

Short Term Rental Tax Policy Stakeholder Meeting 1-19-2022
“Transcript” Notes (K. First)

- Dick Elsner, welcome & opening comments
- Kelly McNicholas Kury, welcome & opening comments
- Dieter Raemdonck referred to Cole Sjöholm, Colorado Mortgage Lenders Association
 - Approaching answers as subject of taxation; many guidelines for loan underwriting involve zoning, will need to seek clarification if commercial taxation rate has any effect on zoning and conforming uses of property
 - Collaborated with appraisal management companies, insurance agents, loan underwriters, Fannie/Freddie, FHA handbooks, service guidelines
 - Did not get specific answer from Fannie/Freddie
 - How exactly is financing decided by Mortgage Lenders?
 - Most mortgage lenders approved with basic tenants: collateral, capacity, character, capital, and conditions; through regulation and reflection, updated to ability to repay, qualified mortgage, which still encompass the 5 C's
 - Lenders are required to qualify a buyer, including all property charges, including principal, interest, property taxes, property insurance, mortgage insurance, and HOA dues; included in housing ration (front end ration) and total debt to income ratio
 - In approving applications for occupancy, looking at occupancy at intent of borrower at the time of application; confirmed at signing via occupancy disclosure form; not necessarily future use
 - If bought as primary residence, then immediately rented, could call into question the occupancy disclosure, and could be a problem
 - Second homes can be rented with agency guidelines, but required that home owner remains in control (cannot turn over to property manager company or list as STR)
 - Taxation on a commercial rate is not specifically addressed (awaiting direct input from agencies, on their concerns)
 - Current/previous use of property doesn't necessarily define how a property is going to be used in future, but how taxes are assessed, and tax certificates are issued, being once per year; having a higher tax bill at time of sale can impact borrowers' ability to qualify for the house.
 - General Assumption -- Each \$5 in additional payments, that a borrower has to account for in mortgage underwriting, reduces amount they qualify for by about \$1,000
 - Based on average home 2021 sales price was \$650k and average state mill levy in 2019 was 81.7 mils
 - Scenario 1 (worse case scenario): if a borrower is purchasing a house that is taxed at the STR (aka commercial) rate, but looking to move into as a primary residence, the property taxes for the short term/commercial classification, property tax bill about \$15,400 if that was taxed at residential rate about \$3,800, difference of \$11,500; lenders would divide by 12, meaning property taxes increased \$965/month over residential rate. Reduction in qualification for affordability by \$193,000.
 - \$350k House with same calculations
 - Borrower would qualify for \$104,000 less in purchase price ability, because of higher property tax bill; so impact is extremely significant with CO's housing prices where they are

- Currently residential but going to be purchased by someone to use as STR
 - No impact at all. Going to benefit from lower residential rate at time of purchase. Lenders deal with servicing issues in year 2 when the tax bill changes significantly. Escrow & impound accounts are set up at time of purchase with best information available, which is the prior property tax bill. The significant increase would mean they would have to make large lump sum payment into escrow to cover higher property tax bill or make up for shortfall and higher monthly payment moving forward. If that's true for any escrow account; that happens on annual basis. Impact is greater because property tax bill is so much greater.
- Large number of loans not escrowed which would increase the number of sales required at the county level because of the higher property tax bill
- Borrower owns current primary residence and also have a STR currently, but in the future, the STR property tax bill would increase significantly, which could limit that borrower's ability to purchase a new primary residence. If for instance, they want to sell their current primary residence to downsize or relocate, the unintended consequence is that borrower qualified for their primary residence & STR, but because of a higher tax bill on that STR, and what Fannie/Freddie allows to use for rental income for STR's, but it could prevent the borrower from qualifying for a new primary residence.
- From loan servicing standpoint, maybe less implication; assuming there is not any conflict between commercial taxation and residential zoning. If they state that they are going to occupy it as a primary residence, then rent, it's an issue now and would also be in the future. Especially if they indicated on their loan application that they plan to use it as a rental property, long term or short term, which can limit the types of loans that are available for a buyer.
- Moving into VA Loan discussion for example. By nature they are intended for owner occupancy use, not rental purposes. However, VA does certainly allow veterans to have multiple loans, technically up to two. VA loan eligibility is based on an entitlement calculation set by VA. It needs to be the intent of the buyer at the time of application and buying. Certainly situations & circumstances that allow it to be rented out, are completely allowable. One example would be if a service member is deployed overseas and they're purchasing a house for their family, so it's not going to be occupied, it's acceptable for them to not immediately occupy; but would be a problem if they rented it out. Could be foreclosed upon.
- **Question** for the group to consider moving forward, **there's been a lot of discussion about an affidavit to be signed by the homeowner of record. Lender's wonder, if that is a public record, they can also utilize and being viewed by public as a whole, for VA and other types of loans.**
- Returning to VA, they are similar to other types of loans, in addition to regular property charges, also look for residual income, that's the amount of net income remaining after deductions for debt service to cover family living expenses. And Colorado falls into one of the four categories the VA specifies, which is the western income, with the highest residual income requirements across nation. For example family of four purchasing a house over \$80,000 needs to have a residual income of about \$1100, so if they held other properties, whether through VA loan or other financing, as STR on their property tax bill increased that would reduce the amount of residual income available.
- VA has two tests: normal debt income ration & residual income requirement
- Zoning discussion

- VA specifically says a property that does not comply with current zoning requirements is not eligible for a VA loan
- Also specifies that non-residential use is ineligible for VA financing (must be primarily residential for use; non-residential use can not impair the residential character of the property; property can't contain more than one business unit (multiple bedrooms being rented out, should be taken into question), also is property legally permitted and conforms to current zoning, or is it a legal non-conforming use accepted by the local authority. VA appraiser would have to identify/comment if that affects marketability and ability of structure to be re-built in the case of loss.
- Fannie & Freddie (Agencies)
 - Don't delineate between STR and LTR, in the case of occupancy; but do delineate in case of how income can be used and recorded on loan application; goes back to scenario #3 spoke about previously.
 - Rental income derived from a property other than subject property must be documented by lease agreement or recent tax returns (lease agreement not available for STR, if they haven't ever owned property before and looking to purchase other property, won't have return showing income, can still qualify, if they qualify without any rental income, would be true today or in future, but it becomes more difficult to apply if property tax bill is that much higher, whether for personal use or to add to investment portfolio.
 - **Principal residence is defined as: property that the borrower occupies as his/her primary residence, which follows IRS guidelines, not necessarily days of use; generally looking for 6 months out of year or more**
 - Certainly issue tons of mortgage loans, with non-occupying borrowers. For instance, parents helping children buy their first house. So Fannie/Freddie allow for that, but for this group & discussion, **how is it going to be accounted for, if there are multiple people on title and only one is occupying the house. Is it that person's primary residence, would they be subject to higher taxation rate, since owners of multiple properties? Or do they get primary residence exemption? Need to fill affidavit etc.**
 - Second homes can be rented, completely allowable with underwriting guidelines, just can't turn over control. Ironically, even if we identify income on a tax return for borrowers for a second home, in case of refinance, which does not make loan ineligible for delivery to agencies can't use income to help them qualify for second home purchase or refinance. Does this property tax change unlevel the playing field for Coloradoans? Does it only make second homes or investment properties available to people who are considered wealthy? Because of ability for a wealthy person to qualify without having to document rental income? Certainly the impact of higher taxes on that ability would certainly reduce the number of people that would qualify.
 - Investment properties completely allowable, actually underwritten with higher down payment requirement & higher interest rates; federally housing finance authority announced changes on January 5, 2022, that would make interest rates on second homes and higher balance loans more expensive and significantly more expensive. Again that's directly from Fannie/Freddie not lenders specifically. Costs will be passed on to borrowers; changes go into effect April 1, 2022. Lenders will vary when changes are implemented because it takes time after loan closing, to sell to services and get secure ties from Fannie/Freddie. Will see

changes taking place in next week or two for many lenders. The goal according to Sandra Thompson, the acting director, is to improve regulatory capitol positions, but also provide equitable and sustainable access to home ownership and ensuring access to both credit and loans for first time buyers and loan income borrowers. So, already some action happening at federal level to increase the amount of housing inventory that's available, they're doing through higher interest rates. Important to note that topic of increasing access or number of properties available, is being reviewed at federal level.

- Condos—Airbnb & VRBO has benefited from, in condo financing front; used to be a ton of front desk & housekeeping services through condo associations. Those types of properties are not eligible for financing through agencies. Condos are required to complete questionnaire and if there is that type of service billable those properties are not eligible. With higher taxation/differentiation for condo associations to avoid paying higher taxes, would they re-institute front desk services? Thus making properties ineligible for traditional financing.
- Both Fannie/Freddie specifically talk about zoning in underwriting guidelines, don't limit mortgage purchases based on zoning classifications. Just has to be conforming use.
- STR designation vs. sewer line issue addressed in contract phase – a person can choose to purchase a property or not based on condition of property, but not being able to qualify because of higher tax bill is a different story. A sewer line repair is not required in other debt to income ration, the income is not the same.
- Private issue between mortgage holder & lender – as a lender, would disagree on various fronts, such as hurting affordability, giving wealthy individuals greater access ability to purchase, potential to create a greater number of tax sales or foreclosures because of higher tax bills. If we as industry have learned from 2008, its that no one wins when there's is a foreclosure crisis.
- STR & identification (affidavit, voter records, etc.) is every Coloradoan required to register to vote to own a property? Provide a federal tax return to state agency? There would be financial and data privacy concerns. Signing an affidavit, how do we address those situations when others provide assistance to another buy a home? A higher tax bills only affected by people that comply with the law. How do you capture that data and delineate between renting a bedroom, MIL unit, garage apartment etc.
- Events like Marshall certainly the need for STR's, couples going through divorce, water leaks, insurance claims, lots of reasons people move into a STR, what are the unintended consequences of fewer STR's?

- Dick Elsner Comment -- Re-zoning: assessors say zoning doesn't apply to assessors' decision for residential vs. commercial rates
- Mike Segrest, La Plata Deputy Manager Question – companies are commercial operations, recommendation to address inequity of current classification? If we were to allow/give 2-year time frame for implementation, does that impact opinion/thinking?
 - Make changes at time of sale, rather than calendar year (how/when calculated)
- George Marlin Question – how impacts the bottom line of mortgage lenders? Took lending industry time to accept STR income as qualified income; rough amount of time to implement?
 - Impact – more worried about borrowers. From servicing standpoint, if taxes are higher, could have impact on industry that's hard to calculate.
 - Implementation --- easy to adapt & change; new regulations daily.

- Kelly McNicholas-Kury Question – how would you treat a disclosure and a credit occurred for a change of use from STR to primary residence? Would this fray the disqualification issues. With volatility of STR income, how is that treated in income verification?
 - Show income for 1-2 years on tax return, before it can be used; some people get around it by executing a long term lease agreement, then get credit for long term lease, then later convert to STR. Nothing for a lender to do/change. Otherwise if owned STR, then use cash flows from previous to apply.
 - Disclosure & credit of sale – could be potential solution but would need to do additional research. Again, must use tax certificate on file. If disclosure/credit, may not hold enough ‘weight’, good consideration.
- Lynn Padgett Question – special circumstances for owner occupies vs. true investment; access to home ownership is a goal, but access to home ownership in true residential neighborhood is also a true goal. Glad to hear more research around owner occupied.
- Marsha Waters with Division of Real Estate (no opening comments, just asked for questions from group)
 - Gini Pingnot Question – home being used as commercial outfit vs. turning into full time residence; anything around current/existing disclosure laws that could help home owner know the situation they’re walking into
 - Real estate brokers must disclose any adverse material facts about a property (including restriction on use, zoning issues). Get many complaints because buyers intend to use as STR then find out they cannot use as a STR. Ultimately falls on consumer to do due diligence. Oftentimes restriction from HOA. Stems from what the broker knows, doesn’t have independent duty to investigate. Brokers should encourage own research.
 - Appraisers also research appropriate zoning, if being used as an STR. To see based on rental income, what is the value of the property.
 - Marsha Waters, comment--Looking at forms for real estate brokers to use, including sellers’ property disclosure; document they complete at time of selling property to disclose any known issues; looking at including STR’s on this disclosure. Just so buyer is on alert. May not necessarily be legal, but at least flagged.
 - Kelly McNicholas-Kury, question – wondering what would trigger that decision? Administratively within department? Re-adding to disclosure form.
 - Receive suggestions throughout time; ultimately real estate commission decision to adopt. Thinks that the commission would want to address STR, since so much jurisdiction on STR and this would put buyer on alert
 - Similar treatment to other uses
 - Don’t go into weeds on all uses, speaks to illegal, zoning, pending legal action; STR’s are so prevalent that they are being called out.
 - Gini Pingnot, question – time frame for addition to disclosure form?
 - Working on now. Year long process. Will work on modifications, goes in front of real estate commission in June. Will choose to adopt changes or not. If adopted, then there is a review for typographical errors. Then public review in October. Goes into effect in January 2023.
 - Gini Pingnot, question—when forms are changed, in realm of legal uses. Might be operating, but not necessarily legal, if seller is selling and disclosure form asks, “did you operate”, sentiment that they knew it was a legal activity
 - Wouldn’t necessarily make assumption that it is legal; at least has made disclosure. If inclined to continue using that way, should contact local authorities to make sure it’s possible.

- Last time updated was in 2018
- Ashley Hodgini, Expedia Group (owns VRBO), Opening Comments
 - Expedia founded in Denver, 25 years ago
 - (More on how operated)
 - Limited data on properties; storage, use & release is governed by federal laws
 - Operators can block use for own use or STR
 - Bookings can and do change; easily transition to long term; changes can be made offline
 - Each platform can only speak to their own understanding of the booking
 - Many owners use multiple platforms or offline ways
 - In circumstances where VRBO is tax liable, they collect and remit to tax jurisdiction. No connection to anything besides the final transaction. Simply required to collect & remit, but not provide any unrelated information. To the extent additional information is needed re-tax, can / are audited like other tax payers, treated as similar businesses. When platforms are remitting data, it's a regulatory obligation from a local jurisdiction to enforce local STR ordinances, not tied to a specific booking transaction. Is necessarily aggregated & demonetized.
- Conner Peretti, Corporate Legal Counsel, VRBO (regulatory position), Opening Comments
 - Federal Law Provisions, relevant
 - Historic communications law (from SCA – Stored Communications Act, functions as mini-fourth amendment) requires certain companies including Expedia Group/vrbo, the only way to comply with federal law & turn over basic subscriber information, is in response to a subpoena or a warrant or a court order (most often) and respond in usual course. Gives them chance to review for relevancy and ability, the SCA ups the stakes here because improvise for private right of action, can use platform. Can create legal risk to hand over data outside of procedures established by the act. When a local/state law says to give data, without any mechanism to subpoena, warrant or court order, it conflicts with federal law. Pre-empted by historic communications act. Had case in Portland, OR, was pre-empted by SCA since it didn't do subpoena.
 - Fourth Amendment, Unreasonable search or seizure. Data may be exempt because of pre-compliance review. Regulatory reporting that doesn't allow for subpoena, doesn't allow for pre compliance review; as industry prevailed in NYC.
- Ashley Hodgini, Expedia Group, additional comment
 - Limitations with data & constraints that apply to releasing it; all applies to other and future existing platforms, even those outside the US. Potentially hundreds of websites and marketplaces. Very few jurisdictions attempt to regulate this way, because of difficulty because of platform data limitations. In order to actively enforce, it requires a large administrative burden for staff. Many hours to obtain, compile, reconcile, and information provided by operator from offline reservations. Historically, has been big challenge.
- Elsner, question for VRBO – not interested in number of days, more interested in listing of addresses that advertise or use platform. When they put their name/address out there, not looking for owner, looking for address, because they can figure out who owns with address. With address being online, isn't it in public domain, so can be handed over?
 - Conner Peretti – addresses are not public; it's private data, to VRBO and partners. Want for privacy/safety reasons, so not publicly displayed.
 - Still collect addresses, but not publicly.
 - Ashley – area/map is provided to see where it is generally, but not exactly.

- George Marlin, question for VRBO – former operator with Airbnb. Signed agreement when signed up. Curious if VRBO would modify agreements with operators so they could do this. Looking at volatility in regulation and negative commentary from operators, is VRBO interested in being a partner.
 - Conner Peretti – agreements are fairly general, don't get into nitty gritty on noise or other particulars. Make sure that partners are responsible for complying with law, don't do or monitor for them. One agreement for the entire world, so too large bore for such a small bore issue.
- Kelly McNicholas-Kury, question for VRBO – would like to have information on nights of use etc. struggling with feeling of over use/high intensity. Growth is in amount of use, public use, visitation etc. data related to that would be super helpful, in absence of that reaction is regulation to ratchet down activity, which isn't necessarily best approach, but those are the tools that we have. Wondering in broad agreement where the operator is required to say they're legally complying with legal regulations, is that where an operator who should have a license, is that where it gets left with them to comply? Any role for platform in compliance?
 - Ashley Hodgini – scalability, 10,000's jurisdictions in US and 190 counties across globe. Obligation to be in compliance on the owner/operator. Internally there are policies, if there are problems, they do address instances of nuisance. To be able to get into nitty-gritty of each regulatory obligation, every city, county, state, country is not scalable.
- Kelly McNicholas-Kury question for VRBO--If County knows there is an illegal operation, what happens
 - Ashley – would determine on case by case operation, since there are so many different obligations. Could still operate on another platform, so would want to tackle together that applies to all platforms.
- Kelly McNicholas-Kury, question for VRBO—what does tax remittance look like, where they remit?
 - Ashley H--In Colorado, unique state in that there is a state marketplace. Become tax liable party: marketplace law obligation or voluntary collection agreement with jurisdiction. Rare in CO since many jurisdictions can enter into agreement with platform.
 - Kelly--From individual operator how does that work with remittance
 - Believe that there is an automatic software component, specific to jurisdiction, that collects appropriate tax and remits to jurisdiction. It is burdensome. In CO, state portal to remit sales tax to state, but not for lodging/excise tax. Fast approaching a cliff as marketplace on what they can comply with, without a state solution, happening with other states/countries. Do on behalf of the partner, if partner has question, they can go into a dashboard for their own tax purposes. Audited frequently.
 - Tax remittance specific to transaction (not apply to other parts of use of the home)
- Frank Celico, Summit Assessor, question – liability of VRBO to disclose under store communications act. Many contractors do internet scraping to determine STR's because of inability of providers to provide that information directly. Does VRBO have liability for the discovery of properties, by third party vendors that scrape for data? Thoughts as an organization to its effectiveness
 - Conner Peretti – aware of third parties, but never seen one that is actually accurate. Unsure of methods, simply not enough information online for sufficient data. Worried about how they are doing that. As long as they are only interacting with public facing website, then no issue.
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- Steve O'Dorisio comment, addressed for VRBO—properties not listed as party houses, but all lip service, need to take ownership & gotten reaction because not being appropriately addressed; could lose it all. Concerned about what we're doing to the assessors; rather how to make more equitable on a transaction basis, then much more proportional.
 - No response from VRBO

- Mike Segrest, La Plata Deputy Manager, clarification question for VRBO – did he understand since state doesn't have portal for lodging tax, it's not remitted
 - Ashley – we do and do it in regular basis, but it's becoming increasingly challenging. Just in CO, 30 jurisdictions looking at regulatory/tax changes. Lots of things going to ballot that would change. Collecting and remitting in different ways in each jurisdiction. That would be serious compliance issue, also for other marketplaces & businesses, even without physical presence in jurisdiction.

Meeting wrapped up/concluded