

A Reprint from *Tierra Grande*

ham & regs

what to check out before guests check in
by judon fambrough

Anyone contemplating opening a bed and breakfast in Texas should be familiar with local, state and federal rules and regulations that govern B&Bs.

Check Local Rules, State Statutes

In addition to checking local city and county ordinances, prospective B&B operators must determine whether any deed restrictions prohibit B&Bs. Title insurance policies reveal deed restrictions and where they are located in deed records. Generally, subdivision deed restrictions prohibit commercial operations such as B&Bs.

Several Texas statutes and administrative rules deal directly with B&Bs. Most are in the Texas Administrative Code. One statute requires persons owning, operating or controlling a B&B to collect a 6 percent tax on room rentals. Another contains comprehensive rules that focus on public health issues related to B&B food service.

Determine Applicable B&B Category

Statutes and codes classify B&Bs in three categories. The *bed and breakfast limited* is a B&B with seven or fewer rooms to rent. Only breakfast is served and only to overnight guests. Owners and managers of these B&Bs must successfully complete a food manager's certification course accredited by the Texas Department of Health.

A *bed and breakfast extended establishment* has more than seven rooms to rent or provides food service other than breakfast to overnight guests. B&Bs in this category must comply with all requirements outlined in Section 229.174 of the code. These rules cover food supplies, food preparation and protection, food



LARGER B&Bs and those that serve food other than breakfast are subject to additional regulations governing food service.

temperature requirements, cleaning and sanitizing utensils and equipment, application of pesticides and rodenticides, garbage receptacles, sewage systems and water supplies.

A *bed and breakfast food establishment* is essentially a restaurant. It provides food services to the public, not just overnight guests. These B&Bs must meet all rules and regulations applicable to retail food establishments found in Chapters 437 and 438 of the Texas Health and Safety Code.

The latter category of B&Bs is under the jurisdiction of the county or public health district and the local county commissioners court. They must secure annual permits and are subject to inspections. Owners may face civil or criminal sanctions for violations.

Consider Property Taxes, Background Checks

One statute affects B&Bs but does not mention them directly. It requires the

taxation of all tangible personal property held or used for production of income. Thus, personal property such as beds, lamps and televisions used in the B&B must be reported to the chief appraiser.

Use of the home for a B&B should not disqualify the owner from receiving a homestead exemption for property taxes. A residence homestead includes a separately secured and occupied portion of a structure and the improvements used for residential occupancy. "Separately secured" is not defined.

The Texas Health and Safety Code grants employers operating a residential dwelling project (including B&Bs) the privilege of checking the criminal history of any applicant who may be reasonably required to access a dwelling.

Follow Federal, State Fair Housing Acts

B&B operators must be aware of federal and state fair housing acts when renting rooms. For the most part, the acts

mirror each other and prohibit anyone from refusing to rent or otherwise make a dwelling available because of a person's race, color, religion, sex, familial status or national origin. There are, however, exceptions that may apply to B&Bs.

The Texas statute permits discrimination based on a person's conviction under federal or state law for illegal manufacture or distribution of a controlled substance. Neither the federal or state act applies to B&Bs when the owner maintains and occupies one of the living quarters as a residence. In such a case, however, the dwelling must be occupied or intended for occupation by no more than four families living independently of each other; this includes the owner. Structures outside the home used as B&Bs are subject to another more complicated exception.

Another federal statute prohibits racial discrimination without exception when renting rooms.

Comply with Disabilities, Architectural Barriers Laws

The Federal Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability and requires places of public accommodation and commercial facilities to be designed, constructed or altered to comply with accessibility standards. The Texas Architectural Barriers Act is intended to eliminate unnecessary barriers to persons with disabilities. The Texas statute duplicates the federal standards but is more restrictive in some instances.

Both laws contain an exception for B&Bs located within owner-occupied homes. The exception appears within the definition of a *place of public accommodation*. The term refers to a facility operated by a private entity whose operations affect commerce, including inns, hotels



B&B OWNERS should be aware that personal property used in a B&B is subject to property taxes. Home insurance policies do not cover home businesses, so whether a B&B is in the home or in a detached building, a separate commercial liability policy should be purchased.

or other places of lodging. However, it does not include establishments located within buildings containing five or fewer rooms for rent and serving as the proprietor's residence.

When a place of public accommodation is located in a private residence and has six or more rooms for rent, the portion of the residence used exclusively as a residence is not subject to the ADA. However, the common areas used exclusively for public accommodation and for both public accommodation and residential purposes are covered. This includes the front sidewalk, door, entryways, hallways and portions of the interior or exterior available or used by customers or clients, including restrooms.

Texas law includes no other exceptions. However, the owner or operator of a place of public accommodation may request a variance. Owners of historic buildings, for example, are sometimes granted variances allowing partial compliance with the Texas Accessibility Standards if a building has historic architectural significance and full compliance would threaten or destroy its historic significance.

Review Internal Revenue Code, Insurance Needs

Compliance with the Internal Revenue Code is essential for B&B owners and operators. *IRS Audit Protection and Survival Guide: Bed and Breakfasts* by Bernard and Baran gives an excellent overview of key considerations, including:

- keeping separate records and receipts for items purchased for the B&B,
- making quarterly payments to the IRS for estimated income taxes,
- filling out Schedule C at the end of the tax year and filing it with the 1040 Form,
- filling out Schedule SE at the end of the tax year and filing it with the 1040 Form for self-employment taxes,
- withholding payroll deduction taxes with each payment to employees,
- filling out and giving each employee a W-2 Form at the end of the year and
- properly allocating deductions for mortgage payments, property taxes and other operating expenses.

Prospective B&B owners may be surprised to discover that their basic insurance policy does not cover business pursuits in the home or on their property. Consequently, whether the B&B is located in the home or in a detached building, a separate commercial liability insurance policy is required. Without the separate coverage, homeowners are exposed to a higher degree of personal liability. ♣

Fambrough (judon@recenter.tamu.edu) is a member of the State Bar of Texas and a lawyer with the Real Estate Center at Texas A&M University.



MAYS BUSINESS SCHOOL

Texas A&M University
2115 TAMU
College Station, TX 77843-2115

<http://recenter.tamu.edu>
979-845-2031
800-244-2144 orders only

Director, Dr. R. Malcolm Richards; **Associate Director**, Gary Maler; **Chief Economist**, Dr. Mark G. Dotzour; **Communications Director**, David S. Jones; **Associate Editor**, Nancy McQuiston; **Assistant Editor**, Kammy Baumann; **Assistant Editor**, Ellissa Brewster; **Art Director**, Robert P. Beals II; **Graphic Designer**, J.P. Beato; **Circulation Manager**, Mark W. Baumann; **Typography**, Real Estate Center; **Lithography**, Wetmore & Company, Houston.

Advisory Committee

Celia Goode-Haddock, College Station, chairman; Nick Nicholas, Dallas, vice chairman; Joseph A. Adame, Corpus Christi; David E. Dalzell, Abilene; Tom H. Gann, Lufkin; Joe Bob McCart, Amarillo; Catherine Miller, Fort Worth; Jerry L. Schaffner, Dallas; Douglas A. Schwartz, El Paso; and Larry Jokl, Brownsville, ex-officio representing the Texas Real Estate Commission.

Tierra Grande (ISSN 1070-0234), formerly *Real Estate Center Journal*, is published quarterly by the Real Estate Center at Texas A&M University, College Station, Texas 77843-2115. Subscriptions are free to Texas real estate licensees. Other subscribers, \$20 per year.

Views expressed are those of the authors and do not imply endorsement by the Real Estate Center, Mays Business School or Texas A&M University.

©2003, Real Estate Center. All rights reserved.