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FOR IMMEDIATE RELEASE:

New Yorkers Should Educate Themselves on Airbnb Legal, Safety Issues

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Airbnb has become all the rage in New York and it is easy to understand why. However, while short-term rental transactions via Airbnb's website provide clear financial benefits for all parties involved, few people are taking the time to understand the legal and safety issues that come into play.

Airbnb allows "hosts" of residential real estate (i.e. owners or tenants in physical possession) to list their residences for short-term rental. Instead of staying in cookie-cutter hotel rooms owned by large corporations, Airbnb invites people to "find hosts with extra rooms, entire homes, and unique accommodations" so that they "feel at home, anywhere [they] go in the world" while "discover[ing] amazing places."

With Airbnb, travelers can enjoy comfortable lodging that may cost less than half the price of a Manhattan hotel room. New York tenants can offset the cost of the city's notoriously high rents and high cost of living by renting some or all of their apartments to guests. For an owner, renting an apartment to short-term guests has the potential to double — or more — the unit's profitability.

There are, however, legal issues to take into account. The most significant of those is the New York State Multiple Dwelling Law, which makes it illegal for tenants in affected buildings to sublet their apartments for less than 30 days unless they actually still live there. Most Airbnb transactions in New York — 72 percent of the bookings between 2010 and June 2014, according to a recent report from the New York State Attorney General — appear to have violated that law, among others. The apparently overwhelmingly illegal nature of these transactions has attracted a wide array of opposition to Airbnb in New York.

Another reason that Airbnb bookings are generating opposition is economic. The hotel industry and hotel workers' unions are opposed to Airbnb, as the service threatens the profits of New York hotels and the jobs of their employees. In addition, New York imposes a 5.875 percent occupancy tax on hotel and other short-term room rentals. Very

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few Airbnb hosts, however, have filed the paperwork necessary to remit these taxes. The attorney general's report estimates Airbnb bookings from January 2010 through June 2014 incurred unpaid taxes of more than \$33 million.

The city is also concerned that illegal Airbnb rentals in residential apartment buildings usually violate the New York City Fire Code. Typically, long-term residents of Manhattan apartment buildings become familiar enough with their surroundings that they can quickly vacate the property in the event of an emergency. Hotels, however, by their nature, are populated by transient guests unfamiliar with the property, which is why the Fire Code requires additional safeguards not present in residential apartment buildings. Airbnb rentals, being in residential buildings, are not required to have protections such as photoluminescent exit path markings for exits and stairwells, diagrams showing the route to two stairwells or other means of egress, or even fire extinguishers.

The city is also worried that Airbnb bookings will reduce the supply of residential housing at a time when affordable housing has become a major issue. Airbnb rentals drive up residential rents and make residential housing less affordable overall. The city has a vested interest in preserving as much affordable housing as possible for permanent residents.

Residential tenants who participate in Airbnb could face eviction if their landlords discover their rentals to transient guests, since residential leases typically prohibit tenants from engaging in illegal conduct. In addition, rent-regulated tenants are prohibited from charging roommates or subtenants amounts in excess of the legal rent. According to case law, using a residential apartment as a hotel room is an incurable lease default and grounds for eviction without recourse. A New York City Civil Court judge recently handed down the first known decision awarding an eviction based on a tenant's illegal renting via Airbnb.

While there is proposed and pending legislation relating to Airbnb, no one really knows what will become law at this point. Measures are being considered that would ease restrictions along with legislation that would make it harder to use New York residential apartments for short-term stays. For now, to protect themselves, Airbnb guests and hosts should fully understand the many potential pitfalls that can result from their participation in the service.

About Rosenberg & Estis, P.C.

Founded in 1979, Rosenberg & Estis, P.C. is widely recognized as one of New York City's pre-eminent real estate law firms. Rosenberg & Estis, P.C. represents clients in all aspects of real estate development, transactions, financing, litigation, rent regulation and governmental affairs.

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