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**Comments of New York State Senator Liz Krueger  
Before the Federal Trade Commission regarding  
The "Sharing" Economy: Issues Facing Platforms, Participants, and Regulators  
May 26, 2015**

My name is Liz Krueger and I represent the 28th New York Senate District, which includes the East Side and Midtown areas of Manhattan.

I have been working for a decade to understand and address the exponential growth of New York City residential apartments being illegally converted into short-term transient units for visitors, commonly referred to as "illegal hotels." After years of collaboration with a large task force of elected officials, neighborhood organizations, housing advocates, and city agencies, State Assemblymember Dick Gottfried and I passed legislation in 2010 clarifying ambiguities in city and state laws that made it difficult for city enforcement agencies to take action against illegal hotels. Following the enactment of the state law, I continued working closely with the task force to support the subsequent introduction and passage in 2012 of city legislation to classify illegal hotel violations as "immediately hazardous" and increase the fines that can be imposed.

In my comments, I want to share some of the key lessons I have learned from years of wrestling with illegal hotel issues and trying to address the negative impacts of the "sharing economy" on New York City's housing market. I have seen time and again that the online platforms that facilitate and profit from illegal hotel activity are bad for tenants, tourists and residents of New York.

When considering the differing perspectives on the "sharing economy" on June 9, I urge the Federal Trade Commission to consider what our experience has been in New York City with Airbnb, which is one of the most high profile purveyors of the "sharing economy", and other online platforms.

**Illegal hotel activity, and the online platforms which facilitate and profit from it, threaten New York City's already dwindling stock of affordable housing.**

The growth of illegal hotels is rapidly becoming one of the biggest obstacles in the struggle to protect and expand New York City's stock of affordable housing. Despite laws prohibiting rentals of less than 30 days,

online platforms facilitating illegal short term rentals have proliferated, and continue to financially incentivize the conversion of permanent residential units into more lucrative short-term vacation rentals.

Online platforms like Airbnb lure individuals into breaking the law with promises of more income from operating illegal hotels, leaving residents with an increasingly scarce supply of affordable housing. This has led to senior and lower income tenants being harassed out of their homes, rapid de-regulation of rent-regulated units by unscrupulous landlords, and double-digit rent increases in areas where illegal hotels flourish.

Listings on Airbnb and other platforms are rapidly growing in New York City neighborhoods like Midtown Manhattan, Upper West Side, Upper/Lower East Side, Greenwich Village/SoHo and Central Harlem, as well as Greenpoint, Williamsburg, Fort Greene, Bedford-Stuyvesant, Crown Heights, and Bushwick - where affordable housing is in short supply and rent has increased by double-digits - forcing out long-time residents.

In spite of strict regulations, Airbnb in NYC is growing at an alarming pace. Airbnb currently lists 28,000 residential units for transient hotel use - a 5,800% growth since 2009. As they have grown, so has their inventory of illegal listings. A report released by State Attorney General Schneiderman last year analyzing Airbnb bookings in New York City from January 1, 2010 through June 2, 2014, found that nearly 75 percent of Airbnb's listings were in violation of state law.

And a new independent analysis of Airbnb's website shows why Airbnb continues to ignore the law – their profit margin depends on illegal rentals. The data showed that 77 percent of the dollar value of Airbnb listings comes from the illegal rental of entire apartments.

The data also showed that nearly 60 percent of Airbnb listings illegally offer the entire home/apartment for an average of 247 days a year – making them largely unavailable for everyday New Yorkers. And nearly one-third of Airbnb listings come from commercial hosts with multiple units, not regular New York tenants.

As Airbnb and illegal hotel usage becomes increasingly prevalent in communities of color and diverse neighborhoods, where affordable housing is already limited, we have seen a distinct pattern of gentrification pushing out long-time residents and businesses.

**Airbnb, Homeaway, OneFineStay and other platforms that facilitate illegal hotel activity are attempting to create a false distinction between “bad” illegal hotel operators and “hosts” who participate in the new “sharing economy”.**

Since the enactment of the state and city illegal hotel legislation in New York, much of the illegal activity has shifted from being organized by a relatively small number of local operators, frequently unscrupulous building owners or managers, to large online companies such as Airbnb, Homeaway, and OneFineStay that act as both marketplace and middleman for hundreds of thousands of short-term apartments around the world. These online businesses have become highly profitable by ignoring state and local laws and ignoring the damage their business model does to communities.

Airbnb, currently the largest of these online platforms with a valuation estimated to be as high as \$20 billion, likes to portray itself as a pioneer of the “sharing economy” movement fighting for everyday New Yorkers. The company now claims that it is more than happy to help get rid of the big illegal hotel operators on their site, and only wants the business of everyday New Yorkers renting out their primary residences every once in a while to tourists.

The facts do not match their words. Attorney General Schneiderman's report found that commercial illegal hotel operators controlling between 11 and 272 units accounted for such a wildly disproportionate share of Airbnb rentals between 2010 and 2014 that they essentially dominated the site. The reality is that they are lobbying for changes in the law that would create loopholes big illegal hotel operators could drive trucks through – but do nothing for the “everyday New Yorkers” who would be at increased risk of eviction if this law passes, let alone the many, many New Yorkers who will have to suffer with the risk of increased nuisances, security concerns, and even violent crime in their buildings.

To be crystal clear: for the so-called “regular” Airbnb hosts they claim they want to protect, the primary “threat” is not city and state enforcement. For these hosts, the primary threat facing them it is the reality that Airbnb has enticed them into behaviors that violate their lease agreements and serve as easy pretext for eviction proceedings.

### **Illegal hotels, and the platforms that profit from them, threaten public safety and damage communities.**

In addition to the threat that illegal hotels pose to affordable housing, the activity and the platforms which facilitate them, pose serious public safety hazards. Illegal hotels fail to conform to the more stringent fire safety and building code standards for hotels. As former FDNY Chief of Fire Prevention, Thomas Jensen stated in a sworn affidavit, “*(in illegal hotels) the visitor is thus placed at significantly increased risk of injury or death in the event of a fire.*” Unfortunately, over the past several months, two substantial fires that have erupted at illegal hotel buildings, where the owner was cited for multiple fire code violations.

Neighborhoods also face serious quality of life and safety problems, ranging from overcrowded buildings and noise disturbances to the more serious burglaries and assaults by strangers who may never have gained access to the building were it not for the illegal hotel activity. The short-term rental of even a single residential unit in a multiple dwelling in New York City for part of the year can have extremely detrimental impacts on all the residents in the building. I constantly hear from constituents whose quality of life and sense of safety have been undermined by illegal hotel activity occurring in as few as only one or two apartments in their buildings. When tenants and apartment owners decide to rent their apartments to tourists, they do so at the expense of all of their neighbors who have to live with the consequences and never had a chance to sign off on the deal in the first place.

Adding insult to injury, most illegal hotels fail to meet federal, state and city accessibility requirements for people with disabilities. Despite claims from Airbnb and other platforms that their presence is good for local business, we have witnessed small business owners who rely on permanent residents living in their community being priced out.

### **The ability of New York City and State to protect residents and the housing market from illegal hotel activity is hindered by the federal Communications Decency Act.**

In New York City, a small multi-agency taskforce of city agencies called the Mayor's Office of Special Enforcement (OSE), has exclusive jurisdiction over illegal hotel enforcement. OSE staff were instrumental in the drafting of the city and state illegal hotel laws, issue thousands of violations each year, initiate litigation against some of the worst violators, and immediately vacate properties after finding conditions that place residents' and/or visitors' lives in imminent danger.

Despite the groundbreaking work of the OSE against individual illegal hotel operations, the ability of enforcement agencies to protect residents, visitors, and communities from widespread illegal hotel activity is

severely hindered by an outdated section of federal law. Section 230 of the Communications Decency Act of 1996 protects online service providers and users from actions against them based on the content of third parties. It provides immunity from liability for providers and users of an "interactive computer service" who publish information provided by others stating: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."

Because home-sharing platforms were not envisioned when the legislation was passed nearly 20 years ago, there was no anticipation of the unintended consequences we are witnessing today: companies like Airbnb and other online booking platforms oftentimes can act with near immunity from prosecution in cases where they demonstrate themselves to be just "information content providers" even though they are directly profiting off of illegal activity on their websites. I strongly urge the Federal Trade Commission to work with Congress to amend Section 230 of the Communications Decency Act of 1996 so that it reflects the realities of today's internet.

## **Conclusion**

The online short-term rental platforms have repeatedly refused to follow the law, opting instead to ignore and attempt to weaken the law that protects New Yorkers and affordable housing. Far from being a harmless service that promotes "sharing," companies like Airbnb threaten public safety and make it more difficult for everyday New Yorkers to find an affordable place to live.

At the June 9 panel, the Federal Trade Commission will undoubtedly hear from Airbnb and other proponents of the "sharing economy." I urge the Federal Trade Commission to consider what regulators and every-day New Yorkers have had to endure in our fight to preserve affordable housing and improve public safety by cracking down on illegal activity.