

Online listing of property for holiday lets in Dubai: Key considerations

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August 2015

Of course, the industry itself is not new. People have always been keen on generating money from property assets, and whether you are a family going on a vacation or simply an individual with extra room in your house, renting out property can prove to be an easy way to generate extra income. It begs the question: what is the driving force behind the recent rise in holiday rentals across the world?

Undoubtedly it is the growing success of what is now called the “sharing economy”, i.e. a business model built on sharing resources enabling individuals to borrow or rent assets owned by someone else, often through the use of websites that promote peer-to-peer (P2P) transactions. A perfect example of this is Airbnb, which is a platform that enables individuals and companies alike to offer travellers and transients, for a fee, short-term accommodation ranging from a sofa bed to entire villas and everything in between. However, such accommodation is not reserved solely to leisure travellers. Since its launch in August 2008, the platform has recorded over 25 million guests, and its listings surpassed 1 million properties worldwide, putting it on track to become the biggest “hotelier” in the world.

In light of the increasing popularity of holiday lets, and the increasing accessibility to this market for customers via online platforms, this article considers key issues that any host should be aware of, prior to listing a property online in Dubai, in order to comply with current laws and regulations.

Ownership Restrictions

In principle, an owner of a property is free to dispose of and manage its property as it wishes, provided that it does so in accordance with applicable laws, regulations and any contractual obligations that the owner must adhere to governing its ownership and/or occupation (including obligations to and in respect of the community where the property is located).

Prior to listing a property online (whether for overnight stays or otherwise), a host will need to carefully examine the terms of the sale and purchase agreement pertaining to the property, and in particular the Jointly Owned Property Declaration and the applicable Community Rules (“Governing Documents”). These Governing Documents are generally intended to preserve and enhance the property values and assets of the community as a whole, and the owner of a property is obliged to abide by them.

Often, the Governing Documents for residential property in Dubai contain restrictions that prohibit commercial activities in the property, including, but not limited to, the renting out of the property on a short-term basis. Developers and community managers are usually concerned that a commercial use of the property, whether through short-term leasing or otherwise, may negatively affect the image and value of the building or development, or be a potential source of disturbance for the other homeowners and occupiers. If these restrictions exist in relation to a host’s property, the host should seek prior written clearance from the community manager.

Tenancy Restrictions

When occupying a property as a tenant and not as an owner, an additional factor comes into play. The tenant's rights and obligations to the landlord are set out in the lease agreement signed with the landlord, and a violation of the lease terms may result in termination and eviction from the premises. The unauthorised subleasing or sharing of a property (whether in whole or in part) is grounds for termination pursuant to Section 1(b) of Article 25 of Law No. 26 of 2007 Regulating the Relationship between Landlords and Tenants in the Emirate of Dubai (as amended by Law No. 33 of 2008) (the "Tenancy Law").

Therefore, the tenant should verify whether its lease agreement allows for subletting or sharing, and if so, on what conditions. The tenant should also be mindful that, pursuant to the terms of Article 24 of the Tenancy Law, subletting is prohibited when the lease agreement is silent on the issue.

DTCM Regulations

Pursuant to Decree No. 41 of 2013 (the "Decree"), any person who wishes to operate a holiday home in Dubai ("Holiday Home") should observe and comply with the licensing requirements of the Department of Tourism and Commerce Marketing ("DTCM").

A key question in this context is whether the online listing of a property for short-term rental constitutes operation of a Holiday Home under the Decree and therefore requires licensing.

Proponents of deregulation may argue that the online listing of properties for short-term rental differs from the activity of operating Holiday Homes under a strict interpretation of the Decree. They would suggest that:

- Many of the hosts are listing their properties online on a casual basis as opposed to a "regular and continuous" basis as mentioned in the Decree.
- The properties are not necessarily marketed (or used) as holiday accommodation.
- Many of the properties listed online are not "integral units" as provided for in the Decree (i.e. whole apartments, villas, etc.), but rather rooms or even beds and sofas.

Although these dissimilarities do exist, they are not necessarily the rule. In many cases, when listing properties online for short-term rental, the hosts are doing so "on a regular and continuous basis" and the subject of the listing may be a full integral unit.

Additionally, obliging the licensee to "hire out holiday homes as an integral unit rather than partially as separate rooms or beds", could be interpreted as impliedly allowing the rental of part of the unit (beds, sofas, etc.) without a licence, i.e. falling outside of the scope of the Decree. However, we are of the opinion that the Decree prohibits the hiring out of separate rooms or beds, rather than suggesting that this would not be caught by the DTCM licensing requirements.

We understand that the DTCM considers the online listing of property for short-term rental as an activity that falls within the scope of the Decree and is therefore subject to the Decree's licensing requirements for Holiday Homes. Those requirements include the following:

- The rental and operation of Holiday Homes is an activity restricted to licensed operators appointed for this purpose by the owners of the properties. For the operators to be licensed, they must have, for the first phase of applications before the DTCM, a portfolio of no less than 20 Holiday Homes (the "Licensed Operators").
- Holiday Homes will be classified by the DTCM as either standard or deluxe and inspected from time to time to ensure compliance with the Decree.
- Holiday Homes must be licensed by the DTCM and for this purpose must meet a number of operational requirements (e.g. a night guard for a building and residential complex, a security camera for a private villa, an identifying number installed on the door of each unit, display of a signboard with the property name and classification, and water and electricity included in the fee without additional charge) including the requirements of other authorities, namely the Civil Defence Department.

- Holiday Homes must not be rented on a shared basis (i.e. multiple occupation), and can be hired on a daily, weekly, monthly or yearly basis.
- The Licensed Operator should maintain an insurance policy, in such terms and under such conditions as specified by the DTCM, to cover for damage and loss occurring in the Holiday Homes.
- The Licensed Operator will be required to participate in the electronic program of guest registration for hotel and tourism establishments and is expected to maintain paper and electronic records and allow access to same by DTCM employees.
- The rental of Holiday Homes is subject to Executive Council Decision No. 2 of 2014 approving the Tourism Dirham in Dubai, and Licensed Operators are required to collect the applicable tourism fee from the guests for each confirmed booking.

These regulations should not be taken lightly. Pursuant to Resolution No. 49 of 2015, failure to comply with the requirements of the DTCM can result in fines that range from AED 200 to AED 20,000. Repeat violators can also expect to pay double (capped at AED 100,000) if any violation occurs twice within the same year. For more information regarding the fines, please refer to our article 'Regulation of Hotel Establishments and Holiday Homes: New Fees and Fines' in the February 2015 issue of Law Update.

As discussed in this article, many laws and regulations come into play in the short-term rental market of Dubai with a click of a button. It is for that reason that a host should carefully comply with the various laws, rules and regulations, including licensing requirements when deciding whether to list its property online.

Should you have any questions in connection with this article or the legal issues it covers, please contact Tara Marlow (t.marlow@tamimi.com), Partner, Regional Head of Hospitality or Malek Al Rifai, Associate, Property & Hospitality (m.alrifai@tamimi.com).