Current Issues in Apartment Overcrowding and Illegal Occupancies

Prepared by:
Michelle Maratto Itkowitz, Itkowitz PLLC

LORMAN®

Published on www.lorman.com - May 2018

INTRODUCING

Lorman's New Approach to Continuing Education

ALL-ACCESS PASS

The All-Access Pass grants you UNLIMITED access to Lorman's ever-growing library of training resources:

- ☑ **Unlimited Live Webinars** - 120 live webinars added every month
- ☑ **Unlimited OnDemand and MP3 Downloads** - Over 1,500 courses available
- ☑ **Videos -** More than 1300 available
- ☑ **Slide Decks -** More than 2300 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.

Get Your All-Access Pass Today!

SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.

Current Issues in Apartment Overcrowding and Illegal Occupancies

From Airbnb to Co-Living!
From Tall Buildings to Small Buildings
From Landlords to Tenants

How the Law is Struggling to Keep Up with Short-Term Residence Sharing and the Other New Ways People Share Apartments Such as Co-Living

A Presentation Prepared for Lorman Education Services
November 1, 2017

By Michelle Maratto Itkowitz, Esq.
ITKOWITZ PLLC
26 Broadway, 21st Floor
New York, New York 10007
(646) 822-1805
www.itkowitz.com
mmaratto@itkowitz.com

By the way: YES! This is legal advertising. And we hope it works!

CONTENTS

I. LANDLORD AND TENANT LAW IS EVOLVING IN THE OCCUPANCY AREA

People today, especially younger people (millennials), occupy apartments differently than people did twenty years ago. I have no citation to an official study to support this introductory section; but I do have extensive anecdotal experience from my landlord and tenant litigation practice in New York City. I represent BOTH landlords and tenants, by the way.

Today, tenants bring more people into apartments with them – including family members, roommates, and subtenants. In some cases, we see married couples living together with other married couples – as roommates. People are "location independent" in their work lives these days and operate businesses from their apartments. Then of course, we have people turning their apartments into beds-and-breakfasts and/or hotel rooms, via Airbnb and other short-term leasing platforms. Then we have "Co-Living", an exploding phenomena where people are living in apartment buildings as if they are dorms.

Some of these occupancies are illegal, and some are perfectly legal. To some landlords, all of this activity might seem like "Overcrowding". The more people in a building, the more stress on the infrastructure, the more garbage, the more noise, the greater the need for maintenance, etc. To tenants (and this program is good for tenant's counsel too) these new modalities of occupancy represent more choice in housing in an increasingly expensive marketplace. To the developers and lenders who build the apartment buildings, this changing environment represents more risk and more opportunity.

This area is obviously evolving right before our eyes. When an area is in flux, it creates both peril and opportunity, for all of us. Stay alert for new developments, and let's dig in!

II. WHO CAN BE IN AN APARTMENT

A. Roommates and Family Members

Under New York Real Property Law § 235(f), often referred to as the "Roommate Law", a residential lease entered into by one tenant implicitly permits that tenant to share the apartment with either his/her immediate family or unrelated persons. **This is true even if a residential lease says otherwise.**

If a landlord violates the Roommate Law, a tenant may seek an injunction to enjoin and restrain such unlawful practice and, the tenant can recover actual money damages sustained as a result of such unlawful practice, including tenant's court costs and, depending on the lease, attorney fees.

Here is RPL § 235(f):

> 1. As used in this section, the terms:
>
> (a) "Tenant" means a person occupying or entitled to occupy a residential rental premises who is either a party to the lease or rental agreement for such premises ...
>
> (b) "Occupant" means a person, other than a tenant or a member of a tenant's immediate family, occupying a premises with the consent of the tenant or tenants.
>
> 2. It shall be unlawful for a landlord to restrict occupancy of residential premises, by express lease terms or otherwise, to a tenant or tenants or to such tenants and immediate family. Any such restriction in a lease or rental agreement entered into or renewed before or after the effective date of this section shall be unenforceable as against public policy.
>
> 3. Any lease or rental agreement for residential premises entered into by one tenant shall be construed to permit occupancy by the tenant, immediate family of the tenant, one additional occupant, and dependent children of the occupant provided that the tenant or the tenant's spouse occupies the premises as his primary residence.
>
> 4. Any lease or rental agreement for residential premises entered into by two or more tenants shall be construed to permit occupancy by tenants, immediate family of tenants, occupants and dependent children of occupants; provided that the total number of tenants and occupants, excluding occupants' dependent children, does not exceed the number of tenants specified in the current lease or

rental agreement, and that at least one tenant or a tenants' spouse occupies the premises as his primary residence.

5. The tenant shall inform the landlord of the name of any occupant within thirty days following the commencement of occupancy by such person or within thirty days following a request by the landlord.

6. No occupant nor occupant's dependent child shall, without express written permission of the landlord, acquire any right to continued occupancy in the event that the tenant vacates the premises or acquire any other rights of tenancy; provided that nothing in this section shall be construed to reduce or impair any right or remedy otherwise available to any person residing in any housing accommodation on the effective date of this section which accrued prior to such date.

7. Any provision of a lease or rental agreement purporting to waive a provision of this section is null and void.

8. Nothing in this section shall be construed as invalidating or impairing the operation of, or the right of a landlord to restrict occupancy in order to comply with federal, state or local laws, regulations, ordinances or codes.

9. Any person aggrieved by a violation of this section may maintain an action in any court of competent jurisdiction for:

(a) an injunction to enjoin and restrain such unlawful practice;

(b) actual damages sustained as a result of such unlawful practice; and

(c) court costs.

1. A Lease for One Tenant

A landlord may not restrict occupancy of an apartment to a tenant or even to such tenant and his or her immediate family. Any such restriction in a lease is unenforceable as against public policy. The court will simply ignore it.

Any residential lease entered into by one tenant shall be construed to permit occupancy by:

- the tenant
- immediate family of the tenant
- one additional occupant, and
- dependent children of the occupant

An example of how this could work is as follows

> EXAMPLE – ONE TENANT ON THE LEASE
>
> Landlord rents to Mr. Smith, **the tenant**. Mr. Smith moves his **immediate family** in, Mrs. Smith and their two children. Then Mr. and Mrs. Smith decide that they need a roommate in order to make ends meet. This is not so crazy – see the recent New York Times piece on married couples getting a roommate.[1] So Mr. and Mrs. Smith get Mr. Jones as a **roommate**. Mr. Jones has two **dependent children**. Now you have three adults and four children living in an apartment, even though there is only one tenant on the lease.

2. A Lease for More Than One Tenant

Any residential lease entered into **by two or more tenants** shall be construed to permit occupancy by:

- tenants
- immediate family of tenants
- occupants and
- dependent children of occupants,
- provided that the total number of tenants and occupants, excluding occupants' dependent children, does not exceed the number of tenants specified in the current lease, and that at least one tenant or a tenants' spouse occupies the premises as his primary residence.

In other words, if you make a residential lease with three tenants, there can be a ***combined number of tenants and occupants*** of no more than three.

[1] http://www.nytimes.com/2015/04/12/realestate/married-with-roommates.html

If you examine the text of the statute (RPL § 235(f), included in the footnote above) you see that the "immediate family of tenant" is omitted from the definition of "occupant"[2]. This is important. In essence then, we have **four categories of humans** referred to in the statute, which are:

- tenants
- tenant's immediate family
- occupants (let's call them "roommates")
- occupant's dependent children ("roommates kids")

Thus the proviso that, *"provided that the total number of tenants and occupants, excluding occupants' dependent children, does not exceed the number of tenants specified in the current lease and that at least one tenant or a tenants' spouse occupies the premises as his primary residence",* excludes tenants' immediate families and roommate's kids. We only count the number of tenants and occupants (roommates).

Are there any limits on the number of people who can be in the apartment?! Yes. But I thought it first important that the reader really understand how the mechanics of the statute work before we start introducing the limitations.

3. Some Other Requirements and Limitations on the Tenant Under the Roommate Law

There are a few other caveats for a tenant under the Roommate Law.

The tenant must inform the landlord of the name of any occupant within thirty days following the commencement of occupancy by such person or within thirty days following a request by the landlord. We recommend that landlords build into their management protocols a regular request to tenants for information about who is occupying their apartments.

A roommate does not acquire any right to continued occupancy in the event that the tenant vacates the premises.

Nothing in the Roommate Law shall be construed as invalidating or impairing the operation of, or the right of a landlord to restrict occupancy in order to comply with federal, state or local laws, regulations, ordinances or codes.

4. Turning a Roommate into a Tenant Via the Direct Acceptable of Rent from the Roommate

If a landlord accepts rent directly from a roommate, it may inadvertently create a direct landlord and tenant relationship between the landlord and the roommate, and grant the roommate many rights that the landlord did not intend to grant. A landlord should always only accept rent

[2] RPL § 235-F (1)(b).

from the tenant of record. In the absence of a lease, the acceptance of rent on a monthly basis creates a month-to-month tenancy.[3]

B. How Many Humans Can Be Crammed Into An Apartment – Occupancy Limitations

So how many people can be crammed into an apartment?

Pursuant to New York City's Administrative Code Section 27-2075, there must be **at least 80 square feet per person in an apartment**. This goes for Multiple Dwellings and one- and two-family houses.

When measuring the available area, for purposes of this statute, the kitchen is counted but bathrooms are excluded.

For every two people who may lawfully reside in an apartment, one child under four may also reside there. In any case, where the birth of a child or its attainment of the age of four causes the number of persons or children to exceed the maximum occupancy permitted, such excess occupancy shall be permissible until one year after such event.

A landlord may demand in writing that a tenant submit an affidavit setting forth the names and relationship of all occupants residing within an apartment and the ages of any minors. In the event of an increase in the number of occupants, the tenant must advise the landlord.

C. Sublets

1. Sublets In General

Under New York Real Property Law 226-b, a tenant renting a residence **in a building with four or more residential units** has a right to sublease the apartment **subject to the written consent of the landlord in advance of the subletting**. Furthermore, the **landlord is prohibited from unreasonably withholding consent.**

The devil is in the details with respect to RPL § 226-b(2). A tenant does indeed have a right to sublet. But it's a lot of work to exercise that right. There is a specific procedure that the tenant must follow, which is detailed in RPL § 226-b(2), when requesting the landlord's permission to sublet the apartment.

First, the tenant must inform the landlord of tenant's intent to sublease by mailing a notice of such intent by certified mail, return receipt requested, to the landlord no less than 3**0 days prior to the proposed subletting** with:

- the term of the proposed sublease
- the name of the proposed subtenant

[3] *Cobert Construction Corp. v. Bassett*, 442 N.Y.S.2d 678 (App. Term 1st. Dept. 1981).

- the business and home address of the proposed subtenant
- tenant's reason for subletting
- tenant's address for term of the proposed sublease
- written consent of any co-tenant or guarantor of the lease
- a copy of the tenant's lease, where available, attached to a copy of the proposed sublease, acknowledged by the tenant and subtenant as being a true copy of the sublease.

Then, within **ten (10) days** after the mailing of the request, the owner may ask the tenant for additional information. Any such request for additional information shall not be unduly burdensome.

Within 30 days after the mailing of the tenant's request to sublet, or of the additional information reasonably asked for by the owner (whichever is later), the owner must send a reply to the tenant consenting to the sublet or indicating the reasons for denial. Failure of the owner to reply to the tenant's request within the required 30 days will be considered consent.

If the owner consents, or does not reply to the request within the appropriate 30 day period, the apartment may be sublet. If the owner reasonably withholds consent, the tenant may not sublet the apartment.

If the owner unreasonably withholds consent, the tenant may sublet the apartment and may also recover court costs and attorney's fees spent on finding that the owner acted in bad faith by withholding consent. Whether a landlord's withholding of consent is "reasonable" is naturally a fact-sensitive question but a court will objectively evaluate the proposed sublet based on the character and financial status of the subtenant as relevant factors. *See Vance v. Century Apartments Associates*, 93 A.D.2d 701 (1st Dept. 1983) ("Where a lease affords to a tenant a right to assign or sublet subject to the consent of the landlord, the reasonable ground to support a withholding of consent has always been tested by an objective standard, relating to the acceptability of the proposed subtenant or assignee. Thus, among the relevant criteria from the point of view of the landlord is the character and financial responsibility of the proposed tenant and the nature of the occupancy or purposes for which the property is to be used.")

2. <u>Rent Stabilized Sublets</u>

Rent Stabilized tenants have further restrictions on their right to sublet.

A Rent Stabilized tenant may not sublet an apartment for more than two years out of the four-year period before the termination date of the sublease. *Rent Stabilization Code § 2525.6(c).*

Subletting can never, for a Rent Stabilized tenant, be about making a profit on the landlord's real estate. If the prime tenant sublets the apartment fully furnished, the prime tenant may charge an additional rent increase for the use of the furniture. ***This increase may not exceed ten percent of the lawful rent.*** The prime tenant may not demand "key money" or overcharge the subtenant. If the prime tenant overcharges the subtenant, the subtenant may file a *"Tenant's*

Complaint of Rent Overcharge and/or Excess Security Deposit" with DHCR. If the DHCR—or a court--finds that the prime tenant has overcharged the subtenant, the prime tenant will be required to refund to the subtenant three times the overcharge.

With that restriction in place, no one is ever going to be able to run a profitable bed and breakfast out of their Rent Stabilized apartment, assuming they had the room and didn't mind sharing their space with a guest.

The landlord may charge the prime tenant the sublet allowance in effect at the start of the lease, if the lease is a renewal lease. The allowance is established by the New York City Rent Guidelines Board Order. The prime tenant may pass this sublet allowance along to the subtenant.

3. Co-Ops Sublets

Every proprietary lease forbids subletting without first obtaining permission of the board. The only exception to this would be proprietary leases for holders of unsold shares, which frequently allow subletting without the board's permission.

A typical proprietary lease will provide for a notice to cure within 10 - 15 days in the event of default. If a shareholder is illegally subletting and does not cure within the required period, the board can terminate the proprietary lease and follow that up with the commencement of a summary holdover proceeding. This is a fairly routine type of case.

The board must give notice to the current lender of the shareholder (if there is one). When a shareholder uses a bank loan to buy a co-op, there is a three-way agreement signed at closing between the Board, the lender and the shareholder, commonly known as a Recognition Agreement. A Recognition Agreement typically requires the board to notify the Bank before terminating a proprietary lease. The notice provisions of the Recognition Agreement must be strictly adhered to. This is a vital step. The bank is as much a part of this situation as the board, shareholder, and the sub-tenant.

D. Running a Business in an Apartment

We include this section because if a tenant is allowed to run a business in his or her apartment (and in some instances, a tenant may), then what does this mean in terms of the amount and nature of customers and employees allowed in the apartment as a result of the business?

First, we look at what types of business are allowed to be run from apartments.

The Zoning Resolution of the City of New York § 12-10 has this to say about carrying on an occupation inside one's apartment:

> (a) A "home occupation" is an accessory use which: is clearly incidental to or secondary to the residential use of a dwelling unit…; is carried on within a dwelling unit…by one or more

occupants of such dwelling unit, except that, in connection with the practice of a profession, **one person not residing in such dwelling unit…may be employed**; and occupies not more than 25 percent of the total floor area of such dwelling unit…and in no event more than 500 square feet of floor area.

(b) In connection with the operation of a home occupation, it shall not be permitted:

(1) to sell articles produced elsewhere than on the premises;
(2) to have exterior displays, or a display of goods visible from the outside;
(3) to store materials or products outside of a principal…building;
(4) to display, in an R1 or R2 District, a nameplate or other sign except as permitted in connection with the practice of a profession;
(5) to make external structural alterations which are not customary for residences; or
(6) to produce offensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare, or other objectionable effects.

(c) Home occupations include, but are not limited to:

fine arts studios
professional offices
teaching of not more than four pupils simultaneously, or, in the case of musical instruction, of not more than a single pupil at a time.

(d) However, home occupations shall not include:

advertising or public relations agencies
barber shops
beauty parlors
commercial stables or kennels
depilatory, electrolysis or similar offices
interior decorators' offices or workshops
ophthalmic dispensing pharmacy
real estate or insurance offices
stockbrokers' offices
veterinary medicine.

In *Mason v. Department of Buildings of City of New York,* 307 A.D.2d 94 (1st Dept. 2003), the court upheld a finding by the DOB that a tenant's renting out of an apartment as a commercial recording studio was an invalid home occupation use of the property. Other than the *Mason* case, there is a dearth of case law on this topic in New York City. Therefore, we did a

survey of existing case law and below we include a chart that shows the types of uses permitted or not permitted. Unfortunately, the outcomes seem almost arbitrary, and the geographical locations of these cases also cast doubt upon the amount of guidance they provide for New York City – a Lawnmower Repair Business is permissible on Shelter Island but a Lawn Care business is not OK in Westchester.

TYPE OF OFFICE	ALLOWED	CASE	JURISDICTION
Social Work Office	YES	Osborn v. Planning Bd. of Town of Colonie, 146 A.D.2d 838, (3d Dep't 1989).	Town of Colonie
"Management Consultant"	NO	Simon v. Board of Appeals on Zoning of City of New Rochelle, 208 A.D.2d 931, (2d Dep't 1994).	New Rochelle
Extermination Business	NO	Mack v. Board of Appeals, 25 A.D.3d 977, (3d Dep't 2006).	Town of Homer
Limousine Service -- where the use consisted solely of the receiving of telephone requests for service	YES	City of White Plains v. Dewvo, 159 A.D.2d 534, 552 N.Y.S.2d 339 (2d Dept. 1990).	White Plains
Lawnmower Repair Business	YES	Krause v. Piccozzi, 106 A.D.3d 1007, 965 N.Y.S.2d 379 (2d Dep't 2013).	Shelter Island
Lawn Care Business	NO	Saglibene v. Baum, 246 A.D.2d 599 (1998).	Westchester
Fence Construction Business	YES	Palladino v. Zoning Bd. of Appeals of Town of Chatham 39 A.D.3d 1004 (2nd Dept. 2007).	Town of Chatham

In *Dept. of Buildings v. Owners and Occupants of 86 Prospect Park Southwest, OATH Index N. 1900/06 (2007),* a Board of Standards an Appeals case, the occupant of the premises ran a business called AIM Strategies "in the front portion of her home performing work as an organization development consultant. The building in question was a three-story building and the home office was situated in a room off the front entry of the house. The office contained three desks, **one was used by an employee.**" The occupant testified that she used "the office to research, design and develop materials for her company but did not see clients there." At issue was whether her use of the premises violated the Zoning Resolution or is a "permissible home occupation accessory use." The City argued that the tenant was "not operating a permissible home occupation because her office occupies more space than is permitted under the Zoning resolution, and because 'organizational development consultant' is not a permissible profession under the Zoning Resolution." Ultimately, after a seventeen (17) page decision, the Board of Standards and Appeals found that the use WAS permissible.

The conclusion here is that, assuming it is lawful for a business to be conducted from an apartment, one employee is allowed to work in that apartment at the business. There is no clear indication of how many customers the business is allowed to bring in, but clearly the business should not be attracting retail traffic.

III. SHORT-TERM LEASING – LIKE AIRBNB!

This section is about short-term renting of residential property in New York State, courtesy of the sharing economy. I would say that the booklet is about "Airbnb", but it's not fair to either pick exclusively on Airbnb or to pretend that it is the only player in a rapidly growing space. Airbnb is big in New York City, but HomeAway, which owns VRBO, is big upstate. And, frankly, I have had "Airbnb cases", as they have come to be called, that had nothing to do with Airbnb because the short-term gigs were booked on Craig's List or some other platform. Below is a chart my paralegal is in the process of making of all the home sharing sites and how we can subpoena them in a litigation. This is NOT a complete list. When the chart was finished, there were 58 companies listed thereon! I include only the first 20 to show you an example of how many sits there are.

ADVERTISING PLATFORMS LIKE AIRBNB

Subsidary Company	Parent Company	Entity Status	Location	How to Subpoena
HomeAway	Expedia, Inc.	Active	Headquarters - Texas (877) 228-3145	Registered Agent: National Registered Agents Inc.111 Eighth Avenue, New York, New York 10011
VRBO	HomeAway		Headquarters - Texas (877) 228-3145	Only does arbitration, not in court - information is the same as HomeAway
VacationRentals.com	HomeAway			
Homelidays	HomeAway		France	
OwnersDirect	HomeAway		United Kingdom	
Abritel HomeAway	HomeAway		France	
FeWo-direkt	HomeAway		Deutschland	
Toprural	HomeAway		Spain	
bookabach	HomeAway		New Zealand	
stayz	HomeAway			
travelmob	HomeAway			
Alugue Temporada	HomeAway		Brasil	
craigslist.com	craigslist	Active	Delaware	No business entities were found for craigslist.com in NYS. legal@craigslist.org - Fax: 415-504-6394
Zumper	Zumper, Inc.	Active	Zumper, Inc. c/o General Counsel 49 Geary Street, Suite 350, San Francisco CA 94108	No Registered Agent in NYS
PadMapper	Zumper	Active	San Francisco, CA	No Registered Agent in NYS
			Georgia - RentPath, LLC Attn: General Counsel's Office –Privacy Policy Questions 950 E. Paces Ferry Road NE, Suite 2600, Atlanta,	Registered Agent: C T CORPORATION SYSTEM, 111 EIGHTH AVENUE

A. New York City - The Short Term Leasing Law – *What Exactly Is Prohibited?*

There still seems to be a great deal of confusion surrounding the prohibition in New York City against short-term renting. Let us demystify what can and cannot be done, by starting with the relevant statutes – the New York State Multiple Dwelling Law ("MDL") and the New York City Housing Maintenance Code ("HMC").

1. The Statutes

a. The Multiple Dwelling Law

The statutory prohibition against short-term occupancy is found in the NYS Multiple Dwelling Law, which applies to buildings with three or more units. Thus, we have already learned one important thing – the law that prohibits short-term leasing does NOT apply to single family homes or two-family homes. Moreover, because the prohibition against short-term leasing is embodied in the Multiple Dwelling Law, it does NOT apply to Lofts, "interim multiple dwellings".[4]

MDL § 4(8)(a), the relevant statute, states:

> A "class A" multiple dwelling is a multiple dwelling [3 units] that is occupied for permanent residence purposes…**A class A multiple dwelling shall only be used for permanent residence purposes. For the purposes of this definition, "permanent residence purposes" shall consist of occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more** and a person or family so occupying a dwelling unit shall be referred to herein as the permanent occupants of such dwelling unit. The following uses of a dwelling unit by the permanent occupants thereof shall not be deemed to be inconsistent with the occupancy of such dwelling unit for permanent residence purposes:
>
> **(1)(A) occupancy of such dwelling unit for fewer than thirty consecutive days by other natural persons *living within the household of the permanent occupant such as house guests or lawful boarders, roomers or lodgers*; or (B) incidental and occasional occupancy of such dwelling unit for fewer than thirty consecutive days by other natural persons when the permanent occupants are temporarily absent for personal reasons such as vacation or medical treatment, provided that there is no monetary compensation paid to the permanent occupants for such occupancy.**

[4] Aurora Associates, LLC v. Mark Hennen and Piano Magic Company, No. 154644 slip op. (Sup. Ct. N.Y. County 2017).

[Emphasis supplied.]

Multiple Dwelling Law § 4 (7) & (8)(a) prohibit people from dwelling in buildings with three or more units for less than thirty consecutive days. But there are two exceptions:

- Exception One – A tenant may have a guest for less than thirty consecutive days if the guest does NOT pay tenant. For example, if tenant is on vacation for a week and tenant's cousin Sophie stays in the apartment and does not take any money for the favor, then there is no violation of the short-term leasing law.

- Exception Two – Tenant may have a guest for less than thirty days and get paid for it IF tenant is at home while the guest is with tenant. This would be the classic bed-and-breakfast gig where a tenant lives with the guest and gives them a bagel in the morning and points out the sights in the neighborhood. The exact language of MDL 4(8)(a)(1)(a) is this – the guest has to be, "***living within the household of the permanent occupant such as house guests or lawful boarders, roomers or lodgers."***

Next, we need to understand what the statute means by *"lawful boarders, roomers or lodgers"*. MDL § 4(5) defines ***"Lawful boarders, roomers or lodgers"*** as ***"a person living within the household who pays a consideration for such residence and does not occupy such space within the household as an incident of employment therein."*** That definition still leaves us with some questions, for example: How many lawful boarders, roomers or lodgers can you have and still be ok under MDL § 4(8)(a)? And what does "living within a household" mean? For these answers we need to turn to the New York City Housing Maintenance Code ("HMC") and the administrative decisions interpreting it.

b. The Housing Maintenance Code

The HMC applies to all dwellings.[5] Under HMC § 27-2004(14), an *"Apartment shall mean one or more living rooms, arranged to be occupied as a unit separate from all other rooms within a dwelling, with lawful sanitary facilities and a lawful kitchen or kitchenette* ***for the exclusive use of the family*** *residing in such unit."* Under HMC § 27-2004(4), a *"family"* is:

> (a) A single person occupying a dwelling unit and maintaining a common household with not more than two boarders, roomers or lodgers; or
> (b) Two or more persons related by blood, adoption, legal guardianship, marriage or domestic partnership; occupying a dwelling unit and maintaining a common household with not more than two boarders, roomers or lodgers; or
> (c) Not more than three unrelated persons occupying a dwelling unit and maintaining a common household; or….

[5] N.Y. ADC. LAW § 27-2003.

Moreover, under HMC § 27-2078, ***"a family may rent one or more rooms in an apartment to not more than two boarders, roomers or lodgers, … Where a tenant rents any part of an apartment in a multiple dwelling to more than two boarders, roomers or lodgers, such rental shall constitute a use of the apartment for single room occupancy and such rental in an apartment of a converted dwelling shall constitute an unlawful use as a rooming unit."***

Let us next look at two examples of how these laws play out.

In NYC v. Carrey, ECB Appeal Nos. 1300602 & 1300736 (2013), the New York City Environmental Control Board ("ECB") held that in an apartment with two roommates, when one roommate went away and rented his room to two (2) tourists for less than thirty days, that this constituted the guests, *"living within the household of the permanent occupant"*. This works in light of the above statutes. The roommates were a "family" according to the HMC (not more than three unrelated persons occupying a dwelling unit and maintaining a common household) with not more than two lodgers.

But see NYC v. 488 West 57th Associates, ECB Appeal No. 1400043, (2014), where, in an apartment with two roommates, they rented parts of the apartment simultaneously to four (4) tourists for less than thirty days. ECB held, that this did NOT constitute, *"living within the household of the permanent occupant"*. Four boarders were two too many and, thus, the apartment was being improperly utilized as an unlawful rooming unit.

2. The Bottom Line – What You Can and Cannot Do in New York City

Therefore, it is only permissible for not more than two guests to stay within the household of a permanent occupant of a multiple dwelling for less than 30 days under two circumstances:

(1) If the guest is (or two guests are) "living within the household of the permanent occupant", *i.e*. the tenant is home.

(2) If the permanent occupant is temporarily away and the guest does NOT pay.

3. NYC Rent Stabilized Tenants Have Further Prohibitions Against Short-Term Leasing

Rent Stabilized tenants experience further restrictions on short term leasing.

When an apartment is Rent Stabilized, using it as a hotel room and profiteering off it is an incurable ground for eviction, as it undermines a purpose of the Rent Stabilization Code. In *42nd & 10th Assoc. v. Izeki*[6], the Appellate Term agreed that:

> The integrity of the rent stabilization scheme is obviously undermined if tenants, who themselves are the beneficiaries of regulated rentals, are free

[6] 50 Misc. 3d 130(A) (AT 1st 2015).

> to sublease their apartments at market levels and thereby collect the profits which are denied the main landlord.

Furthermore, in Bpark v. Durena, N.Y.L.J. May 6, 2015,p. 8 No.100145/2014, (Civ. Ct., Kings County 2015). Judge Lau held that the tenant had "engaged in profiteering by renting out the apartment or allowing his children to rent out the apartment, to a series of short-term transient tenants for commercial purposes on Airbnb." The court explained that, "[s]uch brazen and commercial exploitation of a Rent Stabilized apartment significantly undermines the purpose and integrity of the Rent Stabilization Law and Code and is therefore incurable."

A difficulty arises, however, over what is “profiteering”?

In 13775 v. Foglino, No. 50335(U), slip op. (N.Y.Sup.App.Term 1st Dept. 2016), the Appellate Term held, that an issue of what constituted profiteering should:

> **… be decided at a plenary trial, and not on summary judgment.** Landlord's submission below, consisting largely of hearsay evidence, was insufficient to satisfy its initial burden of establishing, prima facie, that tenant engaged in commercial exploitation or rent profiteering … Among the issues that remain unresolved on the prediscovery record now before us are the number of times tenant sublet the premises through Airbnb or otherwise and the amount of any overcharges.
>
> [Emphasis supplied.]

In 335-7 LLC v. Steele, 993 N.Y.S.2d 646 (N.Y.Supp.App.Term 1st Dept. 2014), the Appellate Term held that the issue of what constituted profiteering should:

> …be decided at a plenary trial, and not on summary judgment. The present record raises but does not resolve several mixed questions of law and fact, including whether the series of short-term occupants allowed periodically by tenant to stay in the apartment between March 2010 and December 2010 were roommates or, instead, subtenants (*see and compare BLF Realty Holding Corp.,* 299 A.D.2d 87, 94–95 [2002], *lv dismissed* 100 N.Y.2d 535 [2003]; *see also First Hudson Capital, LLC v. Seaborn,* 54 AD3d 251 [2008], *appeal dismissed* 11 NY3d 894 [2008]) and, if subtenants, whether the claimed overcharges were so substantial and pervasive as to constitute incurable rent profiteering (*see Ginezra Assocs. LLC v. Ifantopoulous,* 70 AD3d 427, 430 [2010]; *see also Cambridge Dev., LLC v. Staysna,* 68 AD3d 614 [2009]). This latter issue hinges on factual matters relating to the extent, chronology and duration of the overcharges, matters best adjudicated on a more complete record.

After *Steele* was remanded and tried, the court ruled for landlord. Tenant appealed and lost. At trial, landlord showed that tenant: (1) listed the apartment on the Airbnb website at a nightly rate starting at $215 plus other charges; (2) provided linens, towels, wifi, TV, and

housekeeping service; (3) had rented the apartment at least 120 nights in a 14-month period, with groups as large as seven adults staying up to 10 days and paying $375 per night; and (4) had reported Airbnb rental income on tax returns for 2009 and 2010 while deducting apartment expenses against that income. The trial court found that tenant's conduct constituted subletting, profiteering, and commercialization of the premises. This constituted an incurable violation of the Rent Stabilization Law. 335-7 LLC v. Steele, 993 N.Y.S.2d 646 (N.Y.Supp.App.Term 1st Dept. 2014).

Here is a recent profiteering case - PWV Acquisition v. Poole, No. 152612/2015 2017 WL 550196 (Sup. Ct. N.Y. County 2017) in which the special referee found that, in 2014, the tenant made $32,603 in income from Airbnb-ing her Rent Stabilized apartment. Her rent was $12,511.32 that year. The court found profiteering. The interesting twist in *Poole* was that tenant tried to mount this defense – had I known that I would lose my Rent Stabilized apartment over this, I would not have done it. The court said that this didn't make a difference, and the tenant was evicted.

Finally, the most recent and highest level profiteering case has been much publicized and it is very sad. In Goldstein v. Lipetz 53 N.Y.S.3d 296 (App. Div. 1st Dept. 2017), a sick and elderly woman lost her Rent Stabilized apartment of forty years. The tenant engaged in substantial profiteering with respect to her Rent Stabilized apartment, and thus landlord was entitled to terminate the lease. Tenant sublet apartment to 93 different customers recruited online for 338 days spread over period of 18 months. Tenant's *per-diem* stabilized rent was $57.80, and tenant charged $95 per night for single guests and $120 per night for couples, far exceeding the 10% lawful premium for subletting. The Appellate Division confirmed that once substantial profiteering has been established, the tenant is subject to eviction, without a right to cure.

Goldstein v. Lipetz is very important because it clarified that a court will focus on *per diem* profiteering, rather than looking at how much the tenant earned on the subletting in a month. The Division held that:

> Defendant also argues that her profiteering was "insubstantial" because her Airbnb income did not exceed her legal regulated rent plus 10% during several months of the subletting. We find the point unavailing. Defendant sublet her apartment on a daily basis and, perforce, she had less Airbnb revenue in months during which her apartment was sublet for fewer days. **To determine defendant's profit from the subletting, her income from the subletting should be compared to the share of her rent attributable to the days she was actually hosting a subtenant in the apartment, not to her rent for the entire month during which the subletting occurred.**
>
> [Emphasis supplied.]

4. Do NOT Confuse Short Term Leasing with a Tenant's Right to a Roommate or to Sublet

Nothing protects a tenant's right to do short-term leasing in the way that a tenant's right to a roommate or a subtenant is protected by other statutes. Under certain very specific circumstances, a residential tenant has the right to a roommate and/or to sublet his or her apartment.[7] Neither the right to a roommate nor the right to sublet, however, exists when the terms is for less than thirty days. The prohibition on short-term leasing trumps the roommate law or the sublet law by defining who may occupy a Multiple Dwelling. Brookford, LLC v. Penraat, N.Y.S.3d 859 (Sup. Ct. N.Y. County 2014).

5. Lofts

The prohibition against short-term leasing does not apply to Interim Multiple Dwellings, lofts.[8]

[7] Under New York Real Property Law § 235(f), often referred to as the "Roommate Law", a residential lease entered into by one tenant implicitly permits that tenant to share the apartment with either his/her immediate family or unrelated persons. This is true even if a residential lease says otherwise.

If a landlord violates the Roommate Law, a tenant may seek an injunction to enjoin and restrain such unlawful practice and, the tenant can recover actual money damages sustained as a result of such unlawful practice, including tenant's court costs and, depending on the lease, attorney fees.

Under New York Real Property Law 226-b, a tenant renting a residence in a building with four or more residential units has a right to sublease the apartment subject to the written consent of the landlord in advance of the subletting. Furthermore, the landlord is prohibited from unreasonably withholding consent.

The devil is in the details with respect to RPL § 226-b(2). A tenant does indeed have a right to sublet. But it's a lot of work to exercise that right. There is a specific procedure that the tenant must follow, which is detailed in RPL § 226-b(2), when requesting the landlord's permission to sublet the apartment.

You can find more information of this in a booklet on the author's website at:
http://www.itkowitz.com/booklets/THERE-ARE-TOO-MANY-PEOPLE-IN-THAT-APARTMENT-Who-besides-the-tenant-on-the-lease-has-a-right-to-be-in-an-apartment-and-for-how-long.pdf

[8] Aurora Associates, LLC v. Mark Hennen and Piano Magic Company, No. 154644 slip op. (Sup. Ct. N.Y. County 2017).

B. Why Should Landlords Care If Their Tenants Are Engaging In Illegal Short Term Leasing?

1. Violations and Fines

New York City has a task force cracking down on illegal hotels.[9] If the New York City Department of Buildings ("DOB") inspects and finds that even one apartment is violating the short-term leasing law, then it can issue violations that result in fines to the landlord. In *NYC v. ECC Realty LLC*[10], the DOB issued violations against apartment 5B for being transiently occupied and classified the violations as "immediately hazardous".

In City of New York v. City Oases, LLC, ECB Appeal No. 1400626, (Aug. 28, 2014), the City sued landlord for illegally converting two buildings into illegal short-term hotels, claiming that landlord created a nuisance that must be abated. The court denied landlord's request to dismiss the case.

In NYC v. JJNK Corp., ECB Appeal No. 1500708, (Sept. 25, 2015), DOB issued 12 violations notices based on transient occupancy of two apartments. In JJNK, the ECB held that:

> *Ignorance of the violations not a defense*
> According to Code Section 28-301.1, an "owner shall be responsible at all times to maintain the building and its facilities…in a safe and code-compliant manner." The owner may not shift this responsibility to a tenant. *See NYC v. Jasol Properties, Ltd.* (ECB Appeal No. 0900192, October 29, 2009). Respondent, as the building's owner, is ultimately responsible for keeping the property in a Code-compliant manner, even if its tenants caused the violating conditions and it had no knowledge of the tenants' actions. *See NYC v. Mosco Holding LLC* (ECB Appeal No. 1500169, April 30, 20 15) (premises owner liable despite lack of knowledge that apartments in its premises were being used illegally for transient occupancy). Consequently, Respondent's ignorance of its tenant's short-term rental activities is not a defense.

But see W 47 Realty LLC, ECB Appeal No. 1600535 (July, 28, 2016), where the DOB issued five violation notices to landlord based on conversion to transient use of two Class A apartments at landlord's building. At a hearing, DOB showed documentation of Airbnb information for short-term rentals at the building. DOB also showed prior violations for transient

[9] http://www.nydailynews.com/new-york/nyc-spend-10m-crack-illegal-hotels-article-1.2436047; Very recent example = 7/5/2017 Commercial Observer, *City Sues Alleged Illegal UWS Hotel Operator***,** ("The Mayor's Office of Special Enforcement (OSE) filed a suit in New York State Supreme Court against Hank Freid, the founder and chief executive officer of hospitality company Impulsive Group, on Wednesday for allegedly illegally converting 250 affordable rentals into three Upper West Side hotels.") https://commercialobserver.com/2017/06/city-sues-alleged-illegal-uws-hotel-operator/?utm_source=Sailthru&utm_medium=email&utm_campaign=CO%207/5&utm_term=Commercial%20Observer%20Newsletter.

use at the building and sought aggravated penalties. ECB ruled against landlord and fined it $27,300 for the violations, including violations of the building and fire codes. Landlord appealed and won, in part. Landlord argued that DOB's proof of Airbnb reservations was insufficient proof of transient use, especially since DOB's inspector didn't testify at the hearing. Landlord also argued it had inadequate notice that DOB was seeking aggravated penalties. The Airbnb photos documented the short-term rental of the apartments and it was reasonable to conclude that the apartments were occupied during the periods in question. Landlord presented no proof in opposition, except proof that the violations had been corrected. But landlord was given insufficient notice of aggravated penalties. DOB merely checked a box stating "recurring condition" on the violation notice. While daily penalties were properly imposed, ECB reduced the total penalties by $6,300.

2. **Potential Liability**

As of this writing in July 2017, there are no reported cases where a tenant sued a landlord because he or she was harmed in a multi-family building by another tenant's short-term leasing guest. Depending on the factual circumstances of such a hypothetical occurrence, however, it is possible that a landlord would be liable.

In Bello v. Campus Realty LLC, 953 N.Y.S.2d 41 (App. Div. 1st Dept. 2012), a multi-family building's residents brought a premises security action against the owner after they were robbed by intruders. The appellate court held that genuine issues of material fact existed that precluded summary judgment in the tenants' premises security action. The question the trial court needed to contemplate was whether the landlord breached its duty to take minimal security precautions to protect residents from foreseeable criminal acts by failing to remedy an allegedly broken lock on the building's front door entrance, despite notice of the dangerous condition, and whether the robbery of the residents was foreseeable, given the evidence of prior crimes, including robberies in and around the building.

The appellate court made the same decision in Carmen P. by Maria P. v. PS & S Realty Corp., 687 N.Y.S.2d 96 (App. Div. 1st Dept. 1999), when a fourteen-year-old tenant brought negligence action against landlord for breaching his duty to take precautions against foreseeable criminal assaults on tenant after she was raped by an unknown assailant who forced his way into her apartment. There was evidence that intruders loitered in the hallways, committed robberies, assaults, and drug crimes in the building, and that tenants complained about lack of security.

I have had landlords report to me that their tenants are complaining repeatedly in writing to them about illegal short-term guests of other tenants loitering in the hallways and having raucous parties. The question remains open as to whether such a landlord would be liable if a tenant of the subject building was harmed by a short-term leasing guest.

In NYC v. Lorimer LLC, ECB Appeal No. 1400672, (Sept. 18, 2014; aff'd Nov. 20, 2014), a tenant who rented four apartments in a multiple dwelling converted them to transient use, resulting in violations and fines. The landlord testified that he had no idea that the tenant had done this and it would have been impossible for him to access these apartments. The ECB did not find this testimony credible, because increased traffic in the building should have alerted

landlord to the problem, and landlord did not show that he either physically or legally attempted to gain access and deal with the problem.

3. Insurance Coverage Issues

I am NOT an insurance lawyer. I offer this paragraph, however, based upon my experience as a business owner who has occasionally needed to make a claim to her insurance policy. Insurance companies like to deny claims. I doubt many insurance policies will cover a loss that occurs while the policy holder or her tenants are violating the law. Therefore, if a short-term guest burns a building down, owner may not be covered.

4. Inability to Refinance

A recent article suggests that Airbnb activity makes refinancing harder.[11]

C. "Professional Operators" – *Not* Regular Folks Engaging In The "Sharing Economy" And An Even Bigger Problem For Landlords And Other Tenants Of The Building

At this point, when a landlord calls me about an Airbnb problem in her or his building, my first question is this – am I dealing with real human beings attempting to engage in the "sharing economy" or am I dealing with a *de facto* hotelier, a "professional operator" – someone who rents a whole bunch of apartments, which he or she never lives in, and which he or she continuously illegally short-term sublets.

According to the office of the New York State Attorney General, Eric T. Schneiderman, almost half of Airbnb's $1.45 million in 2010 revenue in the city came from hosts who had at least three listings on the site.[12] An analysis of global Airbnb listings in 2014 showed that hosts offering multiple listings made up over 40% of the company's business.[13] A 2016 report from Penn State researchers for the American Hotel and Lodging Association determined that $378M of Airbnb's total revenue—nearly 30%—was generated from "full-time operators" listing rentals year-round.[14]

Dealing with a professional operator is completely different from dealing with a regular person. I had a client recently who discovered that one of his tenants, let's call him "John", had rented three apartments in the building, using his wife's name for one unit and his friend's name for another. John did not live in any of the three units and all three were continuously rented on Airbnb. The landlord was furious. When he confronted John, John said, "*When the Marshal*

---

[11] http://therealdeal.com/2016/08/29/residential-lenders-think-twice-about-refinancing-an-airbnb-home.

[12] http://www.nytimes.com/2014/11/30/magazine/the-business-tycoons-of-airbnb.html?mwrsm=Email&_r=0.

[13] https://www.fastcompany.com/3043468/the-secrets-of-airbnb-superhosts.

[14] https://www.bisnow.com/national/news/hotel/report-professional-operators-make-a-killing-off-airbnb-59859.

comes, I will stop. I have a lawyer and have been in this situation before." The landlord then made a terrible mistake – (without consulting a lawyer) he hired a security guard to prevent guests of the three units from entering. John took the landlord immediately to court on three illegal lockout proceedings and won. **You can never use self-help eviction against a residential tenant in New York City.** You can NOT lock a tenant out of their apartment. In New York State, in the context of a residential lease, a landlord is forbidden from resorting to self-help under any circumstances and can be subject to compensatory, punitive, and treble damages.[15]

In the within section, "Evicting AND Enjoining Tenants for Engaging in Illegal Short-Term Subleasing" I offer some solutions for dealing with professional operators.

D. Preventing Tenants From Engaging In Illegal Short-Term Leasing

It is better to prevent tenants from engaging in illegal short-term subleasing then to have to clean up the mess that short-term leasing creates.

1. Education of Tenants

Many people, tenants included, simply do not understand what is prohibited. Ownership and management should seek to educate the tenants through email memos and flyers. Tenants should be educated about the illegality of short-term leasing as well as the dangers to themselves and their fellow residents. Tenants should be encouraged to report other tenants who violate the short-term leasing law to management.

2. Adding a Specific Lease Clause

I recommend that landlords add a special section to the riders of their residential leases prohibiting short-term rentals. Below is a sample of the language contained in the BODY of a lease I drafted and inserted in the "Use Clause."

> **USE OF THE APARTMENT**
>
> …Tenants shall not violate Multiple Dwelling Law § 4(8)(a) or similar statute, which, among other things, prohibits short-term leasing of an apartment….

Moreover, the lease can further curb a tenant's right to engage in short-term leasing by clarifying that if a tenant violates that clause of the lease, then he or she' lease can be immediately terminated without the benefit of a cure period.

[15] *See* Real Property Actions and Proceedings Law ("RPAPL") § 853; *Romanello v. Hirschfeld*, 63 N.Y.2d 613, 615 (1984).

E. How Can Landlords Tell If (And Prove That) Their Tenants Are Engaged In Illegal Short Term Leasing?

For all of the reasons discussed above, a landlord needs to know if its tenants are violating the short-term leasing law. Once short-term leasing law violations are discovered, landlords also need to carefully document the infractions. If you want to win in Housing Court, you need proof, NOT speculation.

1. Third Party Companies that Use Algorithms and Building Façade Recognition to Find Airbnb in Your Building

There are companies that use building façade recognition software to find a particular building and then produce reports that contain printouts of all the Airbnb pages associated with the listings in such building. For a particular unit the report may contain:

- The listing, including rules that go with the listing and photographs
- Reviews of former guests of the apartment, explaining what it was like to stay there
- Reports of when and for how much the unit was rented

You need as much documentation as you can possibly get from the short-term sublet platform itself because, "Airbnb reservations [alone are] insufficient proof of transient use."[16]

2. Other Tenants and Building Personnel

The testimony of onsite personnel and other tenants is helpful evidence in these cases.

In 42nd & 10th Assoc. LLC v Ikezi, W 47 Realty LLC, ECB Appeal No. 1600535 (July 28, 2016), the tenant effectively transformed his Rent Stabilized apartment into a luxurious lodging suite for those willing to pay a $649.00 nightly fare. The landlord uncovered a listing posted online that advertised the apartment as available for rent. The ad solicited guests who were interested in a lavish stay in Hell's Kitchen. Potential guests agreed to pay tenant $649.00 per night, check-in before 4:00 p.m., check-out by 11:00 a.m., pay $95.00 per extra guest, and include a $150.00 cleaning fee. The landlord sent a written request to tenant demanding that he remove the ad and refrain from renting the property. Tenant refused. In response, the landlord commenced an action to terminate tenant's lease agreement as a violation of the Rent Stabilization Law and to re-possess the apartment. **At trial, the landlord called both its senior residential service specialist and the building concierge to testify.** Each testified that tenant was rarely, if ever, seen in the building, and that overnight, non-family member guests were frequently seen on the premises. **The building's amenities manager also testified that tenant tried to convince her to allow his guests to have access to the gym, screening room, game room, business center and basketball court, which were off limits to guests without a tenant present.** The landlord also submitted the pictures used to depict the apartment online, and the

written contents contained in the ad, to solidify that tenant published the ad with the intent of collecting rental fees for the premises.

See also Board of Managers of South Star v. Grishanova, 969 N.Y.S.2d 801 (Sup. Ct. N.Y. County 2013); ("According to the affidavit of the Board's president … these instructions show that since January 31, 2012, defendant asked the Condominium staff to provide access and keys to 48 different visitors (an average of four per month), some with international and out-of-state driver's licenses provided upon their visits, who stayed in her Unit for several days at a time. Defendant also requested that a housekeeper be given access between these visits. All of such activity is observed by the Condominium's front desk staff.")

3. Question the Guests

As you can see from the fact patterns in the cases included throughout this article, sometimes the short-term guests are the best evidence possible that a tenant is engaged in short-term leasing. Owners, managers, and building personnel should readily ask strangers in the building, especially those with suitcases, who they are and why they are in the building. If the guest shows an online booking receipt, take a picture of it and or scan it with your phone!

4. Public Social Media Data

This author was hired by a residential landlord to prosecute a case against a tenant who was engaging in illegal short-term leasing. We included all of the evidence gathered - from the short-term leasing platform, social media, and cameras - in the termination notice. We had video of the short-term guests coming and going from the subject apartment at the same time that the tenant was posting public Instagram pictures of himself on a beach far away from New York. The tenant decided that he did not wish to fight about it, so he left before the landlord had to sue him.

5. Private Investigators Who Book the Apartment

Another way of proving these cases is to have a licensed private investigator book the apartment for a short-term sublet and create a detailed report of the experience. Why doesn't this author love this as a strategy? I have no objection to adding an investigator into the mix for an already strong case, but I don't like relying on an investigator as my main evidence. Investigators are humans. Humans sometimes make good witnesses, and sometimes they make crappy witnesses. Sometimes they are unavailable. Sometimes they have checkered pasts.

6. Cameras

Sometimes, a long list of evidentiary items presented above still leaves the Court on the fence. Maybe the documentary evidence indicates that the apartment is the tenant's primary residence, but the tenant has a deed in his name to a house on western Long Island. Maybe the tenant's friend testifies that the tenant is often in the apartment, but the superintendent testifies that the tenant is never in the apartment, and the two witnesses are equally credible. In such instances, a video can be worth a thousand words.

a. Why Cameras

Let us consider a non-primary residence case, for example. In the Rent Stabilized context, a tenant must reside in his or her apartment as his or her primary residence. Therefore, the first thing that a landlord needs to prove in a non-primary residence case is that the tenant is NOT there. How could a landlord prove that the tenant is not there? The following is a sample colloquy between a lawyer and a landlord-client on this topic:

Landlord: The tenant in B5 no longer lives in the apartment as his primary residence.
Lawyer: How do you know that tenant does not live in the subject apartment anymore?
Landlord: Because he isn't there.
Lawyer: I heard you say that already. But *how* do you know? What is the source of your knowledge?
Landlord: The super.
Lawyer: The super lives on the same floor as the tenant and is home all day long?
Landlord: No, the super doesn't live on tenant's floor and he is obviously out and about all day.
Lawyer: The super lives in the building at least?
Landlord: No, the super lives in another building.
Lawyer: OK, so the super attends to only the tenant's building?
Landlord: No, the super cares for ten buildings, tenant's building is one of the ten.
Lawyer: So, if the super works 40 hours per week, and tenant's building is one of ten, at best he or she spends about 4 hours per week in tenant's building?
Landlord: I don't know; maybe more.
Lawyer: So what is the super (who is already a biased witness because he is testifying on behalf of his employer) going to testify to, that in the four hours per week that he is in the building he never sees tenant around?
Landlord: Something like that, I guess.
Lawyer: Then you lose. Because tenant will come in and testify that she lives in the apartment, and you have not done anything significant to discredit her.
Landlord: Well a private investigator got me a printout that shows that someone with the same name as tenant owns a house in the Catskill Mountains.
Lawyer: What name is that?
Landlord: "John Smith".
Lawyer: That is a very common name. Does anything else in the report connect tenant to that address?
Landlord: No.
Lawyer: Even if Tenant John Smith of Apt. B5 does own that house in the Catskill Mountains, what are you going to do when Smith says this is just a summer home he only goes to occasionally and he rents it out to others for investment purposes?
Landlord: Well, I just know tenant doesn't live there. I just know it.
Lawyer: Does the super ever see anyone else coming and going from the subject apartment?
Landlord: No.
Lawyer: Has the tenant had any repairs done in the apartment recently?

Landlord: 18 months ago he complained of a leak and we went in and fixed it.
Lawyer: Well that suggests to me that tenant lives there.
Landlord: I just know tenant doesn't live there. I just know it.
Lawyer: Your psychic knowledge or strong hunch is NOT admissible evidence. You need ADMISSIBLE PROOF in a court.

A picture (or a video) is worth a thousand words, or a thousand guesses and speculations.

Cameras are cheaper than legal fees. If a landlord is not willing to pay for cameras, he is not going to be willing to pay legal fees for a protracted trial that landlord is likely to lose.

b. How to do Cameras Correctly

Cameras should be set up by a professional licensed private investigations and/or security firm. The more experience the company has with this type of work, the better.

First, the camera must be set up so that it does NOT look into the tenant's apartment when the door is opened, thus invading tenant's privacy. See more about that below.

The camera must be set up so that it gets a clear view of the subject apartment, but not so that multiple apartments are under surveillance, because then there will be a lot of unnecessary footage to review.

The camera should be motion activated; otherwise, it will be difficult to review all the footage.

Landlord's counsel needs to work closely with the surveillance camera technologists to streamline both the technical and legal process involved with utilizing cameras, or the evidence obtained from the cameras might not be admissible. A videotape must be "authenticated" before it can be used as evidence in a court proceeding. Testimony from someone who has knowledge of the circumstances and who actually reviewed the footage is usually sufficient.[17]

[17] *See Zegarelli v. Hughes*, 3 N.Y.3d 64, 69 (2004).

I strongly prefer that the same person:

- install the camera;
- maintain the camera (i.e. changes its batteries);
- retrieves the data card from the camera and take it to where it will be stored;
- superintend the storage system;
- review the footage; and
- produces a detailed log of what each incident reveals.

This person is your witness in court!

Landlord's counsel can see why attending to the details of this type of thing BEFORE a case gets started is vital to bringing a healthy case. Tenant's counsel can also see how useful it is when landlord's counsel leaves this important evidentiary work unattended to until trial.

c. Cameras Legality

Courts in New York have ruled that tenants have an expectation of privacy inside their apartment behind the closed entry door.[18]

On the other hand, New York courts have found that residents in multi-family buildings lack a reasonable expectation of privacy in the building's common areas, such as lobbies, stairwells and hallways because it is accessible to other persons.[19]

d. Getting Camera Data in to Evidence

Below I offer up a sample Q&A to get camera data into evidence. It will get you familiar with the concepts involved in this work and with how much advanced preparation it takes.

General Questions

1. What is your name?
2. Where do you work?
3. How long have you worked there? 5 years.
4. What is your title? "Support Staff for investigations"
5. How long has that been your title? For 2 years.
6. What was you title before that? "Process server."
7. Do you need a license to be a support staff for private investigations? No, you need a registration – show registration id and get ID number into the record.
8. Is your registration currently active? Yes.

[18] *Otero v. Houston Street Owners Corp.*, 2012 WL 692037 (Sup. Ct. N.Y. Co. 2012); *see also People v. Mercado*, 68 N.Y.2d 874 (1986) ("Once the door is closed, an individual is entitled to assume that while inside he or she will not be viewed by others").

[19] *People v. Funches*, 89 N.Y.2d 1005, 1007 (1997).

9. What is a support staff for investigations allowed to do? Help with investigations, deal with cameras, fieldwork.

Cameras

10. Are you familiar with PREMISES? Yes.
11. How? I installed, maintained, and reviewed the data from a camera placed there.
12. When did you install it? 9/30/2016
13. How many cameras did you install? One.
14. What kind of camera is it? SUPPLY BRAND AND MODEL Smoke detector covert camera with side view angle.
15. Did you activate it? Yes.
16. How many times after activation did you check it? 20 – 30 times, weekly from 9/30/2016 through the present.
17. How is the camera powered? Batteries.
18. Did you change the batteries? Every time I went there.
19. Did the camera record on tape or digitally? Digital, it has an SD Card.
20. Did you retrieve data from the camera? Yes.
21. How? I remove the SD card, put another SD card in, and take the SD card to my home or the office and upload its full contents onto an external hard drive I use exclusively for my work.
22. What do you do with the SD card? I erase it.
23. What do you do with the hard drive? I hand it to my boss once a week and he copies the contents of my hard drive onto his.
24. What do you do with your hard drive. I keep it in my bag, my knapsack.
25. Always? Always.
26. Could anyone ever take the hard drive out of your bag? No.
27. Could anyone tamper with the hard drive? No.
28. When you upload an SD card to the hard drive, how do you organize it within the hard drive? The hard drive has a file for the Rothman Investigation. Within that file I make a new file for each SD card.
29. Did you do anything else with the data from all the SD cards? Anything for court today? Yes.
30. What? I copied all files from 9/30 through today unto a thumb drive I brought with me.
31. When did you do that? ANSWER.
32. Has the thumb drive been in your custody since that time? Yes.
33. MOVE THUMB DRIVE IN TO EVIDENCE
34. Do you do anything else with the data from the SD cards? Yes.
35. What? I reviewed each of them.
36. How long did reviewing each of them take? 3 hours.
37. Was the camera running all the time or was it motion sensitive? Motions sensitive.
38. How does that work? When the camera senses motion it turns on three seconds later. It turns off three seconds after the motion stops.
39. How many gigs on a typical weeks SD card? 3G's.

Examples:

9/30 – 10/14 = 3.18G 577 incidents
10/14 – 10 27 = 2.83G 510 incidents
10/27 – 11/9 = 3.02G's 528 incidents

40. Each incident represents someone coming or going from the Premises? No.
41. Why? Because sometimes the camera sees a shadow from someone coming or going from another apartment, or just the top of the person's head.
42. Can you clearly see when someone is coming or going from the Premises? Yes.
43. Did you do anything else with the data from the sd cards? Yes.
44. What? I made reports of the review of the sd cards.
45. In what – excel? Word? Word.
46. MOVE REPORTS IN TO EVIDENCE.

F. Evicting And Enjoining Tenants For Engaging In Illegal Short Term Subleasing

I usually recommend that prevention and summary proceeding strategies be used when regular folks engage in illegal short-term subleasing. Often (but certainly not always) these cases can be settled early. Professional operators, however, will only go when a Marshal comes to the door. Therefore, Professional Operators may justify the expense of seeking an injunction.

1. Summary Holdover Proceedings

a. *Predicate Notices – No Notice to Cure Needed, But Notice Must Be Based on Facts and not Just Speculation*

If the proof amassed is solid, a summary proceeding to evict for violations of the short-term leasing law is relatively simple, when compared with other types of holdovers – such as regular illegal sublet cases. This is because there is no requirement for providing a cure period, and the case can begin with a notice of termination of tenancy, followed by a holdover proceeding.[20]

[20] Brookford, LLC v. Penraat, 8 N.Y.S.3d 859 (Sup. Ct. N.Y. County 2014).

Next, we have a recent Appellate Term First case that illustrates an important point about doing this work on behalf of landlords correctly, and/or on behalf of tenants, correctly! And that very important point is that landlords MUST do their homework before serving these predicate termination notices. As you will in the "Camera" section of these materials, I will not accept one of these cases without camera evidence coupled with some other type of evidence, either from the internet or from competent witnesses. I have been saying it for years – Housing Court cases are won or lost BEFORE they are filed, in the predicate notice stage. So here we have 128 Second Realty LLC v. Dobrowolski, 41 N.Y.S.3d 450 (App. Term 1st Dept. 2016). *Dobrowolski* let a holdover based on short-term illegal sublet be dismissed because, "it failed to plead facts to state a cause of action." It stated:

> To defeat tenant's dismissal motion, landlord exclusively rested on an investigator's photographs depicting eight different individuals entering and/or exiting tenant's apartment with overnight bags and luggage from February to June 2014 while tenant was admittedly away which inferentially suggested short term rentals were taking place in violation of tenant's lease and various laws. As gleaned from the record, landlord anticipated future discovery would help him factually fill in the missing pieces, namely, the identity of the depicted visitor-licensees, short term rental agreements, the rental sums paid in excess of tenant's stabilized monthly rent, tenant's other residence, if any, and any other relevant information to support a commercial exploitation and profiteering claim.
>
> At first blush, the unchallenged photographs eliminated tenant's contention that this proceeding was a frivolous one. Nonetheless, this decision's message makes clear that a more thorough fact investigation should be undertaken before starting this nuisance-type eviction proceeding, especially when the law allows free, short term "house-sitting" stays (see MDL § 4[8][a](1)[B]) when a record tenant is away for legitimate personal reasons (e.g., vacation, business trip, medical treatment, etc.).

b. Summary Proceedings – What is the Nature of the Cause of Action?

What is the exact nature of the cause of action that leads directly to termination? Asked another way, when you draft the Termination Notice, what section of the leases (and Rent Stabilization Code if the apartment is Rent Stabilized) do you cite?

I have been citing to the sections of leases that prohibit tenants from using apartments for illegal purposes, and then I refer back to Multiple Dwelling Law § 4(8)(a), which prohibits the use of a multiple dwelling for transient purposes. I have yet, however, to have a tenant or a court challenge me on this characterization.

I notice that other law firms are couching the cause of action as illegal subletting. I do not favor that approach because an illegal subletting cause of action requires a notice to cure[21] and

[21] 9 NYCRR § 2524.2(c)(2); 2215-75 Cruger Apartments, Inc. v. Stovel, 769 N.Y.S.2d 347 (App. Term 1st Dept. 2003) ("Landlord's failure to serve the notice to cure at least ten days prior to the date listed for a cure is fatal to the

raises issues of fact regarding whether or not the arrangement was a roommate or sublet situation.[22]

Still other firms call illegal short-term subletting "nuisance". I was hired by a young couple who did Airbnb just once, but was hit by their landlord with a nuisance termination notice. I wrote a letter to landlord's counsel explaining that nuisance legally requires a *pattern* of bad behavior, not a single instance. Landlord backed down and agreed to let the tenants stay, in exchange for a promise that they would do no more Airbnb.

Finally, in a Rent Stabilization case you should also allege (and be prepared to prove) "profiteering". See the section above, however, on the difficulties of proving profiteering.

c. Make a Discovery Motion and, Maybe, a Summary Judgment Motion

There is no discovery allowed in a summary proceeding for the recovery of real property pursuant to Article 7 of the Real Property Actions and Proceedings Law (a Housing Court case) unless leave of court is granted for such discovery, and such leave will only be allowed when the movant shows "ample need".[23]

In a recent Manhattan Housing Court case, 859 Ninth Avenue LLC v. Mor[24], an "Airbnb case", discovery was allowed and included a deposition of the tenant. Landlord demonstrated that tenant reported on his 2013 taxes that he used 50% of his home for business purposes and deducted half of his rent as a business expense. In 2014 tenant declared $19,328 in rental fees from Airbnb and deducted a management fee of $21,120. Respondent, per his deposition and his instructions on the Airbnb website, directed the guests to never mention Airbnb and to state that they were tenant's friends if they were ever asked. Based upon this and other evidence, summary judgment was awarded to landlord.

d. Subpoenas

You can also subpoena Airbnb for its records on a particular apartment, once a litigation is initiated. You can ask for the information on the stays (dates, prices, duration) and conversations between guest and hosts on the site.

---

summary proceeding."); Hudson Associates v. Benoit, 640 N.Y.S2d 540 (App. Div. 1st Dept.1996) ("In a summary holdover proceeding to recover possession upon the ground of an illegal sublet, the landlord is required to prove as part of its *prima facie* case that a notice to cure was served and that the tenant has failed to cure." Only then can the landlord seek to terminate a tenancy).

[22] *See* 335-7 LLC v. Steele, 993 N.Y.S.2d 646 (N.Y.Supp.App.Term 1st Dept. 2014), discussed above.

[23] NYU v. Farkas, 468 N.Y.S.2d 808 (Civ. Ct. N.Y. County 1983) (defines "ample need" test for discovery to be allowed in a summary proceeding).

[24] Index No. LT 87976/2015, Judge H. Cohen, 4/5/2017.

2. Injunctions

Injunctive relief is also available to a landlord when a tenant violates the short term leasing laws. *Brookford v. Penraat*[25] involved an action commenced by plaintiff-landlord against defendant-tenant, the resident of a four-bedroom, rent-controlled duplex apartment on Central Park West, arising out of tenant's rental of three of the bedrooms to tourists and other transient visitors for profit on a short-term basis using a commercial website. Landlord was granted a preliminary injunction enjoining tenant from so renting the apartment where plaintiff demonstrated a likelihood of success on the merits of its claim that defendant's activities were in violation of Multiple Dwelling Law § 4 (8) (a), and where the circumstances of such renting posed a danger to all occupants of the building. The court stated:

> As to whether plaintiff suffered from irreparable injury, case law has already set forth that placing tourists in accommodations that are not designed or equipped with sufficient fire and safety protections, in and of itself, constitutes irreparable injury, and the equities lie in favor of enjoining such conduct, "rather than in allowing said business to continue to operate (to defendants' presumed financial advantage)".[26]

Interestingly, in CLAC America II, Inc. v. Sky Worldwide LLC, 41 N.Y.S.3d 448 (Civ. Ct. N.Y. County 2015), the Civil Court enjoined the tenant from engaging in future short-term rentals.

G. Tenant's Perspective On Short-Term Leasing

Throughout these materials, the Tenant's advocate will find MANY possible defenses to be employed when defending a tenant in one of these cases. In this section, I extract and consolidate those possible defenses. The following defenses should be considered when defending a tenant from an allegation of illegal short-term subleasing.

If there was no camera, it is hard to prove the tenant was not living in the unit with the guests or that the stay was less than 30 days. It becomes landlord's word against tenant's and landlord has no personal knowledge. I recently represented a landlord in an Airbnb case where these was no camera (bad move). My client was very confident because we had many Airbnb listings for the apartment where the tenant was offering to rent the "whole apartment". But this tenant was represented by a clever young tenant's attorney who I have mountains of respect for. This attorney called me and said, *"Michelle, the tenant works nights, so she slept in the bed during the day and her guest slept there at night. Thus, she rented the "whole apartment", while being present in the unit."* That's clever! Yeah, I could have done discovery and depos and vetted this creative excuse, if the client wanted to drop bags of money on my legal fees and spend a year on the case. We settled.

[25] N.Y.S.3d 859 (Sup. Ct. N.Y. County 2014).

[26] See also, IP Mortg. Borrower, LLC v. Sharif, No. 159434/15 WL 6566605 (Sup. Ct. N.Y. County 2015).

In addition, if there is no camera and landlord is only prosecuting the case with Airbnb records from a third-party provider (as opposed to a subpoena of Airbnb records) there may be a hearsay challenge.

What constitutes profiteering is now arguably well settled by Goldstein v. Lipetz 53 N.Y.S.3d 296 (App. Div. 1st Dept. 2017) see above. Nevertheless, that case also suggests that if the profiteering overcharges were refunded to the guests that a cure may be permitted. Keep that in mind for a tenant-client that only did Airbnb a few times.

In *Goldstein v. Lipetz* the tenant also unsuccessfully used a waiver defense, because there was no evidence that the landlord was aware of the short-term subletting. This defense should be kept in mind, because it might work in a different fact pattern.

The predicate notice may be constructed wrong. See the above comments on a cause of action for nuisance (which requires a pattern). Moreover, I saw another firm default tenant for not paying hotel tax! Hello?! That's not a *per se* cause of action by a landlord against a tenant.

IV. CO-LIVING

A. Co-Living Definition

This is the definition of co-living that I have developed for use in my practice:

> An arrangement by which a landlord rents an apartment to a group of tenants, where the tenants occupy and share the apartment as roommates, an arrangement which the landlord consents to and facilitates as an active participant; the tenants have flexible terms, which are often short, and are allowed to vacate the apartment early without liability for the full term of the lease; if a roommate is lost, the landlord assists the remaining tenants with getting a qualified new roommate to take lost roommate's place and gives the remaining tenants rent relief while doing so; the landlord frequently provides the tenants with other advantages and amenities, including but not limited to furnishings and personal property, services, and thematic programing, such as dinners or lectures on topics of common interest to the roommates; co-living places a big emphasis on the creation of a community within the apartment; the price per square foot for the apartment is often higher than it would be if the same apartment was not rented for co-living. The advantages of co-living for the tenant are flexibility, convenience, limited liability for bad roommates, and community. The advantage of co-living to a landlord are a higher price per square foot and greater control of the occupants of an apartment.

B. <u>The Law -- You cannot rent rooms in regular apartments.</u>

You cannot rent rooms in regular apartments. Multiple Dwelling Law ("MDL") § 4(16) states:

> "Single room occupancy" is the occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling, so that the occupant or occupants thereof reside separately and independently of the other occupant or occupants of the same apartment.

MDL § 301 says that every building will be used in conformity with its certificate of occupancy ("CO"). The CO will state whether a building contains apartments or whether it may be rented for Single Room Occupancy ("SRO"). Therefore, MDL § 301 would be violated if an apartment in a regular building was rented for SRO.

If MDL § 301 is violated, then, according to MDL § 302, the building's mortgage goes into default, no rent is due from the tenants, no law suit for rent may be brought against the tenants, and:

> 2. The department may cause to be vacated any dwelling or any part thereof which contains a nuisance as defined in section three hundred nine, **or is occupied by more families or persons than permitted in this chapter,** or is erected, altered or occupied contrary to law. Any such dwelling shall not again be occupied until it or its occupancy, as the case may be, has been made to conform to law. [Emphasis supplied.]

There is a similar definition of an SRO in the New York City Housing Maintenance Code ("HMC"), which calls an SRO unit a "Rooming Unit" at § 27-2004(a)(15) and states:

Rooming unit shall mean one or more living rooms arranged to be occupied as a unit separate from all other living rooms, and which does not have both lawful sanitary facilities and lawful cooking facilities for the exclusive use of the family residing in such unit. It may be located either within an apartment or within any class A or class B multiple dwelling.

Furthermore, the HMC § 27-2078 (Rental of rooms to boarders) states:

> b. **Where a tenant rents any part of an apartment in a multiple dwelling to more than two boarders, roomers or lodgers, such rental shall constitute a use of the apartment for single room occupancy and such rental in an apartment of a converted dwelling shall constitute an unlawful use as a rooming unit.** [Emphasis supplied.]

Here is a recent Environmental Control Board case. DOB issued violation notices to landlord for converting a two-family house to six SRO units [pursuant to Title 28 construction]. Landlord claimed that she hadn't changed the building since buying it in 2014. She claimed that she lived on the first floor and landlord's relatives lived on the second floor. But landlord submitted photographs showing that there were locks on room doors. DOB submitted a number of photographs documenting its claim. The ALJ ruled against landlord and fined her $47,400, which included daily penalties. Landlord appealed and lost. Landlord, a Mandarin Chinese speaker, claimed that she wasn't provided with sufficient language assistance services at the ECB hearing. ECB ruled against landlord, whose attorney didn't claim that alleged language deficiencies caused the ALJ to rule incorrectly. And the ALJ had adjourned the hearing at least once to permit landlord to obtain an attorney.[27]

In *Association For Neighborhood Rehabilitation, Inc. v. Board of Assessors of Ogdensburg*, 81 A.D.3d 1214 (3rd dept. 2011), the court found that "SRO tenants have a single sleeping room, with access to a communal kitchen, bathroom and social area."

- Renting rooms looks like this: Separate prices for the rooms and separate terms for each tenant. Even if that is all in the four-corners of a single document.

- Renting an apartment looks like this: ONE co-terminus contract for the WHOLE apartment, people do NOT have separate prices for the bedrooms, they are ALL jointly liable for the whole rent.

C. Co-Living Lease I Wrote and Questions Co-Living Clients Ask Me and How We Are Solving Their Problems

I wrote a lease for my co-living clients to try to LEGALLY navigate the law and still allow them to deliver value to their customers.

1. "But people don't want to be on the hook for their roommates rent!"

That's where my lease's "RENT-RELIEF" section comes in to play.

- If a tenant leaves, a certain portion of the overall rent (as associated with that roommate) is forgiven, unless and until the company offers the group a replacement roommate and the group declines that person entry into the deal.

- When a tenant leaves, they are released from the lease using a rider.

- When the new tenant comes they are added to the lease via a rider.

[27] *Zhao*: ECB App. No. 1700674 (8/3/17) [LVT Number: #27928].

- When the year ends, do a new lease, not a renewal, because otherwise the document gets too cumbersome.

2. **<u>"But people want flexible terms!"</u>**

   That's where my lease's "EARLY TERMINATION" section comes in.

   - A tenant can give a week's notice (or however long you say) and leave at the end of the month with no further liability.

   - A year term was really a 3 month term.

3. **<u>"But the problem is, this is one-sided, the tenant determines their term, not the company! Then the company can't price the room according to the term?"</u>**

   That's where my "FREE-RENT-AT-THE-END-OF-THE-TERM" section comes in.

   You reward people for longer terms by giving the 12th month free. Or every sixth month free.

4. **<u>"But, Michelle, we need more predictability to be able to run this business profitably?! We want to price and rent rooms separately, based on the season, the term, and availability; we want to know if a tenant is staying for 3 months or for 2 years!"</u>**

   - And I want all the children of the world to join hands and sing. But I can't have that. And you can't rent rooms in regular apartments.

   - If you want to rent rooms separately, pricing them separately based on the term and the time of the year and availability – then go into the hotel industry.

   - You are free to only operate in buildings zoned as hotels and pay hotel tax, because that's a different business than the one you are in.

   - Or you are free to be subject to violations, fines, and vacate orders.

   - I am not a miracle worker.

5. **<u>"Are you sure this leasing and operating procedure will protect us from violations, fines, and vacate orders?"</u>**

   No, I am not guarantying that this leasing and operating procedure will protect you from violations, fines, and vacate orders.

ABOUT THE AUTHOR

Michelle Maratto Itkowitz is the owner and founder of Itkowitz PLLC and has been practicing commercial and complex-residential landlord and tenant law in the City of New York for over twenty years. Michelle represents BOTH landlords and tenants and her core competencies include: Rent Stabilization, the Loft Law, Short-Term Leasing litigations, Yellowstone injunctions, residential tenant representation, Good-Guy Guaranties, clearing buildings so that construction projects can go forward, and Rent Stabilization Due Diligence.

Michelle publishes and speaks frequently on landlord and tenant law. The groups that Michelle has written for and/or presented to include: Lawline.com; The Columbia Society of Real Estate Appraisers; LandlordsNY; Lorman Education Services; Rossdale CLE, The Association of the Bar of the City of New York; The New York State Bar Association, Real Property Section, Commercial Leasing Committee; Thompson Reuters; The Cooperator; The New York State Bar Association CLE Publications; The TerraCRG Brooklyn Real Estate Summits; The Association of the Bar of the City of New York; BisNow; and SubletSpy.

Michelle regularly creates and shares original and useful content on landlord and tenant law, including via booklets, videos, and live presentations. As the “Legal Expert” for LandlordsNY.com, the first social platform exclusively for landlords and property managers, Michelle answers member's questions, guest blogs, and teaches. Michelle developed and regularly updates a seven-part, eight-hour continuing legal education curriculum for Lawline.com entitled "New York Landlord and Tenant Litigation". Over 20,000 lawyers have purchased Michelle’s CLE classes on Lawline.com (a labor of love for which Michelle gets not a dime) and the programs have met with the highest reviews. Michelle is currently co-authoring a chapter on lease remedy clauses and guaranties for the New York State Bar Association, Real Property Section, Commercial Leasing Committee.

Michelle is also an adjunct professor of Legal Project Management, a topic she is passionate about, at NYU’s School of Professional Studies.

Michelle is immensely proud that Itkowitz PLLC was awarded its NYS Women Business Enterprise Certification by the Empire State Development Corp. Michelle’s eponymous law firm is one of the largest women-owned law firms, by revenue, in the State.

Michelle is admitted to practice in New York State and the United States District Court for the Southern District of New York. She received a Bachelor of Arts in Political Science in 1989 from Union College and a Juris Doctor in 1992 from Brooklyn Law School. She began her legal career at Cullen & Dykman.

There are many ways to keep up with Michelle. When Michelle tweets, which is not an obnoxious amount, she does so in an easy to understand manner about useful stuff regarding real estate, business, the legal industry, and organic herb gardening. Feel free to contact Michelle; she would be happy to speak to you.

Michelle Maratto Itkowitz
Itkowitz PLLC
itkowitz.com
26 Broadway, 21st Floor
New York, New York 10004
mmaratto@itkowitz.com
twitter: @m_maratto