

# Airbnb and Insurance Coverage: Is It Up in the Air?

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Nine years. That’s how long it took for Airbnb to grow from a zero-dollar company to a \$30 billion company. Few other businesses in American history can boast such an impressive initial track record. Various forms of “disruptive technology”—like Airbnb—are changing the way we travel, drive, eat and live. Americans are no longer satisfied with the limited options provided by hotels, motels and traditional bed and breakfasts. Airbnb recognized this gap in the market and capitalized on it handsomely. While various other companies, including Expedia and Priceline, are racing to catch up, Airbnb remains the leading “home sharing” company. With that success, however, have come certain challenges that the government, judicial system and insurance companies are still struggling to identify and understand. One such challenge is how innovative concepts like Airbnb impact existing homeowners’ insurance.

Founded in 2008 and based in San Francisco, Airbnb now has over three million listings worldwide and, according to its website, is a self-defined “trusted community marketplace for people to list, discover and book unique accommodations around the world.” Users fall into two predominant categories: “hosts” and “guests.” Hosts rent their property—often on a short-term basis—to “guests” for a fee. The guest selects an accommodation that

meets his unique wants and needs. The host reviews the profile of the prospective guest and can either accept or reject the proposed booking. At the end of the stay, hosts and guests have the option to review each other. These reviews post on their respective profiles, providing an incentive for the parties to respect each other and the property. Yet, despite this review and vetting process, accidents and even intentional damage can still occur. From an insurance coverage standpoint, key questions include: Are these damages covered by the host’s homeowners’ policy? Should the host seek additional property or liability coverage, via endorsements, supplemental policies, or otherwise?

Airbnb offers a host guarantee program, advertised as providing “protection” for property damages, up to \$1,000,000, around the world. Payments are subject to certain conditions, limitations and exclusions. Given such sizeable numbers, the novice host may question whether there is any need to confirm, or secure, coverage under their homeowners’ policy as well. While the host guarantee does provide hosts with some peace of mind, there is little to no case law addressing the coverage afforded by this program, the terms of which are somewhat complex and arguably open to challenge.

According to the host guarantee, after a loss occurs, the host must contact the guest and attempt to negotiate a resolution before submitting an official claim through Airbnb. If the issue cannot be resolved with the guest directly, the host may then submit his request to the host guarantee either 14 days from when the guest checks out, or before the next guest checks in, whichever is earlier. Airbnb solicits information from both host and guest, evaluates the claim, and advises the host if he will be reimbursed.

Airbnb repeatedly states that the host guarantee is not insurance and should not be considered a replacement for homeowners' or renters insurance. Airbnb encourages hosts to review their own homeowners' policies, determine what they do and do not cover, and purchase supplemental insurance that will cover losses that do not fall within the terms of the host guarantee. It reserves the right to modify or terminate the host guarantee terms for various reasons, including if a governmental or regulatory authority should construe the host guarantee as insurance.

The host guarantee terms specify that, for a loss to be covered under the host guarantee, it must also be covered under Airbnb's own insurance policy, and that Airbnb may make payment contingent upon a determination that the claim is ultimately covered under its own policy. The host guarantee states that the hosts are not insureds or third-party beneficiaries under Airbnb's insurance policy, and that, if additional protection is sought, "AIRBNB STRONGLY ENCOURAGES YOU TO PURCHASE SEPARATE INSURANCE THAT WILL COVER YOU AND YOUR PROPERTY

FOR LOSSES CAUSED BY GUESTS OR GUESTS' INVITEES IN THE EVENT AIRBNB OR ITS INSURER DECLINES COVERAGE FOR CLAIMS UNDER THEIR AIRBNB HOST GUARANTEE OR YOUR LOSS IS NOT OTHERWISE COVERED BY THE AIRBNB HOST GUARANTEE." The host must also have used reasonable efforts to comply with Airbnb's safety guidelines, outlined on the website.

Consider for a moment the following scenario. A guest stays at a host's home. The guest accidentally starts a fire and the house burns to the ground. The host first turns to the guest to reimburse him for the damages—as required by the host guarantee. The guest responds: "The fire started because of the faulty wiring in your home and I did nothing wrong and I'm not paying you anything." The host then turns to Airbnb for coverage. Airbnb considers the claim. Perhaps the claim is covered by Airbnb's policy and the host is reimbursed through the host guarantee program. What if the claim is not covered? Or what if Airbnb determines that the fire occurred because the host had failed to comply with Airbnb's safety guidelines and, as a result, denies the claim? The host will then likely turn to his own homeowners' insurance company. Let's assume that insurer denies the claim based upon an exclusion for business use or an exclusion for short-term rentals. Then what?

The possibility that a host's existing homeowners' policy includes a business-use exclusion is a real one. For example, the Oregon insurance commissioner has explained that "homeowners policies generally do not provide coverage for business use." Ron Lieber, "A Liability Risk for Airbnb Hosts," N.Y. TIMES, Dec. 5, 2014, (Quoting Oregon insurance commissioner);

Allstate, “Is Home Sharing Covered by Homeowners Insurance?,” May 2014, (Most homeowners policies do not consider property damage to a rental property to be a “covered peril.”). Consider, too, this coverage issue: If the host charges the guest money to use the home, is he a social guest at all—or, rather, a party to a commercial transaction? The Insurance Information Institute has also indicated that ongoing short-term rental of an insured’s property may be considered a business that requires the insured to purchase business insurance.

Consider this scenario: A hurricane floods the basement of an Airbnb property. The damage had nothing to do with the guest or with Airbnb operations. When adjusting the claim, however, the host’s homeowners’ insurer discovers—for the first time—that the property is being used for short-term rentals. The insurer could conceivably cancel the policy, concluding that the commercial enterprise constituted an increased risk of which it was not aware and which it had not previously evaluated when setting premiums. See Ron Lieber, “A Liability Risk for Airbnb Hosts,” N.Y. TIMES, Dec. 5, 2014, (Quoting Allstate spokeswoman, Laura Strykowski: “An insured has the obligation to be forthcoming about all facts relating to his/her insured property. Not doing so could impact coverage and jeopardize the continuation of insurance”).

Another key insurance-related issue is liability coverage. The hotel industry—one of Airbnb’s most prominent and vocal critics—must adhere to strict safety standards regarding fire prevention and food and health safety, and must comply with the Americans with Disabilities Act and other state and federal regulations,

regulations with which (for now, at least) Airbnb is not required to comply. One could argue that there are certain increased risks that guests voluntarily assume when staying at a private home, as opposed to a regulated hotel, perhaps in exchange for a lower rental amount or increased options and flexibility.

In 2014, Airbnb began offering \$1,000,000 in secondary liability coverage to its hosts. In other words, if the host’s homeowners’ insurer denies the claim, Airbnb’s policy is triggered. A year later, Airbnb made its “Host Protection Insurance Program” (HPI Program) primary. Hosts in approximately 15 countries, including the United States, are now insured for liability coverage of up to \$1,000,000 in the event of a third-party claim for bodily injury or third-party property damage, regardless of whether the host’s homeowners’ policy provides coverage. Per the terms of the HPI Program, this coverage is primary.

Airbnb’s decision to provide this coverage may have, in part, been because a growing number of local governments have shown an increased awareness of legal issues from the home-sharing trend when drafting new ordinances and regulations. San Francisco, for example, has a new ordinance which requires hosts to maintain at least \$500,000 in liability coverage, see *Airbnb v. City and County of San Francisco*, 217 F. Supp. 3d 1066, 1070 (N.D. Cal. 2016), (San Francisco Ordinance 218-14 requires proof of liability insurance). The source of such liability coverage, however, will not likely be a conventional homeowners’ policy maintained by the host. For example, depending upon the language of the individual policy, the insurer may find that the claim falls under a business exclusion,

or that the definition of “insured location” has not been met, if “insured location” is defined as that part of the premises where the insured—not a paying guest—resides. Galen Hayes, “The Scary Insurance Reality For Airbnb Hosts,” PROPERTY CASUALTY 360 Jan. 5, 2016. To date, there is little U.S. case law addressing the issue of insurance coverage for Airbnb properties. This may be, in part, as a result of the fact that Airbnb’s “terms of service” require disputes with Airbnb to be resolved through arbitration, as in *Selden v. Airbnb*, 2016 U.S. Dist. LEXIS 150863 (D.D.C. 2016).

To return, then, to the question posed by this article’s title—just how up in the air is insurance coverage? It is unlikely that we will have a clear answer in the immediate

future, and the variety of insurance coverage issues that may arise could be substantial. Hosts would, therefore, be wise to check on the insurance provided by their personal homeowners’ policies, before their guests check out.



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