

NEW YORK
CITY BAR

COMMITTEE ON COOPERATIVE
AND CONDOMINIUM LAW

October 26, 2015

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**Re: October 30, 2015 Committee on Housing and Buildings
Hearing: Intros 0823-2015 and 0826-2015 (Short Term Rentals)**

Dear Council Member Williams:

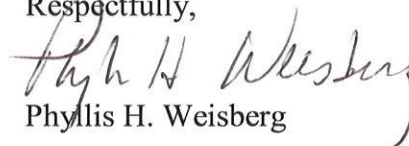
I write in my capacity as Chair of the Cooperative and Condominium Law Committee of the New York City Bar Association with reference to the hearing scheduled for October 30, 2015 on the subject of short term rentals.

We applaud your Committee's efforts to deal with the problems created by short term rentals, both with respect to the proposal to increase transparency in enforcement and the proposal to increase the civil penalties for violations of the law.

We ask that the attached report be submitted for the record. This report was prepared by our Committee, in conjunction with the Real Property Law Committee, and issued by the New York City Bar Association in June, 2014. The report was issued in response to legislation introduced in Albany to legalize short term rentals. While the proposed legislation was not enacted, we believe the issues discussed in this report are directly relevant to the questions that we assume will be considered at the hearing and in your deliberations on the proposed legislation.

Thank you for your consideration.

Respectfully,


Phyllis H. Weisberg

Enclosure

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**REPORT ON LEGISLATION BY THE
COOPERATIVE AND CONDOMINIUM LAW COMMITTEE AND
REAL PROPERTY LAW COMMITTEE**

**A.7848
S.5039**

**M. of A. Wright
Sen. Golden**

AN ACT to amend the multiple dwelling law and the administrative code of the city of New York, in relation to clarifying certain provisions relating to occupancy of class A multiple dwellings

**A.7495
S.5637**

**M. of A. Camara
Sen. Savino**

AN ACT to amend the multiple dwelling law, in relation to the definition of a "class A multiple dwelling"

THESE BILLS ARE OPPOSED

The New York City Bar Association's Cooperative and Condominium Law Committee and Real Property Law Committee (the "Committees") submit this statement in opposition to A.7848/S.5039 and A.7495/S.5637 (collectively the "Short-Term Rental Bills"). As submitted for enactment, the Short-Term Rental Bills would amend the Multiple Dwelling Law to create and regulate a new class of New York City multiple dwelling units intended for occupancy in periods of less than thirty consecutive days. Notably, the Multiple Dwelling Law was only recently amended (Chapter 225 of the Laws of 2010) to insure that transient occupancy (less than thirty days) would not be permitted – legislation that the Short-Term Rental Bills seek to effectively repeal. For the reasons set forth below, the Committees urge that the Short-Term Rental Bills not be adopted.

As discussed more fully below:

- The concept advanced in support of the Short Term Rental bills – that short term rentals are a "legitimate business model" for apartment owners or tenants - is stated as a given. However, we question the conceptual basis for this business model, which is essentially based upon allowing, and indeed encouraging, renters or owners of residential apartments to run their apartments as hotels, even if it violates their leases or by-laws. Thus, the Short-Term Rental Bills would allow tenants and owners of cooperative and condominium apartments to "lease" their apartments for less than 30 days, provided that taxes are paid and the apartment owner "registers" with the City. The legislation and accompanying memorandum

do not provide any justification or explanation as to why this model should be adopted.

- While we recognize the potential revenue stream to the City, the Short-Term Rental Bills are in conflict with virtually all cooperative and condominium governing documents, which require such things as application packages and, for cooperatives and even some condominiums, interviews prior to taking occupancy. This process exists for good reason: when people purchase (or lease) a cooperative or condominium apartment, they do so with the understanding that some entity, whether a board, managing agent or apartment owner, has taken some action to vet the people who are living in the building. The same reasoning applies when someone rents an apartment – he or she can assume that the landlord has vetted fellow tenants in the building.
- Further, many people purchase apartments precisely because they do not want transient traffic. Owners of apartments want to know that the people who are living in the building (whether owners or long-term renters) have a stake in following the rules of the building (noise, dust, odors, smoking, parties and general good behavior) and face consequences if they fail to do so.

Proponents argue that the Short-term Rental Bills simply streamline registration of short-term rentals, but the Bills effectively generate a mass of corresponding conflicting liability and public policies. In reality, proponents of the Short-Term Rental Bills want to give individuals a by-pass around most of the responsibilities and obligations of being an actual business owner while still providing a revenue source, subject merely to the payment of taxes, a registration fee and maintenance of the most basic life and safety equipment (e.g., a smoke detector).

Moreover, the Short-Term Rental Bills are advancing a business model that is fundamentally flawed within the confines of the cooperative and condominium laws of New York. The underlying concept of the Bills, that apartment owners should have the right to use their apartments solely as they see fit, is diametrically opposed to the well established concept of cooperative living and antithetical to the rules laid down by the Court of Appeals almost twenty-five years ago in *Levandusky v. One Fifth Ave. Corp.*, 75 N.Y.2d 530, 537 (1990); *see also 40 West 67th Street v. Pullman*, 100 N.Y.2d 147 (2003). As the *Levandusky* Court succinctly articulated, “Every man may justly consider his home his castle and himself as the king thereof; nonetheless his sovereign fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or cooperation with others. The benefits of condominium living and ownership demand no less.’[citation omitted.]” No matter how it is couched, converting individual cooperative and condominium apartments into hotel rooms for individual financial gain is at odds with the spirit and intent of community living where ownership is in common and in cooperation with others.

If enacted, the Short-Term Rental Bills will provide shareholders and unit owners with “justification” to rent their units on a short-term basis so long as they comply with certain New York City registration requirements. However, nearly all New York proprietary leases and condominium by-laws – and many rental leases as well - prohibit such transient occupancy.

Therefore, the Short-Term Rental Bills affirmatively interfere with existing contractual obligations.

In addition, the Committees oppose the Short-Term Rental Bills from a public policy perspective. The Committees are concerned about quality of life issues which may be created by short term rentals. Those who do not live full time in a building and who have not been vetted prior to being permitted to stay there, may well perceive they can treat the building as a hotel and certainly cannot be expected to appreciate the responsibilities and obligations expected of permanent residents of these buildings. Logically, this would make such occupants less concerned about their neighbors and more likely to create problems with noise, odors, smoke, security (e.g., propping open the front door), and the like. In addition, those who reside in the building would rightfully be concerned that unvetted strangers have full access to the building. These consequences highlight the fact that where ownership is in common or cooperation with others, an individual's right to use his property as he pleases must yield to the benefit and concerns of all. Further, enactment of these bills will have direct consequences on various other areas of the law including taxes, rent regulations, and consumer protection. Simply put, the proposed legislation is an ill-conceived concept with serious negative implications.

For all of these reasons, the Committees oppose enactment of the Short-Term Rental Bills and respectfully urge that they be rejected in their entirety.

June 2014