



IBR Apt. Downtown, Fraught with Risk

What to know before listing your apartment with Airbnb BY ANDREW BRANDT

The case for placing an apartment on Airbnb in New York City essentially begins and ends with the state's Multiple Dwelling Law.

Lorraine Nadel, a real estate attorney at Nadel & Ciarlo, sums it up: "Multiple dwellings must be used by permanent residents, and have to be occupied by the same person or family for at least 30 days. So any co-op, condo or rental apartment can't be rented out for less than 30 days."

Even if the resident avoids the Multiple Dwelling Law by owning or living in a building containing fewer than three dwelling units, there are still the city's building, fire and housing maintenance codes to worry about. Violations can even be handed down by homeowners' associations.

So why are there so many listings online?

"Essentially, you can equate Airbnb to Uber," says Mitchell Shpelfogel, a real estate attorney at Pinczewski & Shpelfogel. "New York continues to have taxi medallions, which regulate how to have cabs be able to take you from one place to another. Uber came in with this app that is convenient to a lot of people, and circumvents the regulations we have in place for medallions. Now the government is coming in to try and regulate it to make it work for everyone."

"Airbnb is the exact same thing when it comes to housing."

This is true nationwide. Residential leases typically preclude subletting without the landlord's written approval. "If tenants are engaging in hosting their units with Airbnb," says real estate attorney Ricardo M. Vera with Newman Ferrara, "and they're doing so without the written prior approval of their landlord, it's certainly fraught with risk."

For one thing, safety issues could create liability: A permanent resident is familiar with where the exits and stairs are. A temporary resident, says Nadel, is not so familiar. Hotels have rules in place for the safety and security of their guests.

"Given the constant flux of guests when utiliz-

ing Airbnb, it's extremely difficult to monitor the comings and goings of those guests," adds Vera, "and that could create a safety hazard for other occupants of the building."

Shpelfogel says the law exists in the interest of keeping an affordable housing market. "If people rent an apartment for \$2,000 a month and you can rent it out on Airbnb for \$150 a night, you're doubling your money," he says. "So people who have those apartments would clearly take the opportunity to rent it out."

Nadel cites a number of recent cases in which courts ruled against tenants renting out their apartments through Airbnb. "If the court finds that the tenant engaged in commercial exploitation or rent profiteering, there is a serious risk they will lose their rent-regulated apartment."

Aside from that possibility, the fines from getting caught improperly renting out a living space on Airbnb can really stack up: There are per-diem violations of \$1,000 per day for up to 45 days; you can also be fined for not having a fire exit sign or other hotel safety requirements. Nadel has seen violations adding up to \$45,000.

It's worth noting that a resident can have a boarder with them in the apartment—as long as the resident lives there and remains in the apartment during their guest's stay.

The risks involved in renting an apartment through Airbnb rest squarely on the tenant. "With regards to the people who are actually renting these rooms," says Shpelfogel, "the liability is actually very minimal. They come in, they use it and they leave."

When it comes to renting, Vera offers this: "Generally speaking, I think tenants would be wise to steer clear of Airbnb to avoid losing their homes."

