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lawfulness of leasing of holiday flats in Berlin in 2014

On the 12th of December 2013, the Government of Berlin launched the so called "Zweckentfremdungsverbot-Gesetz"(referred to as "the law" in the following text). This was the base for the so called "Zweckentfremdungsverbot-Verordnung" (referred to as "the by-law" in the following) which came to effect on the 1th of May 2014. The government planned to prohibit the excessive use of flats as holiday flats because available housing space is getting more and more rare in Berlin and prices are going rapidly up in some quarters.

The law regulates, that housing space in Berlin or in some of the districts should not be used for other purposes than living without permission of the appropriate district exchange if the accommodation supply of the population in Berlin for fair conditions is endangered in particular. This is exactly what the by-law declares for all districts of Berlin. That means, that beginning with the 1st May 2014, it is forbidden by law to rent out a flat for other purposes than living. Breaches (administrative offenses) of the landlord will be punished with penalty of up to 50.000 EUR.

What is "Zweckentfremdung" (wrongful use)?

The most important and legally defined cases of a wrongful use are:

- ? leasing as holiday flat (rental contract days or weeks)
- ? leasing or use for business purposes
- ? vacancy for more than 6 month

The responsible administration will check if there is a wrongful leasing of holiday flats. In individual cases it might be tricky to differ between wrongful use and for example allowed temporary lease of an furnished apartment which can be legal within a certain period. But in the normal case ? lease of a flat for only some days or weeks ? the authorities will be likely to decide for a wrongful use.

Are there exceptions?

The law includes exceptions respectively interim arrangements. If the flat was already used for example as holiday flat before the 1st may 2014, the landlord is allowed to continue for two years. This requires an announcement within 3 month towards the district exchange. The landlord may be asked to prove, that there was a wrongful use before the 1st May 2014 as the case may be. The last deadline is the 31th of July 2014. If the wrongful use is not announced until this date, future use as holiday flat of business use is prohibited.

The alternative possibility of an exception will be very rare. The administration will have to check in the individual case, there is for example a public interest or danger of destruction of an existence. Both won't be very likely for the ordinary real estate investor.

What are the risks?

Beaches of the by-law will be detected piece by piece. At first, tenants will report to the

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After that, the district exchange can (and will) impose a fine up to 50.000 EUR within the administrative offenses case. The penalty will presumably rise with if the wrongful use is continued. Besides, the employees of the district exchange can use administrative force and enter the flat.

What are the alternatives?

It is unclear at the moment, if and under which requirements there will be exception. From the legal point of view it will be dangerous to use a flat as holiday flat (or other wrongful use defined in the by-laws) for the first time. Existing holiday apartments may be continuously used for this purpose if this is properly announced. In the meantime landlords should consider alternative uses. It still seems possible to rent out furnished flats to non-tourists (eg. business people, trainees or exchange students) as long as they are not only visitors. But this will be a fine line.

There still is a chance, that the by-laws will be declared as ineffective. In 2003, the Federal Administrative Court of Germany decided about an old "Zweckentfremdungsverordnung" and declared it as illegal because there was enough housing space available for the population. But times have changed and some statistics tell different stories nowadays although there still are voices claiming the opposite. As a landlord I wouldn't bet on such a happy end so the market will have to deal with the law and by-laws until the real estate situation in Berlin changes.

If the apartment was verifiably already used as holiday flat before the 1st May 2014, landlords should announce the continued use immediately. After this interim period, landlords are risking high fines as landlords who try to establish new holiday flats in Berlin.

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