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Statement from Senator Liz Krueger

Answers for New Yorkers Concerned or Confused About the Illegal Hotel Law

After years of work with neighborhood organizations, housing advocates and government agency staff, Assemblymember Dick Gottfried and I passed legislation in 2010 to give New York City enforcement agencies the tools they needed to take action against illegal hotels. Since then, much of the illegal hotel business has shifted from being organized by local operators and individual websites to large online companies like Airbnb. These online businesses have become highly profitable by ignoring state and local laws and ignoring the damage their business model has done to communities.

In recent months, Airbnb and an organization calling itself “Peers” have started a major PR and lobbying campaign to overturn New York’s laws governing short-term rentals. With these businesses and groups circulating misinformation to residents, their own users, and the media, it’s important that we all know what the law is, why it’s important, and what our rights are.

What is illegal hotel activity? When permanent residential apartments in buildings with three units or more are rented out for less than 30 days to transient visitors instead of residents, that’s illegal hotel activity. Illegal hotel operations can range from one unit, to a few units here and there, to large-scale operations, with dozens or even hundreds of units converted to full-time illegal hotel use.

The 2010 law does not apply to owners of single-family and two-family homes, or residents who rent out individual rooms in their homes for less than 30 days (as long as they are also there the entire time). Many members of “Peers,” and the general public, appear to have been misinformed about this fact.

Why is this important? Illegal hotels exacerbate New York City’s affordable housing crisis and are bad for tenants.

- A Danger to Affordable Housing – Every unit that’s used all or most of the time for illegal hotel activity is an apartment that’s not on the residential housing market. That means illegal hotels are worsening New York City’s chronic housing shortage and increasing the rents of everyday New Yorkers. In some cases, landlords or managing agents who are running illegal hotel operations themselves attempt to harass or evict rent-regulated tenants to free up more units for this illegal misuse of housing.
- Putting Neighbors At Risk – Illegal hotel operations mean, at a minimum, a regular stream of relatively un-vetted strangers coming into and out of residential buildings. That can create serious quality-of-life problems and safety for neighbors, at a minimum – sleepless nights caused by overcrowded neighboring apartments packed with loud tourists, for example. But it can get far worse. My office has heard of buildings burglarized and neighbors assaulted by strangers who might never have had access to get inside, were it not for illegal hotel activity.

But wait, my lease says I can't do that anyway! Yes, the vast majority of rental leases in New York City (and other cities with tight housing markets, such as San Francisco) do not allow tenants to rent out their apartments without first obtaining permission from their landlords. This is also true of the overwhelming majority of co-op/condo boards. This means that landlords, and many co-op and condo buildings, can initiate eviction cases against those who are engaged in illegal hotel activity.

What about subletting and roommates? The changes made to the law in 2010 did not in any way impact tenants' rights to have roommates, sublet their apartments, or have non-paying guests stay with them. Additionally, residents who rent out rooms in their homes for less than 30 days (as long as they are also there the entire time) are not engaged in illegal hotel activity. Rent-regulated tenants should, however, be careful about renting out rooms for less than 30 days without first obtaining permission from their landlords. My office has heard that some landlords have started Housing Court cases against rent-regulated tenants who rented out rooms for less than 30 days, claiming that the tenants turned their apartments into commercial operations and/or charged the "guests" more than a proportionate share of the rent.

So why are Airbnb and other companies recruiting tenants to rent out their apartments on their website?

As a lifelong tenant advocate, I find it offensive that many companies are actively recruiting tenants to list their apartments on their websites even though they are well aware they are putting residents at risk of eviction. I have repeatedly asked Airbnb to put detailed warnings online but they have refused. Unfortunately, this is hardly the first time big businesses are trying to ignore or wish away an inconvenient legal reality, putting their clients and customers at risk rather than acting responsibly.

Airbnb says that 87 percent of their New York hosts are regular people who rent out their own apartments to pay their rent – that doesn't sound like what you're talking about. Yes, Airbnb throws that number around a lot, but even if it's true, that's the number of users – not the amount of business. The remaining 13 percent could represent 90 percent or more of the actual rentals happening. It's hard to know for sure, because Airbnb hasn't answered more detailed questions about their hosts and only recently agreed to settle its legal battle against the New York Attorney General and make some data available for analysis and investigation.

How do you respond to critics who say the law is in part designed to protect the interests of the big hotels in the city? The law was created to protect both the safety and quality of life of residents and visitors to New York City. In response to countless complaints from our constituents living in buildings with illegal hotels, I have been working for about a decade with other elected officials, affordable housing organizations, and City agencies to develop strategies to combat illegal hotel operations. While the Hotel Association of New York ultimately supported the 2010 law, the organization was not consulted until after the bill was introduced. In fact, because the Hotel Association was not involved in the effort that led to the bill, they had to be convinced that the bill would not harm their members!

What should I do if I think illegal hotel activity is happening in my building?

File a complaint with the City by calling 311, organize your neighbors, reach out to housing advocates, and contact your local elected officials.

"They thought it was OK to rent out on Airbnb because the company didn't tell them otherwise. Airbnb should be defending these tenants, or they should disclose to every person who rents in San Francisco that (short-term rentals are illegal) and tenants are being evicted."

*-Joe Tobener, tenants' rights attorney
San Francisco Chronicle, 4/7/2014*