

GERMAN LAW NEWSFLASH – February 2017

Dear [Vorname],

With this we are sending you our monthly newsflash, this time dealing with administrative court decisions regarding the ban of misuse of apartments as holiday homes in the city which could have a great impact on the Berlin housing market.

We hope that it meets your interest. Any remarks and feedback are always welcome.

Best regards,

Thomas & Team



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Ban of misuse of apartments as holiday homes in Berlin challenged by homeowners

How it used to be

As in many capitals and major cities in Europe, there is, and has been for quite some time, fierce competition in the Berlin housing market. Affordable living space is tight and with rising numbers in the population the current situation calls for action. Already in 2013, to insure that more affordable living space gets back on the long-term rental market, the Senate of Berlin passed an act regulating that apartments in Berlin can no longer be rented as short-term holiday homes (*Zweckentfremdungsverbots-Gesetz*). The act included a two-year transition period during which the apartments could still be used as holiday homes by tourists. This period ended in May 2016. Since then homeowners have had to apply for a permit to rent their apartments as holiday homes.

What is new

Now with the end of the transition period, the Senate hopes

that a lot of apartments which had been rented as holiday homes will get back on the long-term rental market. There are today 23,000 to 29,000 apartments in Berlin which have at some point been rented as holiday homes. Most of them are located in the city center. Since 2014, only 6300 of them have been registered for the two-year transitional period. However, at least those should be back on the long-term rental market again. This is good news for all residents looking for apartments but bad news for private apartment owners as well as holiday home renting platforms like Airbnb and Wimdu. They will have to exclude many apartments from their range of offerings and it will be harder for tourists to rent apartments via these platforms as a good and affordable alternative to hotels and hostels.

A major problem is that the Berlin act does not contain clear definitions of what exactly a holiday home is. This results in uncertainty in the various Berlin districts regarding the question of how to apply the law properly. All districts and the Senate agreed meanwhile that it is permissible to rent only a room or a part of an apartment representing less than 50% of the whole apartment. However, other regulations are still unclear. For example, there was no consensus about whether someone could rent out their own apartment to tourists short term during times when the owner is on vacation themselves. The rental platforms demand a clear distinction between holiday homes and homesharing. Sharing your home with other people from abroad is not only done for commercial purposes but is also about meeting new people, getting to know more about other countries and cultures and sharing one's own lifestyle. Therefore, homesharing should be out of the scope of the act.

This social drift to a sharing community – nowadays seen often in areas of high population density – is also reflected in the transport sector as enterprises like Uber try to open the public transport market to private providers. Nevertheless, even this progress faces legal issues regarding the so-called Passenger Transport Act (*Personenbeförderungsgesetz*). In this particular case, the German law prohibits commercial transport of passengers by private drivers without a specific certificate given by a German authority. An intermediate solution called UberTaxi, which uses the same structure but links customers to professionally certified Taxi-drivers, has tried since 2014 to satisfy this growing demand of a sharing culture in German cities.

It remains to be seen if the idea of homesharing will also yield comparable solutions as decided by the Senate. Some owners of apartments have already taken proceedings against the act prohibiting the sharing of private apartments. The administrative court in Berlin ruled on the 9th of August 2016 that those homeowners who own a secondary residence in Berlin, for example, because they work here, are allowed to rent their apartments in the short term to tourists during periods they are not in the city themselves. The court instructed the administrative district departments to grant permits in these cases.

What does it mean for the future

It is expected that lawsuits against the act will occupy the courts for years. The act will stay in force at least until then. The administrative offices of the different Berlin districts already announced that they plan on recruiting more employees to ensure that owners observe the law and that violations are severely punished. It is even possible to report easily online. Already 700 apartments have been reported to the authorities since the beginning of this year. In light of these imposed measures, it seems unlikely that many apartment owners will risk renting their apartments illegally. Nonetheless, it is expected that some homeowners will start proceedings against the act, expressing the social desire to engage in a world of sharing community rather than a concept of personally owned goods.

Recent Transaction

Erwin Hymer Group AG & Co. KG (EHG), the largest manufacturer of caravans and motorhomes, has acquired the Explorer Group Ltd., near Newcastle (England), with more than 400 employees. tkslegal Berlin LLP has advised EHG in the transaction. For more information [click here](#).



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