



**WOODS:** This email you sent me did get me interested. At first I looked at the subject lines and thought, oh, there's no way this is going to be interesting. But, oh, is it. Actually, there's a lot involved in this issue. So you were talking about – well, first of all, you're an Airbnb so-called superhost, so maybe you'll be able to explain what all that means. But apparently there was a shooting at an Airbnb rental in California, and there are some complications resulting from this, and you wrote a blog post talking about who should be held responsible. Is it the shooter, the guests, the homeowner, the city, Airbnb? How do you apportion responsibility? Things like that. And then Airbnb is making changes to its platform, and Airbnb has been doing that already for other reasons having to do with housing discrimination and stuff like that. So there's a lot going on here.

And also, I mean, there's a lot to talk about with Airbnb, because I was looking in New York last year. I was thinking of getting an apartment in New York because I spend so much time up there. I briefly considered having a place so that if I take the kids up there, we always have a familiar set of surroundings for us. And it's hard, actually, to find the kind of high-rise touristy-area apartment building that I wanted that would allow for its use as an Airbnb, for instance. Because at first I thought about just getting an apartment. Then I thought about long-term rentals and stuff, but there are a lot of buildings where for their own reasons, the residents don't want transients coming in and out. And I could sort of understand that, and that's a private property rights thing. But anyway, I'm getting completely – sorry, I'm just talking about everything that occurs to me here. Let me turn it over to you. You give us an overview of the situation.

**BROCHU:** Sure. The situation you just described is actually a really great reason for people to have the ability to do short-term rentals, because it gives people the opportunity to generate income in an asset, which could be an apartment in a city, could be a vacation home, that otherwise is just sitting empty, sitting vacant most of the time, except for when they want to use it. And at the same time, as you said, if you own a unit like that, you're not going to rent it long-term, because you're trying to get some use out of it, and so there is really a strong reason for this type of service to exist in a lot of places.

Of course, part of the problem that people see with that is when you start opening that door, that some people argue that that then starts to take housing units off the market for long-term renters, and then that could potentially drive up housing prices. And then of course, there are a number of other concerns about these short-term rentals, that when you have people coming in and out on a transient basis, which is typically defined as less than 30 days at a time, sometimes you can open the door to various kinds of nuisances. Some places turn into party houses, which is what happened at this house out in California where the shooting was.

And so there are a number of these issues that are circulating around short-term rentals that are now leading many towns to look at various forms of regulation, whether it's bans, whether it's requiring owner occupancy. These local towns are kind of grasping at straws to just try to throw something out the wall and see what sticks to rein in what they see as potentially problematic use of their existing housing stock for short-term rental.

**WOODS:** All right, let's go through some of the points you've got here. Because what I want to know is, how do we sort all this out in terms of what libertarians ought to think according to our own principles about the short-term rental of your home? Because obviously the state wants to jump in and have a say about this or at the very least regulate the terms on which Airbnb makes the service available.

**BROCHU:** Yeah, I guess the first thing I would say is that, for one thing, short-term rental of homes is something that I see as really a long-standing and well-established property right. I live in Maine, in Southern Maine, and you can drive around any coastal town here in Maine and look at some of the beach cottages, and maybe one of the five has a little orange sign stapled to the side of the building that says "For Rent" on it. And it's got a phone number; it might have the dates that it's available over the summer. So this has been going on for a long time, especially in a vacation area like Maine.

But even beyond that, in the early 20th century, you had a lot of places, especially some bigger cities like New York and San Francisco, where you would have buildings that were renting out what was called a single-room occupancy, essentially like a boarding house. And these could be rented on a long-term basis, on a short-term basis. And even people in their own homes outside of cities and outside of apartment buildings might take on a lodger from time to time, might take on somebody, again, on a short-term or long-term basis within their own home to help supplement their own income, and again, take something that was an underutilized asset, an extra room in their house, and make that productive.

So this is something that's been going on for a long time. And I view it as, really, a long-standing property right, that if you're going to start to take that away from people or constrain it in some way, that's going to require some pretty strong justification.

However, the other thing we should think about as libertarians is that one of the problems that we're hearing about, and this is really the biggest problem I've heard about in my town, which is now looking at various forms of ways of regulating short-term rentals, is the problem of nuisances.

**WOODS:** Right. Right, right, because a lot of these people, as with anything, like if you're if you're in a rental car, some people drive it more recklessly, which they shouldn't — or at the very least, you don't get an oil change in a rental car. You don't get the rental car detailed.

**BROCHU:** Right.

**WOODS:** And likewise, the thinking is people maybe won't take as good care of — or since they don't have to cultivate long-term relationships with the neighbors, they'll be inconsiderate jerks. I mean, there is at least a presumption that this may be true.

**BROCHU:** I think it is. And so that's I guess my caution to libertarians, is while we do you want to support the property rights of the owners who are trying to use their property in a different way, I think we also need to be really careful about defending and honoring the property rights of their neighbors to what you'd call the quiet enjoyment of their own property. And I think as libertarians, we've probably thought about this problem probably more than anybody else about what constitutes a nuisance between two separate properties and how we apply property rights to that and what types of regulations are proportional and reasonable.

And so I think that if this is coming up in anybody's town and they're trying to get involved in these discussions, I'd say we should start by listening to the neighbors who are complaining, understanding is this something that's legitimate. I know that in my town, there's this one property — well, let me just to put this in perspective. I live in a small town in Southern Maine. I've found that there are about 90 or so short-term rental listings in my town. And of those 90, there are about 3 that we've heard of getting some significant complaints. All 3 of them are larger units. One of them I think sleeps 8 people, maybe 5 bedrooms. One of them

is, I think, maybe 6 bedrooms and sleeps 12 people, and one of them is another 6 or 7 bedrooms, sleeping 14 people.

And one of these units is actually making itself available for weddings on their property, and so this is like an acre-and-a-half lot in a residential, kind of waterfront area. And they're hosting a wedding on their property on weekends throughout the summer. So as much as I want to defend that guy's right to do what he wants with his property, I mean, I have some appreciation for the guy next door who doesn't want to be listening to Earth, Wind and Fire until 11 o'clock at night from some band playing on the property next door. So I think we can come out on both sides of the issue and really try to get to some kind of a balance between the rights of the property owners and the rights of their neighbors.

**WOODS:** I have another question for you that doesn't hit directly on a libertarian concern, but it does hit on the kind of concern that, let's say, people are more or less taught to have in the media, which is the claim that if short-term rentals are available, long-term housing becomes less affordable. Now, I have to admit, I don't immediately see what the connection between those two things is supposed to be. So maybe you can explain what that relationship is supposed to be and why, in fact, it does not hold.

**BROCHU:** Sure. So there have been some studies on this. I've looked into a few of them. I'm no statistician, but I've tried to make sense of a couple of the ones that I've found. For one thing, there's one study that was done in Santa Monica, California, which has I think one of the strictest bans on Airbnb in the country. I think that went into place around 2015 or so. And so they looked at a couple of years of data from this ban, and they compared it to other areas around it, other towns right around that area, to see if there was any difference in essentially the rental prices between Santa Monica, which had the ban, and other areas which didn't help the ban. And this study found that there was no significant impact on rental pricing from the ban. In other words, by banning Airbnb and short-term rentals, they weren't able to produce any improvements in rental pricing.

There have been a number of other studies done that suggest that there is an impact on rental prices. One of them that's probably gotten some of the most press is in 2018, there was a study done in New York City, where they looked at — there's a website called AirDNA, which essentially scrapes the Airbnb website, and they pull together a whole bunch of data of where listings are, how much they're being rented for, and for how long. And they did this kind of big-data analysis on that. They looked at rental values from Zillow, and somehow, they sussed out of that some number of units that they believe have been taken off of the market as permanent rental units. So in other words, if there were 100,000 rental units before, they said that now there are — the number they came up with I think was about 5,600 units — that are now permanent short-term rentals that are no longer available on the long-term rental market.

And now, to put this in perspective, in New York City, they're saying that there were 5,600 units taken off the market. This is a city with 3.4 million housing units and about 2.1 million rental units. So just at face value, it seems like a bit of a stretch to suggest that that that 5,600 units taken off the market is really going to make that much of an impact on rental prices. But they did find a bit of an impact. What they found is that it's increased rents by about a half a percent per year over the three years that they were looking at this study. And this has been trumpeted from the rafters as the smoking gun that shows that Airbnb increases housing prices in New York City, of all places, which has the most mature Airbnb market in the country. It has a long-term, year-round rental market, as opposed to places like where I live where it's seasonal. And this study was sponsored by, of course, the hotel union or lobby or whatever in New York City.

**WOODS:** Yeah.

**BROCHU:** And so they got the answer they want, but even that, it's such a small — it's a half of a percent per year. This is the best they could do to show that short-term rentals are increasing rental prices in the city. So I don't find that very convincing.

**WOODS:** Yeah, and this is, first of all, only a curiosity anyway, because strictly speaking, it makes no difference. If this is the arrangement people prefer, then you've got to just let the chips fall where they may. If this is what people want to do, then let them do it. I mean, there are a lot of preferences people may have that wind up affecting prices one way or another. I mean, almost everything we do affects prices one way or another, and I don't see any reason to single out this particular decision over any other.

**BROCHU:** Exactly. Well, just to put this in perspective. Another study I read looking at this issue — this was I think — in Los Angeles — there was this kind of throwaway line in this article where it said, you know — I'm paraphrasing here, of course, but it said, you know, these short-term rentals, we shouldn't be letting them take these units off the market, because don't they know that in Los Angeles, it takes three years to get a permit approved for a new housing unit and costs \$315,000? And so they take that, the fact that the permitting process takes three years, they take that as like a fact of nature, and then look at short-term rentals and people who are finding these various different ways to increase the productivity of their properties in their homes, somehow that's the problem. But the three years of permitting, that's just taken for granted. I mean, how could it be any other way?

**WOODS:** Let's get back to the issue of disturbances and nuisance and so on and on, and whether or not this is Airbnb's responsibility. I mean, obviously nobody at the company is playing music at 11 o'clock at night. But on the other hand, they are fashioning the contracts by which these people come in and live in these places, so it is interesting to consider exactly what Airbnb's role would be. And is there a way we can solve this problem in the same way that, let's say, a lot of online solutions solve problems, where you have a fraudulent seller on eBay, they have in-house ways of resolving that? Same with PayPal. In fact, PayPal has really interesting ways, where they can kind of detect something is fraudulent very, very early on, almost before you detect that it's fraudulent. They've come up with all these clever ways of handling situations like this. So is there something that can be done that does not involve local or state government?

**BROCHU:** Well, so to answer I think the first question about what responsibilities does Airbnb have, I mean, if you think about what Airbnb is, as I said before, vacation rentals have been around forever. And not just vacation rentals, but short-term rentals, long-term rentals, or let's say maybe a three-month or six-month lease. This isn't like they've reinvented the wheel here. What they've done is they've made a listing service much easier to use and much easier to manage things like the money exchange between people and the contractual arrangements, and even having reviews so that you can review guests, and guests can review hosts, and everybody hopefully has some idea of who's going to be coming and staying at their place, and the renters have some idea of what they're going to be getting.

But Airbnb, they've kind of gone beyond, let's say, something like a Craigslist or like a classified ad in your newspaper, right? I mean, if somebody advertised their property for rent as a vacation rental in a classified ad in a newspaper, nobody would be looking at the newspaper and saying, oh, there was a party at that house. You, Mr. Newspaperman, are responsible for this disturbance that your rental unit caused. But people look at Airbnb, and there's this perception that Airbnb has some kind of, let's say, managerial responsibility over all of these properties that they're hosting.

I don't think that's technically true; however, by the fact that everything is happening under their terms of service that they've established, they do have a lot of control over how those relationships get managed and what happens on these properties. They've traditionally taken what I see as really kind of a hands-off approach to a lot of their listings. They've been willing to really just kind of put it out there as a listing service and see what happens when people

see if people want to come on and list different places in different ways. They're now advertising even things like experiences that you can advertise on Airbnb. And so I think that they've taken on, to some extent, at least the ability to start to manage some of these things.

And now with this shooting that just happened in California, it seems like this has been a big wakeup call for them. And I should say that there's some evidence that there have actually been other shootings previously at other Airbnb units, that for whatever reason just haven't been nationally publicized. But this event seemed like a wakeup call for Airbnb.

And just to explain what this was, there was an Airbnb rental. Somebody booked the place saying that it was a family reunion of 12 people. The host allowed it. The host had a rule, he had a house rule in his listing that said there are no parties allowed. And this person put something on Instagram saying that there was going to be a house party. They called it an Airbnb mansion party. 100 people showed up, and then around 10:30 at night, there was a shooting where five people were killed and other people were injured. Apparently the sheriff in the county is now saying that this appears to have been gang related. In fact, two of the victims, they think might have actually been also two of the shooters. This is all still being investigated, obviously. And even the person who rented the unit and advertised the party is apparently being charged now as an accessory to murder for this event. So it's just an absolutely tragic event.

But this seems to have really gotten the attention of Airbnb, Inc. And so their response to it is they've made three announcements about policy changes to their platforms. So the first is that they say they're going to verify all listings worldwide. So they have about 7 million listings worldwide, and they're going to start doing some kind of inspection on all of these listings to make sure, first of all, that they exist, that they're not hoaxes, that they are clean, that they are safe. And so I'm not sure what the extent of that would be, but that seems like a pretty big effort on their part to get all their listings have at least a higher kind of certification for what listings are on their site.

Another thing they've announced is that they're going to ban party houses. So for example, that house I mentioned in my town that's hosting weddings and booking people through Airbnb, I get the feeling that their days are numbered, at least on Airbnb's platform. And what they say is that Airbnb says they're going to be using artificial intelligence in some way to detect bookings that are likely to be a party house. So for example, if somebody who lives in the same town books a unit in that town for one night, and maybe they're a first-time user of Airbnb, they're going to look at that as something that's suspicious and maybe flag that as something that looks like it could be somebody renting the place just to throw a party.

Another thing they're doing is they're setting up a 24/7 neighbor hotline, and they're consulting with law enforcement on this to try to see how they can best respond to neighbor complaints. They've had, I don't know, it seems like a kind of a lackadaisical neighbor complaint-reporting service that doesn't seem — I haven't heard of anybody really getting much use out of that, let's say. But they're now setting up a 24/7 neighbor hotline, which it seems like they're going to be starting to take neighbor complaints a bit more seriously, and possibly even responding to events as they're happening. So it'll be interesting to see how each of those three things pan out.

But for me, I mean, getting again back to the question of whether or not Airbnb has responsibility in this, it's like, again, technically, they're a listing service. They don't own the properties. I don't really see them having a responsibility. But it boggles my mind that they've waited this long to start to address the party houses, which it seems like in every city where these things are, these party house seem like the big problem that is drawing attention and that is getting them banned, it's getting them regulated. And they just lost a \$4.2 million lawsuit in Jersey City, which is important because it has great access into New York City. And New York already has some pretty severe restrictions on Airbnb. So they just lost this whole

battle there to fight off some bans and some restrictions that are going to really kill a lot of Airbnb business in Jersey City. They've been fighting these things all over the country, and the fact that they haven't dealt with this party house situation until now is kind of boggling to me. It seems like something that doesn't add value to their business and that they've been letting happen for a long time, really, for no good reason that's causing them all these problems.

**WOODS:** What's the trend in terms of what local authorities are trying to do with regard to Airbnb? Because for instance, with Uber, we've seen a bunch of localities trying to ban it or place restrictions on it or regulate it one way or another. I don't know where that stands, if that's increasing or decreasing. And likewise for Airbnb, I don't know if that's increasing or decreasing or staying the same. What's your sense of it?

**BROCHU:** What's happening in a lot of places, for one thing, this is all happening at the local level. So individual towns are coming in and trying to deal with these issues in their town when they start getting complaints, mostly from neighbors who are observing these nuisances. And there's a lot of things that they're kind of throwing at the wall to see what sticks on regulating these units.

So for one thing, I mentioned Santa Monica. There are other places who are coming up with outright bans on Airbnbs, on short-term rentals. Other places are requiring owner occupancy, which means that essentially I can live in my house and rent out one or two or three rooms to different people, but I couldn't just rent the whole house out to somebody else. So again, that's effectively a ban, because you're taking, again, this long-standing use of, let's say, a vacation home where you're going to rent that out to somebody on a weekend when you aren't there. Some of these places are really taking that off the table. And I think that's actually part of what Jersey City did in their regulations.

In New York City, and I think that this actually might be statewide in New York, they have a policy that is one host, one home. So in other words, for each host on a rental site like Airbnb, you can only have one address that you're renting out. You can have multiple listings within that address, so let's say if you have a duplex or something, you could list both places on Airbnb, I think. I might not have this quite right. But they don't want people to come in and be buying up six different buildings in town and renting them all out on Airbnb. So that's something that's happening in New York City. I think San Francisco is also doing that.

Other places are limiting the number of days in the course of a year that somebody can rent out their unit on a short-term basis. Amsterdam has a 60-day maximum. London I think is a 90 day. Paris I think is 120 days. So in other words, you can't rent your property out for more than 120 days in the year in Paris as a short-term rental.

And then of course, people are looking at some existing regulations that they might have on the books and kind of reading into them some kind of existing ban on short-term rentals. One of these obviously is zoning. There was a case near where I live in Portsmouth, New Hampshire that just has gone up through the courts, where somebody was charged with — they got essentially a cease-and-desist order on their short-term rental, because they had just set up a second unit on their property as a short-term rental. Somebody complained about it, and what they said is that the zoning code, the zoning ordinance for their district was a single-family residence district that did not allow transient occupancies. And so these things that were written into zoning codes, which never really anticipated anything like Airbnb, people are now going back and reading and saying, well, look, we have this thing that says no transient occupancy. That means that you can't do this because of the zoning code.

Similarly, people are looking at building codes. And I will say that the building codes are a mess on this issue. First of all, there are multiple building codes usually in effect in various areas. One definition that's getting called out a lot is from the NFPA life safety code, which is the definition of a dwelling unit as housing one family, plus up to three outsiders. So in other words you could have a family living in a unit, and they could rent three separate rooms within their dwelling unit, and that could still be considered a one-family dwelling. If you rent

to a fourth person or if you have some different configuration that doesn't meet their definition, then you have to look at a change of use to something like a lodging place or like a boarding house. There are different definitions in the code for things like that. But it's not well-written into the codes, again, because I don't think they really anticipated this type of use very well, and so there's a lot of confusion there with code enforcement officials and fire chiefs in trying to wrap their heads around how they should be applying the building code to existing dwelling units.

And then of course, lots of places already have some kind of licensing in place for lodging. Often, there are exceptions for things like single-home vacation rentals. Other places are looking at various forms of permitting requirements. Some places are just asking people to register their units. And in fact, Airbnb is cooperating with places too, where when somebody registers an Airbnb — I think this just happened in New Orleans — they'll actually give the city of New Orleans the name and information and contact information about that listing, and then they register them with some kind of a number that they have to post on their listing.

So it's really all over the place with the various kinds of ideas that regulators are coming up with to deal with this. And so if you're going to try to start to speak out against some of this stuff, I think for one thing, you want to know what the existing regulations are that are in place, see if there are any existing regulations like something like a lodging business license that already address the issue, and then, as I said, talk to the neighbors and try to find a way to deal with things like nuisances. Like really get to the source of the problem, because a lot of these things I'm talking about don't affect the fundamental issue of what might be nuisances or possibly the housing question. So again, it's all happening at the local level, so there are opportunities for people to get involved really personally in their town. And if anybody really wants to start to promote libertarian ideas, it's a good way to get into some discussions about things like nuisances and property rights and the homeowners' rights to rent their own property.

**WOODS:** Right. So in other words, let's wrap up with what would you recommend to people? What is the best way for libertarians to stand up against these kinds of bans and make a case for short-term rental rights?

**BROCHU:** Yeah, I've said a couple things which I'll reiterate, which is for one thing, listen to the neighbors that are complaining and respect those complaints and see if you can find a way to resolve that. There's usually a handful of problematic properties in any given area. I would say draw a difference between party houses and the majority of rental units which are not disruptive. See if you can quantify that in your town, find out how many places are actually getting complaints. If you go on sites like AirDNA.com, you can find out how many total listings are in your town, and you can start to at least put some numbers to some of these discussions. As I said, knowing the existing laws, licensing requirements, building code requirements, land use ordinances. There may be things already in place that can start to address these issues that are just not being enforced.

And ultimately, I think just getting involved in some of these discussions in your town. As I said, this is all happening at the local level and nobody really knows what to do. Everybody kind of has their heads spinning, so if we can go in there with some principled approaches to dealing with the fundamental problems, I think that we can add something meaningful to that conversation.

And then for me, I'm actually trying to propose doing something that doesn't involve the city or the state, which is to set up what I'm calling a home rental mediation service. And my idea here is that I would set up a website where neighbors could complain. They would file complaints anonymously on the website. I would record that. I would then reach out to the homeowners with these complaints and engage them and talk to them about any issues, any existing regulations they may be in violation of, and talk with them about what some of the issues are, and see if we can get them to propose some solutions. Then go back to the

neighbors and see if we can work back and forth between what the neighbors are looking for some kind of resolution and what the homeowner is willing to offer up on their end, and see if we can come up with some way that we can get these things sorted out, and keep everybody happy without even involving the state.

Because one problem you have in a lot of these places, even if you come up with some kind of a nuisance ordinance that is enforceable, things like noise violations are really hard to enforce, because it's not just about like the decibel level at the property line, which is how a lot of noise ordinances are written. These kinds of disturbances, they're subjective, they're difficult to document, they're difficult to quantify. And so I think that there needs to be some other way for people to be talking to each other and sorting out these conflicts, rather than relying on the police, who ultimately don't have a leg to stand on, oftentimes, in enforcing some of these nuisance complaints.

**WOODS:** All right, we're going to leave it there, but can you take just a minute to tell us about the Anarchitecture Podcast and give us the website?

**BROCHU:** Sure, yeah. Anarchitecture Podcast is a podcast I host with my twin brother, Joe. We talk about libertarian approaches to thinking about built environment, which is talking about cities and infrastructure and architecture and the way that the whole world gets built around us. Obviously, there have been a lot of things over time, a lot of government regulations that have really twisted the way that the built environment has been developed. And so we're looking at a lot of those issues, and again, trying to come up with ways that we can apply libertarian principles, both to how the world gets developed as it is now, and then really see if we could push those ideas to ideas like privatization of infrastructure, and finding ways to get a greater degree of freedom in the way that people use their properties.

**WOODS:** I had you guys on quite a while ago. We talked about a bunch of these issues, but it seems like it's been so long. So if you've got more stuff that we could discuss, I'd be glad to revisit this, because a lot of the issues that you deal with are tricky for average libertarians – and I don't mean like low-IQ libertarians, just the traditional libertarian who doesn't spend all his time thinking about these things – hard for them to grasp as to how we would handle them. So I think you have a really unique and important podcast.

**BROCHU:** Well, thanks. Yeah, and that's something that that we saw as something that we could speak uniquely. You know, I'm an architect, Joe was an engineer, and so we thought that we could bring this perspective and really zone in on this little niche, I guess, in the world of libertarian thought, and explore some topics that haven't really been developed I think as far as maybe they should be, things like privatizing the road. Obviously, there's a lot of discussions about that. I think we've brought some new ideas to discussions like that, and thinking about it in the bigger picture of things like land use planning and real estate economics, all kinds of things like that. There's a lot that comes into play there that I think are issues that libertarians might think about a little bit here and there, but we're trying to look at it holistically and really bring those these discussions of the built environment to people who are obviously interested in libertarian thought.

**WOODS:** Well, I'm going to link to it at the show notes page, [TomWoods.com/1542](http://TomWoods.com/1542). And Tim, thanks for your time on this topic. I mean, not every topic is going to be the genocide in Yemen, but there are still issues at the local level – I mean, I have no control over virtually anything the US government does, but every now and again, some outraged citizens can do something about what's going on in their local area, absolutely. And this is an example of that, so thanks very much.

**BROCHU:** Yeah, thank you, Tom.