



On-line rental platforms: A real estate broker's perspective

October 27, 2014 - New York City

The rise of the sharing economy has led to the proliferation of peer-to-peer listing platforms in the real estate industry. While on-line listing services (OLS) such as Airbnb, HouseTrip, and FlipKey (among others) are celebrated for their ease of use, modern technology and low cost, the influence of such services cannot be ignored. As a real estate brokerage firm focused on short term furnished rentals, New York Habitat (www.nyhabitat.com) has seen the effect of OLS on the real estate industry first hand.

The real estate brokerage industry is heavily regulated in New York in order to protect the rights and safety of tenants and landlords. Brokers are licensed and trained in providing real estate services, including the ability to relocate dissatisfied guests. Brokers also have the obligation to conduct due diligence on properties and disclose potential concerns. This process involves a comprehensive investigation of the property and public records to verify that the manner in which the property is advertised is consistent with the law and building policies.

OLS offer similar services to brokers, blurring the line between licensed brokerage firms and OLS. The problem is that OLS lack the expertise of brokers and are not held accountable for rentals they facilitate.

Consumers are aware of the risks associated with on-line posting boards such as Craigslist, because such platforms have minimal involvement in the content generated by users. However, consumers are ignorant to risks associated with OLS due to the proactive role and additional services provided by OLS. These include collecting funds, resolving user disputes, offering insurance policies, and rewarding good behavior. This hands-on approach results in the mistaken belief that OLS take responsibility for the content of their listings.

The reality is that if an apartment is in violation of the law, guests could face eviction. OLS provide no assurances that accommodations comply with applicable laws, fire codes, and building safety standards. In fact, a federal law mitigates the potential liability of OLS by categorizing them just like on-line posting boards - as intermediaries of user generated content. The purpose of the law is to promote free speech, but it does not take into account the difference between posting boards and OLS. This allows OLS to profit from listings without incurring liability.

OLS aggressively recruit users to become "hosts" and list properties, but hosts are not adequately informed of their obligations and responsibilities. Most leases in NYC require tenants to obtain their landlord's permission prior to subletting. Rules promulgated by co-op and condo boards can be even more restrictive, to maintain the comfort of permanent residents and avoid the commercial nature of transient occupancy. Hosts are unaware that violating a lease or bylaws can lead to fines and eviction proceedings against them.

Many OLS offer insurance policies to hosts to protect against damage resulting from a guest's stay. However, this is misleading since hosts can only collect on such policies if the underlying rental

activity is legal. OLS do not disclose such caveats and thrive on a lack of transparency.

Landlords and other building tenants are affected as well. Landlords may be held liable for hefty fines when tenants violate transient occupancy laws. As a result, landlords are now closely monitoring tenants' rental activity. Some landlords are even offering incentives to tenants for reporting improper behavior of their neighbors, contributing to a sense of paranoia among tenants.

Building tenants may face overcrowding, noise, strangers coming and going at all hours, and a decrease in building services and amenities. Violations are only investigated when a complaint is filed, but it can be difficult for a tenant to uncover the bad actors of an illegal rental necessary to file such a complaint. Frustrated building tenants thus have little recourse to stop their neighbors' behavior.

Consumers have embraced the sharing economy and the new wave of technology harnessed by OLS. As a result, brokers will continue to face challenges associated with such services. The onus is on real estate professionals and government officials to work together to implement protections in this changing rental landscape and maintain a positive reputation and outlook for the industry as a whole.

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