

CONTENTS

ACKNOWLEDGMENTS	XIX
-----------------	-----

CHAPTER ONE

THE LEGAL LANDSCAPE OF THE SHARING ECONOMY	1
--	---

Part 1: Introduction	1
----------------------	---

Part 2: The Sharing Economy	2
-----------------------------	---

<i>Consumption</i>	4
--------------------	---

<i>Production</i>	5
-------------------	---

<i>Exchange</i>	9
-----------------	---

<i>The Four Platforms for the New Economy</i>	10
---	----

Part 3: Legal Conundrums in the Sharing Economy	12
---	----

<i>Laws That Didn't Foresee Collaborative Relationships</i>	13
---	----

<i>Laws That Didn't Take into Account the Varied Motivations</i>	
--	--

<i>Behind Our Activities/Enterprises</i>	14
--	----

<i>Laws That Didn't Foresee Diverse Forms of Exchange</i>	15
---	----

Part 4: Practicing Law in the Sharing Economy	16
---	----

CHAPTER TWO

PRACTICING LAW IN THE SHARING ECONOMY	21
---------------------------------------	----

Part 1: Lawyers in a Sharing World	21
------------------------------------	----

<i>Who Serves the 70 Percent?</i>	21
-----------------------------------	----

Part 2: Becoming a Sharing Economy Lawyer	25
---	----

<i>Skills and Practices</i>	25
-----------------------------	----

<i>Training the Next Generation of Sharing Economy Lawyers</i>	30
--	----

Part 3: Structuring a Sharing Economy Law Practice	36
--	----

<i>Solo Practice</i>	36
----------------------	----

<i>Small Firms</i>	37
--------------------	----

<i>Law Cooperatives and Collectives</i>	38
---	----

<i>Practicing Sharing Economy Law as a 501(c)(3) Nonprofit</i>	44
--	----

Part 4: Developing a Niche and Finding Clients	52
<i>How to Frame Your Practice and Find a Niche</i>	53
<i>Finding Clients</i>	56
Part 5: Representing Clients	59
<i>First Contact with Prospective Clients</i>	59
<i>Preparing to Meet with a Client</i>	60
<i>The First Full Consultation</i>	61
<i>The Follow-up Memo</i>	62
<i>Entering into an Agreement for Legal Services</i>	63
<i>Providing Legal Services</i>	63
Part 6: Compensation for Services	63
Part 7: Common Ethical Issues in Sharing Economy Law	79
<i>Multiple Representation</i>	80
<i>Representing Clients in Collaborative Transactions</i>	
<i>with Non-clients</i>	84
<i>Moving Between the Roles of Mediator and Attorney</i>	89

CHAPTER THREE

NEW KINDS OF AGREEMENTS 95

Part 1: Agreements as the Building Blocks of a Sharing Economy	95
<i>Building an Economy with Agreements</i>	95
<i>Agreements as Private Sharing Economy Laws</i>	97
<i>The Unique Qualities of Agreements in the Sharing Economy</i>	98
<i>Key Agreements for the Sharing Economy</i>	99
Part 2: Key Considerations in the Creation of Agreements	101
<i>The Many Functions of Written Agreements</i>	102
<i>Agreements That Foster Resilient Relationships</i>	105
<i>Language [and Pictures]</i>	110
<i>Assisting Clients in Agreement Formation</i>	113
Part 3: Key Provisions of Agreements	115
<i>Two Frameworks for Sharing Agreements</i>	116
Co-Ownership Questionnaire	119
<i>Buying the Property</i>	119
<i>Designation of Units, Exclusive Areas, and Common Areas</i>	120
<i>Who Lives at the Property</i>	120

<i>What May or May Not Be Done to or on the Property</i>	121
<i>Property Related Costs and Accounting</i>	121
<i>Taking Care of and Developing the Property</i>	123
<i>Refinancing the Property</i>	124
<i>If One Co-Owner Has Financial Troubles</i>	124
<i>Selling the Whole Property All at Once</i>	124
<i>Selling Individual Interests in the Property</i>	125
<i>Making Decisions About the Property</i>	126
Part 4: Sample Co-ownership Agreement	127
<i>Co-Ownership Agreements and the Spectrum of Sharing</i>	127
<i>Working with This Agreement</i>	128
Co-Ownership Agreement for [ADDRESS]	128
1. <i>Tenants-in-Common Agreement in Relation to the Property</i>	129
2. <i>Owners and Parties to This Agreement</i>	129
3. <i>How Owners Allocate Rights and Responsibilities</i>	129
4. <i>Cotenancy Interests</i>	130
5. <i>Units, Common Areas, and Exclusive Use</i>	
<i>Common Areas</i>	130
6. <i>Use of Property</i>	131
7. <i>Rental and Occupancy</i>	132
8. <i>Decision-Making and House Rules</i>	133
9. <i>Financial Arrangement for Purchase</i>	133
10. <i>Responsibility for Debt on the Property</i>	134
11. <i>Sharing Costs</i>	134
12. <i>Insurance</i>	135
13. <i>Creation of a Joint Bank Account and Payment of Expenses</i>	135
14. <i>Creation of a Reserve Fund</i>	136
15. <i>Keeping Accounts and Records</i>	136
16. <i>Maintenance, Repair, Alterations, and Improvements</i>	137
17. <i>Failure to Make Payments</i>	139
18. <i>Encumbrances</i>	141
19. <i>Transferring an Interest in the Property and First Right of Refusal</i>	141
20. <i>Other Events Constituting Offers to Sell to the Other Owner</i>	144
21. <i>Sharing of Losses Related to the Property</i>	145

22. <i>Refinancing the Property</i>	145
23. <i>Events Triggering Distributions</i>	145
24. <i>This Agreement Shall Bind Future Owners</i>	147
25. <i>Resolution of Disputes</i>	147
26. <i>Indemnity</i>	148
27. <i>Effective Date, Term, and Termination</i>	148
28. <i>Miscellaneous Provisions</i>	148
<i>Attachments</i>	149
CHAPTER FOUR	
NEW KINDS OF ORGANIZATIONS	151
Part 1: Organizations in the New Economy	151
<i>The Mandate of Organizations in the New Economy</i>	151
<i>Designing Organizations for a Sharing Economy</i>	153
Part 2: Traditional For-Profit Legal Entities in the Sharing Economy	159
<i>Corporations and Shareholder Primacy</i>	159
<i>Other Corporate Design Flaws</i>	166
Part 3: Adapting Traditional For-Profit Entities	169
<i>Modified Corporate Structure</i>	169
<i>LLC Modifications</i>	174
Part 4: New Types of For-Profit Entities	175
<i>Low-Profit Limited Liability Company (L3C)</i>	175
<i>Benefit Corporation</i>	177
<i>Flexible Purpose Corporation in California</i>	181
Part 5: Cooperatives	181
<i>What Is a Cooperative?</i>	187
<i>Cooperative Nuts and Bolts</i>	189
<i>Co-ops as an Exit Strategy for Retiring Business Owners</i>	196
<i>Cooperatives That Are Not Cooperatives</i>	197
<i>Outside Investors and New Generation Cooperative Statutes</i>	198
<i>Types of Cooperatives and Examples</i>	199
Part 6: Nonprofit Organizations in the Sharing Economy	203
<i>What Is a Nonprofit?</i>	203
<i>Section 501(c)(3) of the Internal Revenue Code</i>	209
<i>Pros and Cons of 501(c)(3)s</i>	221

<i>Other Nonprofit Variations</i>	222
<i>Nonprofits Without Tax Exemption</i>	230
Part 7: Nonprofit/For-Profit Hybrids	231
<i>Fee for Service</i>	231
<i>Revenue-Generating Activities and Subsidiaries</i>	231
<i>Joint Ventures</i>	232
<i>Sponsorships</i>	233
<i>Royalties</i>	233
<i>Nonprofit Funds for For-Profits</i>	233
Part 8: Organizational Governance Models	235

CHAPTER FIVE

NEW KINDS OF EXCHANGE 259

Part 1: I Can See Clearly Now the Money's Gone	259
<i>The Scarcity of Dollars</i>	259
<i>The Spectrum of Ways to Exchange</i>	261
<i>Legal Gray Areas in the Spectrum</i>	262
<i>Areas of Law Implicated</i>	267
Part 2: Tax	267
<i>Taxation of Barter, Swapping, and Gifts</i>	269
<i>What Is a Gift?</i>	272
<i>Paying Tax on Barter Income</i>	274
Part 3: Regulations on the Creation and Administration of Currencies	275
<i>It Is Illegal to Make Coins That Will Circulate as Money</i>	280
<i>It Is Illegal to Create Currency Worth Less Than \$1.00</i>	283
<i>It Is Illegal to Materially Alter the Dollar</i>	283
<i>It Is Illegal to Make Things That Look Too Similar to the U.S. Dollar</i>	284
<i>Bank Secrecy Act</i>	285
Part 4: Tax Exemption for Organizations That Administer Time Banks, Barter Networks, or Currencies	285
<i>501(c)(3) Tax Exemption</i>	288
<i>501(c)(4) Tax Exemption</i>	290
Part 5: Paying Employees with Something Other Than Dollars	291

CHAPTER SIX

NEW KINDS OF CAPITAL 299

Part 1: Community Capital in the Sharing Economy	299
<i>Introduction</i>	299
<i>Why Is It So Hard to Raise Capital?</i>	300
<i>What This Chapter Covers</i>	301
Part 2: A Securities Law Primer	302
<i>What Is a Security?</i>	303
Part 3: Registering Securities or Finding an Exemption	316
<i>Registration Requirements</i>	316
<i>Exemptions from Registration</i>	318
Part 4: Funds, Investment Clubs, and Business Development Companies	348
<i>The 1940 Investment Company Act</i>	349
<i>Business Development Company</i>	352
<i>State-Regulated Funds</i>	354
<i>Investment Clubs</i>	356
Part 5: Models for Creative Capital Raising and Shared Equity	356
<i>Community-Supported Enterprise Models</i>	356
<i>Crowdfunding</i>	357
<i>Direct Public Offerings</i>	359

CHAPTER SEVEN

EMPLOYMENT LAWS AND NEW WAYS OF WORKING TOGETHER 367

Part 1: New Ways of Working Together	367
<i>From Working for Others . . . to Working with Others</i>	368
Part 2: Employment Laws Get an Economic Reality Check	371
<i>Employment Laws and Our Relationship “Issues”</i>	372
<i>Employment Laws and the Relationships of the Sharing Economy</i>	374
Part 3: Working Together Outside of Employment Relationships	385
<i>Partners/Proprietors</i>	386
<i>Volunteers</i>	396

<i>Interns</i>	401
<i>Independent Contractors</i>	408
<i>Work That Is Not Actually Work</i>	411

CHAPTER EIGHT

NEW FORMS OF PRODUCTION AND COMMERCE 415

Part 1: Collaborative Production/Collaborative Consumption	415
<i>New Modes of Production and Consumption</i>	415
<i>When Sharing Becomes Commerce</i>	416
<i>Purposes of Regulation</i>	417
Part 2: Approaching the Gray Areas	419
<i>Examples of Gray Areas</i>	420
<i>Steps to Approaching a Gray Area</i>	423
Part 3: When the Sharing Economy Is Exempt from Regulation	425
Part 4: Navigating Out of Gray Areas	431
<i>When the Consumer, by Means of Collaborative Agreements, IS the Producer</i>	431
<i>Production and Exchange in a Private Context</i>	436
<i>Non-Commercial Production and Exchange</i>	442
<i>Zoning and the Sharing Economy</i>	445
<i>The Moral to This Story</i>	447

CHAPTER NINE

NEW RELATIONSHIPS WITH LAND AND HOUSING 463

Part 1: Building Economically Sustainable Relationships with Land	463
<i>Unpacking the Bundle of Rights</i>	464
<i>When Land Is Not Shared</i>	465
<i>Solutions Addressed Here</i>	467
<i>Common Goals of Clients</i>	468
Part 2: Solutions: Sharing Use, Management, and/or Financing	471
<i>That Bundle Is Too Large, This Bundle Is Too Small</i>	471
<i>Sharing Space</i>	472
<i>Sharing Management</i>	473
<i>Sharing Financing</i>	475

Part 3: Agreements and Organizations to Share	
Property Rights	477
<i>Common Configurations</i>	477
<i>A Few Considerations in Drafting Agreements</i>	
<i>and Forming Organizations</i>	492
<i>Forming and Structuring Organizations</i>	503
Part 4: Navigating Public Laws	515
<i>Land Use and Zoning</i>	516
<i>Landlord/Tenant Laws</i>	518
<i>Inclusionary Housing Laws</i>	526
<i>Regulations on Hotels, Hostels, Boarding Houses,</i>	
<i>and Temporary Stays</i>	526
<i>Laws Governing the Sale of Subdivided Properties</i>	527
<i>Laws Governing Community Associations</i>	528
<i>Building and Fire Codes</i>	529
<i>Fair Housing Laws</i>	530
<i>Property Taxes and Property Tax Exemption</i>	531

CHAPTER TEN

NEW APPROACHES TO INTELLECTUAL PROPERTY 535

Part 1: Intellectual Property and Sharing	536
<i>What Is Intellectual Property?</i>	536
<i>Four Major Forms of Intellectual Property</i>	536
<i>Why Does Intellectual Property Exist?</i>	536
<i>Sharing in the World of Intellectual Property</i>	537
<i>The License Agreement</i>	537
<i>A Word About the Public Domain</i>	537
Part 2: Sharing and Copyright Law	538
<i>Copyright Law Basics</i>	538
<i>Infringement and Damages</i>	538
<i>Innovations in Open Sourcing</i>	539
<i>Creative Commons Licenses</i>	540
<i>Other Approaches with Licenses—Crowdsourcing</i>	542
<i>Public Domain Commons</i>	542
Part 3: Sharing and Patent Law	544
<i>Patent Law Basics</i>	544
<i>Humanitarian Licenses</i>	545
<i>Other Efforts Related to Humanitarian Licenses</i>	549

<i>Patent Commons</i>	549
<i>Freeing an Invention Completely</i>	549
Part 4: Sharing and Trademark Law	550
<i>Collective Marks</i>	550
<i>Certification Marks</i>	551
<i>Avoiding the “Naked License” When Sharing Trademarks</i>	552
CHAPTER ELEVEN	
NEW APPROACHES TO RISK AND LIABILITY	555
Part 1: Sharing Economy/Sharing Risk/Sharing Responsibility	555
<i>Loss Is Scary, but Uncertainty Is Scarier</i>	555
<i>Taking Risks in a Sharing Economy</i>	556
<i>Being Careful in the Sharing Economy</i>	558
<i>Advocating for Laws That Encourage Sharing</i>	561
Part 2: Making Agreements	564
<i>Ingredients of Risk Management Agreements</i>	564
<i>Common Agreements for Sharing Economy Clients</i>	565
<i>Forming Limited Liability Entities</i>	569
Part 3: Insurance	570
<i>Adapting Insurance to the Sharing Economy</i>	573
INDEX	575
ABOUT THE AUTHOR	609