



Image: BATO Group

Amendment to the Ban on Short-Term Rentals in Berlin

With booming tourism and ever-growing population in the German capital, short-term rentals have become an attractive niche in the letting market providing business opportunities for property owners and online market place operators as well as income opportunities for private hosts. In our July 2016 newsletter we had written about the ban on misuse of residential space (*Zweckentfremdungsverbot von Wohnraum*), which virtually bans holiday apartments in Berlin — an attempt of the city authorities to alleviate housing shortage. The ban went into effect in May 2016 and from May this year, an amendment of the regulation will become effective. This newsletter provides the latest information.

The Ban in a Nutshell

Since May 2016 short-term apartment lettings without official permits are banned in the German capital. The law was already introduced in May 2014, but allowed a two-year transition period for owners.

The ban generally applies to all misuse of residential space (*Zweckentfremdungsverbot von Wohnraum*) such as commercial use, e. g. office (exemptions are protected businesses such as a running medical practice), constructional changes leading to loss of residential space or demolition of residential space or vacancy. Holiday apartments seem to have become a special target.

The ban applies to all Berlin districts and allows only few exceptions. Renting out of shared apartments or mixed-use are still permitted, but only as long as the rented floor space makes up less than 50% of the overall residency.

Renting out entire apartments requires an official permit, which landlords can apply for. However, they need to justify the short-term letting and permits are very hard to obtain.

In case the space is used misappropriately, a penalty of up to 100.000 € can be imposed on offenders of the regulation.

The Current Situation

The ban has not only attracted plenty of criticism. Several legal actions were taken against the State of Berlin.

In September 2016, the Berlin Administrative Court had ruled that Berlin residents are entitled to get permits for short-term rentals of their secondary homes.

One year later, the court has ruled in favour of a landlord who was denied a permit and took a legal action against the city authorities. The landlord was permitted short-term rentals of his whole property for 182 days a year. This court ruling should theoretically apply to all Berlin residents.

Due to this course of events, the Berlin District Courts have finally submitted the case to the Federal Court for a substantial decision on the constitutionality of the law or at least parts of it. Since then, all legal cases are on hold awaiting clarification.

The Berlin Senate on the other hand claims its regulation was successful and made 8,000 apartments re-appear on the regular letting market, half of which were previously used as holiday accommodations and the other half kept vacant.

According to the current statistics, the city authorities have so far issued fines amounting 2.6 million Euros. However, while the legal cases are waiting for the court's decision, the fines cannot be enforced.

The Amendment

In the meanwhile, the Berlin authorities have issued an amendment to the current regulation as a reaction to the criticism and the legal uncertainty. The amended version is expected to come into effect on May 1 and is aimed at making private home-sharing easier on the one hand, while preventing commercial short-term letting and harshening the penalties for violations of the ban.

Second homes may be rented occasionally to holiday guests for a maximum of 90 days a year while main residences can be rented without a specific duration limit (a 60-day limit was previously discussed by authorities).

However, a registration with the city office will still be required in both cases. In the course of registration for a short-term letting, landlords will be provided with a registration number, which is mandatory to listing the property on platforms (such as airbnb, Wimdu, 9flats etc.) and makes landlords identifiable. Keeping a book on rentals will also be required as well as paying a 5% tax equivalent to the hotel tax.

A new regulation in the law states that a registration number is to be granted in case of letting main residences. This was rather an exception. Based on the ruling of the Berlin Administrative Court in September 2016 residents should also be granted permits for secondary homes. But even with the granted permit the rents will be limited to the local average rents per square metre.

The current regulation will also be changed in the way that it will no longer allow applicants for such a permit to deem the letting as approved if authorities do not respond within 14 days.

Commercial lettings of homes via holiday platforms and speculative vacancies will still be prohibited and consequences for any misuse of residential space have been harshened.

In case of persisting vacancy for just as long as three months, the authorities can intervene as a "trustee" and rent out the properties or refurbish it without owners's authorisation. The cost can be then enforced by an debt entry in the land registry. Currently, the regulation allows a six months period of vacancy.

Property demolitions could be accepted under the premise that it will be replaced with equivalent housing, meaning the property will be built in the same district and rented at similar rent prices (while in the past, any new housing development would be considered as an acceptable replacement). Demolishing cheap rental housing and replacing it with expensive freehold apartments, should no longer be possible.

Offenders of the ban on misuse of residential space could face fines of up to 500,000 Euros in future.

Concluding Remarks

As with all other measures that appear to be more symbolic rather than target the actual causes for the problems, it is no surprise that the ban attracted sharp criticism and even ended up in the decision pipe line of the Federal Constitutional Court (as it is also the case for the rent cap law and the real property tax - see our latest [newsletters](#) on these topics).

On a positive note, the amendment to the law as a reaction of the Berlin government to these events can be considered as a gesture of a goodwill allowing at least private landlords to exercise their owner's and contractual freedom rights to an extent.

On the other hand, the considerably controlling character of the regulation as well as its interference with owner's rights continue to persist. The belief that the ban will alleviate the housing crisis remains highly questionable (some criticism arose about it as a possible protectionist measure of the hotel industry).

While the Berlin Senate is confident about the success of its strategy claiming it has brought 8,000 apartments back to the regular letting market, home-sharing platform providers such as airbnb, have grown the number of guests by nearly 17% from 2016 to 2017 (to a total number of 700.000) and the number of accommodations grew by 23% to 26.000, as the *Tagesspiegel* reports.

It is also interesting to see what actual citizens think of the ban. So far, a result of representative study by a leading market research firm *Innofact*, has revealed that the majority of the German population (68.9% of the survey respondents) think that citizens should be free to rent their flats to holiday guests at any time and 55.7 % do not approve of harsh penalties in cases of offence. Even more convincing is that 71.2% of citizens believe that the ban will not impact the housing situation.

It remains to be curious how the amendment to the ban will impact the course of developments. For an individual advise or more detailed information regarding the ban on misuse of residential property, please do not hesitate to get in touch with us. ■

Please note that the contents of this newsletter have been researched and written according to the best of our knowledge; however they are in no way to be accepted as a legal advice or suggestion. Therefore we exclude any liability.

Sources

- Tagesspiegel: [Zweckentfremdungsverbot in Berlin: 8.000 zweckfremde Wohnungen zurück auf dem Wohnungsmarkt](#)
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