. http://www.chad.ca/fr/membres/publications/actualites

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