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Real estate websites and broker regulation

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New York's brokerage community is likely to be better served by pushing for a modernization of the regulations.

The recent news of a lawsuit against AirBNB alleging that the company is not entitled to collect fees for connecting tourists with New Yorkers offering space in their residences, highlights the need to update New York's broker licensing statute and rules to accommodate evolving, more technologically advanced methods to connect buyers and sellers and landlords and tenants.

For decades, *The New York Times* was the primary resource for Manhattan apartment hunters, but it's always been clear that the *Times* didn't need to be a licensed real estate broker. It charged a flat fee and it was paid whether the landlord rented the apartment or not.

Today's Internet and mobile apps have essentially elim-

inated the *Times*' real estate advertising business but they have done so with methods that defy easy classification under the current broker regulations.

For example, if the advertised listing is free but the website or app receives a fee, albeit a larger fee, only upon the consummation of the lease, is the site required to have a broker's license? The regulations don't address this issue. Does it make a difference if the fee is a percentage of the rent or sales price as opposed to a simple flat fee? Nobody knows for sure, and it's causing uncertainty and confusion in the market.

Some established websites have taken the conservative approach: auction.com's site lists its affiliations with a licensed broker in every state in which it does business. Other sites take the position that merely connecting people over their

site and charging a fee is not acting as a real estate broker. In informal advice via email, however, the Department of State has taken the position that the fact that the connection between the parties is made online does not mean that a license is not required. Applying this logic, it's like saying the *Times* needed a broker's license to run advertisements and was violating the law for years.

New York's brokerage community is likely to be better served by pushing for a modernization of the regulations. Many of the sites take on areas of the real estate market that busy brokers are likely not interested in. For example, there is a website for temporary retail locations inside existing stores. These modern and, yes, low cost services appear to be aimed at connecting landlords and tenants in transactions that brokers couldn't be both-

ered with. There is no way, of course, that a substantial office tenant would look for its new office space online. And I understand the argument that once the door is opened to unlicensed operators, it will be hard to control quality and limit fraud, but surely there is a compromise to be had here.

AirBNB and other online sites have valid arguments that the services they provide don't require a broker's license. The recent AirBNB lawsuit may not be successful for a variety of reasons, including the possibility that the plaintiff will not be able to get a class action certified and, if class action status is not granted, the economic impracticality of enforcing the license requirement on a case by case basis will be prohibitive. Please follow my column as I will follow the AirBNB case and any legislative or regulatory developments.

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