

## GERMAN LAW NEWSFLASH – December 2017

Dear Reader,

Berlin like other metropolises has been facing big housing issues over the years. In that context, sharing platforms such as airbnb are of major interest. With this Newsflash, we put the latest developments into perspective.

We hope that it meets your interest. As usual, any remarks and feedback are always welcome.

Best regards,

Thomas & team

### Sharing concept versus Berlin ban on misuse of apartments

#### How it used to be

The concept of sharing has become a central one in times of limited resources and sustainability. Many capital cities of central Europe are facing the problem of shrinking living space for a growing population. In Berlin, every year 40,000 to 60,000 people move to the city to stay for long term. Based on this, platforms like airbnb have experienced a high popularity during the last years, disadvantaging equally the housing market and property owners.

Flats that are offered on airbnb on a steady basis disappear from the normal housing market and open up new markets for travelers and tourists.

At the same time, tenants who subcontract their apartments to unknown persons disadvantage their landlords, especially when demanding higher rents; despite the fact that German law requires the consent of the landlord to every subcontracting.

The Berlin legislator reacted through an administrative law and banned the misuse of apartments in 2013. Forbidding the renting of apartments to tourists as holiday apartments, Berlin tried to regulate the problem through public law. The transition period ended last year. The new law has resulted in a high



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number of reported apartments and many public lawsuits against the respective decisions of the Berlin authorities.

### **What is new**

During this year, there have been a number of court cases skeptical to the application of the ban on misuse of apartment rules.

The Berlin administrative court accepted the renting of living space in secondary residences. The court allowed a rent out for up to 182 days of owner absence and stated that even a longer period might be admissible. The court argued with the public interest, that empty living space would actually have to be used by renting it out.

In another ruling, the administrative Court of Appeal criticized that the law itself would be too far reaching in restricting the fundamental property rights of owners. As a consequence, it forwarded the law to the Federal Constitutional Court to examine its constitutionality.

In a third controversial decision, an administrative court of Berlin ruled, that information demands regarding users of airbnb have to be addressed to the Irish parent company.

Not only the courts have realized problems with the application of the rules to ban the misuse of apartments. The Berlin Senate recently reacted to the decisions and announced a legislative amendment. According to the Senate's new proposal, every tenant shall be entitled to rent his apartment for up to 60 days per year, provided that he/she registers at the district office. Additionally, a duty to disclose information on users shall be implemented for platforms like airbnb. The amendment focus on transparency illustrates the necessary balance of interests between the Berlin community, homeowners and tenants.

### **What does it mean for the future**

The main point for all parties involved clearly is certainty. From this end, it appears doubtful that the new 60 days rule can solve the problem.

Airbnb has already expressed strong resistance. The platform has launched a campaign against the law in order to sensitize the Berlin community for a need of a sharing practice. The campaign is also directed against stronger information requirements.

Although the new amendment permits renting out without restrictions under public law for a certain period, the civil law relationship between homeowners and tenants remains static and complicated. Effectively, the public permission to rent the apartment for a maximum of 60 days conflicts with the requirement of the landlord's permission according to the German civil law.

Also, the registration duty at the local district authority may impact data protection issues.

From a general point of view, it is not certain that a ban on misuse of apartments can positively affect the housing market. Whereas the Berlin Senate states a return of some 6.000 apartments to the market, Airbnb also in Berlin has the highest number of users ever.

While housing market regulation is also apparent in other European metropolises such as Stockholm or Paris, the necessity of stable living space especially strikes the city of Berlin. With a quota of 86 percent of rented apartments, Berlin is a City of tenants. In this particular situation, sector-inherent interests of involved parties are more distinct. The amendment law is planned to be passed in early 2018. The law's concrete shape and further practical developments within the sharing community will show, if Berlin is still able to keep the balance.

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