

The Conundrum With Short-Term Rentals In NYC

By David Pfeffer, Tarter Krinsky & Drogin LLP

Law360, New York (February 6, 2017, 2:35 PM EST) --

The internet has caused major disruption in New York's hospitality business. Apartment vacation rental websites such as Airbnb, HomeAway, VBRO and Roomorama now offer consumers attractive alternatives to traditional hotel rooms. And they are on a significant rise in densely populated and expensive metropolitan cities with a high volume of tourists such as New York City. Although these services offer travelers a cost-effective alternative to traditional hotels and provide owners and lessees with opportunities to make extra money, in New York City, most of these rentals are actually illegal. In this article, we explore what New York City landlords and tenants need to know about these short-term apartment rental services.



David J. Pfeffer

The Impact of the Multiple Dwelling Law

The New York State Multiple Dwelling Law (MDL) establishes the standards for all buildings containing three or more dwelling units. Since the 1920s, the MDL has distinguished between Class A and Class B dwellings. A Class A dwelling is a residential building that is occupied for 30 days or more, while a Class B dwelling is a transient building (i.e. a hotel, hostel or other short-term stay) that is occupied for less than 30 days. The MDL prohibits un-hosted rentals of less than 30 days in "Class A" multiple dwellings, a building occupied by three or more families living independently. In 2010, the MDL was amended to provide that Class A multiple dwellings can only be used for "permanent resident purposes." This means that the units in such dwellings must be occupied for at least 30 or more consecutive days by the same person or family. Thus, one cannot rent out an apartment in a "Class A" multiple dwelling for less than 30 days, unless a "permanent resident" is present during the rental period. Essentially, any intent to occupy a Class A dwelling for less than 30 days, regardless of the circumstances, is violating the law. The only exception is if the building has been zoned to be a hotel or hostel.

In October 2016, Governor Cuomo signed into law some of the toughest restrictions on short-term apartment rentals in the country. The law made it illegal to advertise a short-term rental on Airbnb and other online short-term rental platforms that is prohibited by the MDL. Under this law, rather than having to figure out when and where illegal rentals are happening, regulators can simply browse Airbnb's site for any listings that break the rules. Proposed fines for violations of this law ranged from \$1,000 for the first violation, to \$5,000 for the second to \$7,500 for three or more violations. Hours after Governor Cuomo signed the bill into law, Airbnb filed a federal lawsuit against the city and state claiming the restrictions were unconstitutional. New York is Airbnb's largest U.S. market, which

underscores how much was at stake for the company. In an agreement reached in December 2016, the city agreed not to fine Airbnb, only those people renting in violation of the law.

Beginnings and Problems

In early 2000, tourism exploded in New York City which in turn led to the current predicament. Landlords realized they could capitalize on the price differential between semi-affordable rental housing and the high hotel prices by entering into short-term "leases" with tourists. Thus, began the so-called illegal and criminal "conversions" of Class A dwellings to Class B dwellings. A number of apartment owners and hotel chains began converting Class A buildings to Class B use. This "conversion" became a fairly new problem for New York City and its dwellers.

Solution

Over time, permanent renters began complaining about short-term renters or "transients," bed bugs, parties, messy hallways and a number of other problems typically associated with short-term stays. The NYC government latched on to unsafe and life-safety concerns. This culminated in the creation of a special task force by Mayor Michael Bloomberg charged with nixing this fast-growing industry. The task force helped to prosecute residential building owners in order to send a clear message to the industry. Over time, Mayor Bloomberg's actions shut down the illegal conversions.

Current Situation

Today, property rental sites like Airbnb have raised the same issues previously faced in the early 2000s. The issue is the same, but the problem is mainly with individual apartment owners and renters, not large businesses. Unlike Mayor Bloomberg's special task force, since the current climate primarily deals with "one-off" renters, the city's approach has turned into one of education and applying pressure on Airbnb to self-police itself. This "self-policing" is evident on Airbnb's website where it includes a section dedicated to navigating the murky waters of the rules governing short-term rentals in New York City.

In short, it is not illegal to rent a room if the owner or lessee is occupying the apartment at the same time as the paying guest. In addition, all parts of the apartment must be available to the paying guest. However, while the multiple dwelling law may not prohibit this, individual leases or condo/co-op by-laws very well may prohibit it. An individual wishing to rent in the manner mentioned above should check with their landlord or building board before listing their apartment on a short-term rental site. The state and city of New York is resolved in enforcing Cuomo's new law, creating a myriad of issues for owners and lessees looking to rent out their apartments. And landlords and building owners should take advantage of the availability of information on the internet that gives them the opportunity to view listings in their buildings and take appropriate action if necessary.

David J. Pfeffer is chair of the construction practice group at Tarter Krinsky & Drogin LLP and a member of the firm's executive committee. Legal intern Karim Sabiddine assisted with the preparation of this article.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.