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STAYING THE NIGHT: INTEGRATING HOME-SHARING PLATFORMS INTO THE HOSPITALITY INDUSTRY

❖ NOTE ❖

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I. INTRODUCTION

Home-sharing websites have changed the game when it comes to short-term living space rentals. Home-sharing, a concept once unheard of, has taken the world by storm since Airbnb first launched in 2009 and seems to be growing at a steady pace.¹ The amount of rental spaces available on Airbnb since it first launched has increased at an astounding rate—“Airbnb’s global inventory grew from 3,000 units in February 2009 to 2.3 million units — houses, condos, apartments — in 2016” and that has Airbnb at forty-five percent year-to-year total growth.² The quick growth rate can be attributed to the competitive pricing offered on hosting platforms compared with their

¹ Tom Rogan, *The Ridiculousness of New York’s Airbnb Ban*, OL (Oct. 25, 2016), <http://www.opportunitylives.com> [hereinafter Rogan].

² *Id.*

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hotel counterparts.³ With a tight budget for many travelers, saving on a place to stay is key.⁴ This booming sector of the economy, however, leaves many questions unanswered, specifically, how these short-term rental spaces will be regulated as part of the hospitality industry.

Part II of this Note will give a brief background on the history of short-term home-sharing rentals. Part III will outline the benefits that come along with these newfound rental spaces, and Part IV will discuss how to come to a middle ground that keeps hosts, renters, and those in the hotel industry content.

II. BACKGROUND

Home-sharing, as many startups nowadays, grew from very humble beginnings. It was 2007 and a pair of roommates living in San Francisco couldn't afford to pay their monthly rent.⁵ This led the pair to turn their loft into a living space that could accommodate three air mattresses. They knew there was a convention in town that weekend so they began taking reservations through what was then called airbedandbreakfast.com.⁶

Airbnb struggled during the first year or so, but eventually Paul Graham, a venture capitalist, noticed it and decided to invest.⁷ The company subsequently lined up more investors and began to build up its online presence into what exists present day: hosts in over 191 countries with upwards of three million listings.⁸

Throughout its almost decade in business, Airbnb and other home-sharing platforms have operated with minimal regulations. Airbnb originally "operated by trusting the government to turn a blind eye to their business model. And that expectation was well justified. Airbnb allows users to make a

³ Talia Avakian, *Here's where it's cheaper to book an Airbnb over a hotel room*, Business Insider (Feb. 18, 2016), <http://www.businessinsider.com/is-it-cheaper-to-airbnb-or-get-a-hotel-2016-2> [hereinafter Avakian].

⁴ Biz Carson, *How 3 guys turned renting an air mattress in their apartment into a \$25 billion company*, Business Insider (Feb. 23, 2016), <http://www.businessinsider.com/how-airbnb-was-founded-a-visual-history-2016-2/#it-started-with-an-email-joe-gebbia-sent-his-roommate-brian-chesky-an-idea-what-if-they-made-a-designers-bed-and-breakfast-complete-with-a-sleeping-mat-and-breakfast-it-was-a-way-to-make-a-few-bucks-almost-nine-years-later-that-idea-is-worth-25-billion-1>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *About Us*, Airbnb, <https://www.airbnb.com/about/about-us>.

little extra money renting their spare room or apartment to those on a budget. Both sides win.”⁹ There’s a third party in this business model that doesn’t win though: the hotel industry.¹⁰ With so many varying interests involved in this new sector of the hospitality industry, many cities and states seem to be at a loss as to how to regulate these newfound short-term rental spaces.¹¹

In New York, Governor Andrew Cuomo, signed a bill into law in 2016 that bans the advertisement of entire unoccupied apartments for less than 30 days. In San Francisco, Airbnb rentals are only permitted if the hosts are full-time residents and are registered with the city.¹² And in Santa Monica – likely the toughest regulations implemented on these short-term rentals up to date – requires the hosts to live in the property during the occupant’s stay, register for a business license, and collect a fourteen percent occupancy tax from the stay.¹³ Although the hotel lobby advocated for many of these regulations, there is the regulatory deficit in the home-sharing market in order to ensure a balance of interests between property owners, neighbors, customers, and the hotel industry.

Until Airbnb rolled out, the hotel industry had a monopoly-esque model in place that guaranteed them customers prior to home-sharing platforms hitting the market.¹⁴ If people were traveling, hotels were a one-stop shop for sort-term living rental. Sure, there are various options within the hotel industry ranging from hostels to luxury five star rooms, but they are almost always company-run locales. However, contrary to popular belief, sharing platforms are not leaving hotel rooms empty and cutting into profit margins.¹⁵ According to 7Park Data, a data collection agency, Airbnb customers are taking trips that they wouldn’t have otherwise taken.¹⁶ Despite this, however, Airbnb has managed to bring down hotel prices during peak

⁹ Rogan, *supra* note 1.

¹⁰ *Id.*

¹¹ Zaw Thiha Tun, *Top Cities Where Airbnb is Legal or Illegal*, Investopedia (Aug. 31 2015), <http://www.investopedia.com/articles/investing/083115/top-cities-where-airbnb-legal-or-illegal.asp>.

¹² *Id.*

¹³ *Id.*

¹⁴ Adrianna Jeffries, *Airbnb Takes On Hotels with Last-minute Booking*, The Verge (May 13, 2014), <https://www.theverge.com/2014/5/13/5709720/airbnb-retools-app-to-emphasize-last-minute-booking>.

¹⁵ *Id.*

¹⁶ 7Park Data, (2017), <http://info.7parkdata.com/airbnb-company-insights-in>.

times such as holidays or conventions.¹⁷ This has made the hotel lobby weary of Airbnb and they have begun campaign-after-campaign to try and derail it as it creeps into its market share.¹⁸ Since the concept of home-sharing is relatively new though, there is a lack of regulation throughout the country to help integrate this new short-term rental sector into the market.

III. HOME-SHARING: THE BENEFITS

Airbnb found a gap in the short-term rental marketplace. Its platform serves to connect consumers with suppliers, in a sense. By giving “individuals the opportunity to visit a place on an affordable budget, Airbnb assists the American right to pursue of happiness.”¹⁹ The hotel industry has spent much time and effort trying to thwart Airbnb’s rise, arguing that home-sharing services like Airbnb only lead to higher housing costs for consumers.²⁰ The American Hotel and Lodging Association (an organization with Marriott International, Hilton Worldwide and Hyatt Hotels as members) sees home-sharing as a threat and has taken steps to try and stop it in its tracks.²¹ From a consumer standpoint though, more competition in any market is generally a good thing because it drives down the cost of the product. Airbnb’s average prices in cities across the globe is usually cheaper than their hotel counterparts.²² A recent Merrill Lynch study found that

Airbnb’s listings are expected to increase by up to 50 percent in the coming year and make up 3.6 percent to 4.3 percent of lodging inventory by 2020. There are currently more travelers looking for rooms than there are rooms to house them, but that dynamic could change as soon as 2017, when there will be more room options, between hotels and Airbnb, than there is demand []. That means more competition for hotels and lower costs for consumers.²³

¹⁷ Katie Benner, Inside the Hotel Industry’s Plan to Combat Airbnb, *The New York Times* (April 16, 2017), <https://www.nytimes.com/2017/04/16/technology/inside-the-hotel-industrys-plan-to-combat-airbnb.html?mcubz=0> [hereinafter Benner].

¹⁸ *Id.*

¹⁹ Rogan, *supra* note 1.

²⁰ Benner, *supra* note 17.

²¹ *Id.*

²² Avakian, *supra* note 3.

²³ Samantha Shankman, Airbnb May Force Hotels to Lower Prices, <http://www.travelandleisure.com/articles/airbnb-lower-hotel-prices>.

Another benefit that home-sharing websites also bring with them is increased tax revenue for their cities and towns. Cities tend to institute hospitality taxes ranging from ten to fifteen percent, which amounts to a significant financial benefit for cities.²⁴ Problems arise, however, when hosts fail to pay the taxes owed on their revenue to local municipalities.²⁵ The hosts are “ultimately responsible for payment of this tax to the city regardless of whether it is collected from the transient or not.”²⁶ Airbnb took notice of this problem and recently began automatically charging the transient occupancy tax so as to keep governmental taxing agencies and the hotel lobby at bay.²⁷ It’s easy to see why the hotel industry has declared war against Airbnb as recently noted by The New York Times, “Hilton’s market capitalization is \$19 billion, and Marriott’s is \$35 billion” and investors currently value Airbnb at around \$30 billion if it were to go public.

Aside from its lower cost, Airbnb gives customers something hotels don’t have: a way to stay in comfortable, through well-located homes with amenities like kitchens and living rooms at what is frequently a discount from traditional hotels.²⁸ Amenities and rooms throughout most hotels are very uniform and lodgers know what to expect when they make a reservation.²⁹ Airbnb changes that; it provides more of an adventure for those who book their stay on the website.³⁰

In Chicago for example, there are a variety of rules and regulations currently in place that have been implemented as a result of the home-sharing industry. Section 4-14-020 of the Municipal Code regulates the registration requirements, which makes establishments keep records of their guests such as names, contact information, room number, and dates of accommodation.³¹ The city has also extended its Hotel Accommodation Tax onto home-sharing, which has helped to integrate the home-sharing market

²⁴ Ashley M. Peterson, *Sharing Space: To Counteract the Impact on Long-Term Rental Availability Various Jurisdictions Are Restricting the Ability of Homeowners and Tenants to Offer Short-Term Vacation Rentals*, Los Angeles Lawyer (January 2017) [hereinafter Peterson].

²⁵ *Id.*

²⁶ L.A., CAL., MUN. CODE Ch. II, Art. 1.7; Peterson, *supra* note 24.

²⁷ Peterson, *supra* note 24.

²⁸ Brian Solomon, *Airbnb And Hotels Need Each Other, They Just Don't Know It Yet*, Forbes (May 5, 2017), <https://www.forbes.com/sites/briansolomon/2017/05/05/airbnb-and-hotels-need-each-other-they-just-dont-know-it-yet/#fa10a4033e46> [hereinafter Solomn].

²⁹ *Id.*

³⁰ *Id.*

³¹ Municipal Code of Chicago, Sec. 4-14-020.

into the hotel industry.³² These are examples of how cities and municipalities have begun to build a bridge between the home-sharing and hotel industries. By leveling the playing field between these two competing forces, cities and other governmental institutions can help aid in the integration of home-sharing units into the short-term rental marketplace. There are some rules though, that don't necessarily apply to home-sharing units yet because of the difficulties associated in their implementation. These hospitality laws that regulate large-scale hotels are hard to administer on a micro-scale across the offerings on websites such as Airbnb.

IV. FINDING A MIDDLE GROUND: INTEGRATION

One possible solution to the many questions and problems that have arisen since the inception of the home-sharing market would be to better integrate it with the hotel industry. This solution would fill the current void of lacking regulations for these new rental spaces. If hosts and their short-term rental spaces were held to the same standards to which the hotel industry is held, they would keep standards set at what current regulations require. Initially this may impose a burden on the home-sharing market, but it would be beneficial in the long-run because it would allow for hosts to keep making a profit.

One interesting solution that has been proposed would be to make some hotels rebrand. If hotels were to “make their accommodations less of a commodity, there should be a place for them to be featured in search results on the growing Airbnb platform. Because, after all, Airbnb needs a supply of places to stay more than nearly anything else.”³³ If hotels were to begin to advertise some of their units on the site it would then make for a greater supply of rental units.

Currently, legislators have only begun to tackle the issues that have risen as a result of this new home-sharing economy. The hotel lobby points to the fact that “Airbnb hosts often do not comply with rules imposed on hotels, like anti-discrimination legislation, local tax collection laws, and safety and fire inspection standards”³⁴ If it were possible to integrate these two competing markets into one with regulations that evened out the

³² Municipal Code of Chicago, Sec. 3-24-7520.

³³ Solomon, *supra* note 28.

³⁴ Benner, *supra* note 17.

competition, it would likely create a more uniform marketplace where consumers could choose between standard hotels and home-sharing options.

Critics of home rental sites argue that the presence of these rental spaces “remove affordable housing from the market by turning rentable apartments into unofficial year-round hotels, [and cause] a drop in supply [that] can mean higher rents for remaining apartments.”³⁵ Conversely, Airbnb notes that their website offers its hosts an economic lifeline to help them pay their bills, rent, or mortgages.³⁶ Though likely an unpopular regulatory solution, cities and states should make sure that they are taxing these home-sharing spaces, as they are standard hotel units so as to provide an equalizer among short-term rental spaces. As previously noted, Airbnb has begun to automatically charge taxes on their site when customers check out, so this taxation issue has begun to be addressed. State legislatures and local government councils, however, should enforce not only the same taxes on these home-sharing spaces, but also the same rules and regulation such as licensure and other local code requirements. Though, this may be initially burdensome on the home-sharing market, at the end of the day it is a business and hosts should abide by industry standards if they wish to make a profit. Another solution that some cities have already implemented would be to allow a space to become a home-shared space for only a certain amount of days throughout the year.

If the hotel industry hopes to not lose any more of its market share to home-sharing, they should start to take pages from Airbnb’s business model. Currently, the hotel industry is being clearly labeled as the “bad guy,” with Airbnb noting, “the hotel cartel is intent on short-sheeting the middle class so they can keep price-gouging consumers.”³⁷ States and cities alike must find a middle ground that keeps the many competing interests in this newfound sector of the hospitality industry at bay. If there was a better integration of these two clashing sectors of the short-term rental economy, with equal regulations and taxation, it would be beneficial for not only hosts and the hotel industry but consumers as well.

³⁵ Heather Kelly, *Why Everyone is Cracking Down on Airbnb*, CNN Tech (June 23, 2016), <http://money.cnn.com/2016/06/22/technology/airbnb-regulations/index.html>.

³⁶ *Id.*

³⁷ Benner, *supra* note 17.