

Airbnb, regulated eldorado

While Airbnb has been igniting the temporary rental market in recent years, this trend, now established, often comes with legal surprises for both owners and tenants who sublet their property.

Indeed, it is legally important to distinguish traditional temporary rentals from those contracted via collaborative economy platforms such as Airbnb.

For this second option, the essential difference lies in the fact that the property is literally withdrawn from the ordinary rental market, and thus changes its use. In Lausanne, more than 3,500 housing units are affected by these new platforms.

How does it work?

In the canton of Vaud, the Council of State has reacted to the growth of collaborative economy platforms that list the properties available in the canton.

In order to better regulate them, he is now asking to register with the authorities of the municipality, where the rented property is located.

They thus keep an up-to-date register which will make it possible to verify the limit set at 90 days per year. This number roughly corresponds to the length of school holidays, and on the other hand, to that of a tourist visa. After this period, it will be compulsory to request an additional authorization, as well as to declare its activity to the canton, to the housing division.

Landlord tenants, some rules to follow

Provided that it complies with the law of the lease, the conventional sublet may apply to his home, in part or in its entirety. Indeed, the Fédération romande immobilière (FRI) considers it legitimate that a tenant who leaves his home for a short period, for a stay abroad for example, must be able to return there without complications.

In this case, only the benefit of the tenant, now lessor, must be announced. In addition, it cannot in any case exceed 20%.



Tourist taxes and tax declaration

With Airbnb, nothing is that easy, because a different regime applies. On the one hand, the money generated by this collaborative economy platform is subject to income tax, and on the other hand, the lessor tenant will have to pay tourist taxes.

Violating these obligations exposes fraudsters to penalties of up to tens of thousands of francs, as well as a ban on renting the property.

Risks and Responsibilities

As a lessor tenant, even if he carries out the sublet, he is solely responsible in the event of damage, refusal to leave the premises, as well as non-payment of the rent. According to the Code of Obligations, as there is a conclusion of a sublet, he must imperatively seek the agreement of the owner and the management, otherwise he incurs a termination of the lease contract.

Despite the strong growth in Airbnb's adoption rate, agencies rarely receive such requests. Regular checks are carried out to dislodge fraudsters.

What protections for the owners ?

On the one hand, according to the framework contract in French-speaking Switzerland, the owner has 30 days to accept the subletting of his property. This rather long delay almost always makes it possible to refuse its introduction on collaborative economy platforms.

On the other hand, to be valid, a sublet must always be concluded for a specific period. However, a lessor tenant who sublets his property frequently on Airbnb will not be able to determine a deadline.

Finally, if the ad includes photos of the co-proprietary

propriété on Airbnb, by advancing a disruption of the privacy of neighbors as a major inconvenience, the owner can refuse the sublet.

A stable situation

Even though there has recently been talk of promoting repeated short-term subletting, the Federal Council has rejected this draft revision of the Federal Ordinance on rental leases and farm leases of dwellings and commercial premises. (OBLF), because it would have caused inconvenience for the other inhabitants of the buildings, and above all reduced the supply of housing on the rental market.

What about condominiums?

The regulation

Whether owner or tenant, a landlord who passes on the building access code to strangers can cause internal conflicts or instill a feeling of insecurity.

Indeed, it is not uncommon to observe complaints related to comings and goings in the hallways, non-compliance with house rules, and the presence of strangers in the common areas.

A person who would put his apartment on Airbnb could thus be prohibited from practicing by his PPE. The final decision usually comes from the house rules.

The argument put forward is that putting your apartment online on collaborative economy platforms constitutes a change in the destination of the condominium, and thus requires the unanimity of the assembly of co-owners. It is therefore advisable to modify its regulations, in order to prohibit such use, if we want to preserve the private framework of the property, for example.

Measures for the territory

On a broader level, ASLOCA wishes to take land use planning into account in order to prevent Airbnb-type commercial offers from invading housing districts in tourist areas or cities in general.