

New World of Short-term Lettings and Leasehold Apartments



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The Airbnb internet phenomenon is a boon for tourists, who find accommodation in popular destinations at a fraction of the cost of a hotel.

But in some cities the explosion of holiday lets is beginning to cause serious concern.

In London, these rental sites are at the centre of a battle between the Government and the individual councils that govern the city's boroughs. Until recently it was illegal to rent a property in London for a period of less than 3 months (without planning permission).

But now the law has been changed and properties may be let for up to 90 days per year on a short term basis without planning permission. The Government say this will allow Londoners to benefit from the “Sharing Economy” without the disproportionate need for planning permission; however, by limiting the period to 90 days in any year they will stop people turning their properties in permanent short-term letting businesses.

London Councils say that they cannot police the 90 day restriction and argue it is increasing the housing shortage as people seek to rent out their homes for financial gain. In Camden Airbnb shows more than 1,400 listings, the £154 average price per night for an entire property is 140% per cent higher than the median rent for the borough.

The Government does, however, make one other point clear in the amended legislation, “*the changes will not affect any existing clauses in tenancy contracts which prohibit sub-letting*”. In English that means it does not change any restrictions imposed on Leasehold Apartments.

What are the Rules for Leasehold Apartments?

In relation to leasehold apartments (as opposed to freehold houses) what you may or may not do is covered by the terms of your lease. In areas that are historic holiday destinations (Cornwall’s coast for example) some leases allow

properties to be let out as short term Furnished Holiday Lets (FHL). If this is allowed in the lease then whether you use Airbnb or some other letting agent is purely a matter of personal choice.

Outside historic holiday destinations most leases do not allow short-term lettings. Therefore, the use of sites like Airbnb is likely to be a breach of your lease and could cause all sorts of expensive issues for owners involved.

What do Leases Not Allow?

Long residential leases account for the ownership of 99% of all UK privately owned apartments. This style of lease usually includes 3 clauses that will individually or collectively make the use of Airbnb type sites impossible. The clauses are:-

1. The property must be used solely as a single residential unit and may not be used to carry on a business or trade.
2. The property may not be sublet, or may not be sublet except as a whole (often with an added clause that it may not be let for less than 3 or 6 months).
3. The leaseholder must not do anything to invalidate the insurance of the building.

Clause 1. forbids the use of your apartment as a business and requires it to be used only as a single family dwelling. As such you may not take in paying guests to your spare bedroom or let the property as an overnight / weekly rental, as this is both a business and not a use that would qualify as a “single residential dwelling”.

Clause 2. Self-evidently bans you from letting the property and or letting the property on a short term basis (less than 3 months) totally.

Clause 3. Most building insurance policies would be invalidated by the carrying on of an apart-hotel, short-term let or bed and breakfast activity in the building. In the event of an insurance claim being made this may make the owner who carries out such activities responsible for the entire claim. Imagine the claim involved a substantial fire in a block of 20 apartments this could be millions of pounds that one owner may become liable for.

Why Can't I do what I like with my Apartment?

Many residents ask why they can't do one thing or another in their apartment (have a pet, put down parquet flooring, change the style of their windows, etc.). The answer is almost always “because that is what it says in your lease”.

When you buy an apartment you are not just buying a piece of real estate, you are also signing up to be a part of a “community”. The rules of the community are laid down in the leases. If the lease bans the use of the apartment for short term lettings all the other residents must be able to rely on these community rules being enforced equally and fairly to all residents.

Why were these restrictions put in in the first place?

Developers wish to sell their apartments for the maximum price. In some areas and at some-times the best price will be to a buy-to-let landlord and subletting will be allowed (usually subject to rules and minimum tenure periods of 3 or 6 months). In some areas and at some-times the best price will be to the FHL landlord, this may also be a requirement of the local planning permission.

But in many areas and most of the time the best price has been to sell to owner occupiers, who will pay a premium not to live next door to a mixed group of asylum seekers or a stag-party over from Germany for the weekend. These clauses protect the owner-occupier against disruption, disturbance and increased costs; it is part of their right to “quiet enjoyment” of their home.

[It is undoubtedly true that sublet tenants are harder wearing on the common parts of a building than owner occupiers. Sublet tenants that only stay for a night or two will be even more so. The cost of the additional wear and tear will be borne by the service charge to which every apartment owner is pay for, regardless of who is benefiting from the short term letting income.]

If you need help or advice about subletting why not talk to your Managing Agent or Freeholder first. It could save you and your neighbours a lot of hassle further down the line.