

Rights, obligations and recourse for short-term rental properties

"In recent years, sectional title properties have grown in popularity to become the preferred choice of holiday accommodation in most destination hotspots and therefore also the most attractive property type for buyers seeking short-term buy-to-let investments," says Brett Leon, MD of Lew Geffen Sotheby's International Realty, Atlantic Seaboard and City Bowl.



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"And, if investors do their homework with regards factors like location and expected facilities and services, these investments can yield excellent returns despite the prevailing economy and market conditions."

However, with the advent of online booking spurring short-term letting, it has become an increasingly contentious issue, especially in complexes where it regularly occurs and the day-to-day lives of long-term residents are routinely disrupted.

Short-term letting not defined

Sectional title owners are legally entitled to let their properties for any length of time they choose, (subject to the relevant laws, title deed conditions and the complex's approved rules) and in terms of the sectional title acts and rules, the concept of short-term letting is not defined nor specifically regulated.

“However,” says Leon, “this fact should not lull owners into complacency regarding their tenants' conduct as provisions are made in the Sectional Titles Schemes Management Act 8 of 2011 (STSMA), Management Rules and Prescribed Conduct Rules which bind both owners and tenants.

“The rules state that it is an owner’s duty to ensure their tenant’s compliance with the conduct rules of any communal or exclusive use area. It furthermore provides that the rules within a sectional also title bind the body corporate.

“Additionally, many landlords are unaware that the Sectional Titles Schemes Management Act requires them to inform the body corporate of any change in ownership or occupancy of the unit and to provide the names and ID or passport numbers of the occupants.

“Owners or their letting agents are also legally obliged to give their tenants a copy of the scheme’s conduct rules, including details about security arrangement, which must be signed by the incoming occupants. And owners will remain responsible for the actions of their tenants.”

Role of trustees

By the same token, the trustees are tasked with the duty of managing and administering the common property and the enforcement of the rules of the scheme whilst at the same time not unreasonably restricting the proprietary rights of investment owners to obtain the highest rental return.

However, the STSMA does also make provision for owners/the body corporate to modify the standard rules or to add new ones specific to their set of rules and regulations and codes of conduct.

For instance, they can change the hours of use of communal amenities like swimming pools or braai facilities and limit the number of people who may attend a gathering in a single unit.

But for any modifications to be enforceable, they must be formally passed by a special resolution of the body corporate and then approved by and filed with the Community Housing Schemes Ombud.

Leon says that if scheme rules are to be fair and not discriminate against investment owners, they should address the specific actions or behaviour of the short-term tenants, rather than include blanket bans or overly restrictive rules.

“Up till now, there have been few material rulings regarding this sector, so until a High Court ruling has been established in this matter, it will continue to be a contentious issue which makes it critical that owners and trustees work together, especially to find solutions if any problems arise.”