

Can a VvE ban AirBnB or Short Stay?

A previous blog has already extensively discussed the requirements to start a bed-and-breakfast (read this blog here).

A situation that also regularly occurs is that within an apartment building properties are used for AirBnB or short stay. Especially during short stays this can be a nuisance. A group of tourists spending a long weekend in Amsterdam can usually be a bit noisier than the average resident. For example, we are aware of cases where the common areas (corridors, elevator, stairwell) have been damaged.

The question is whether the VvE can prevent such use and how. Most split certificates (based on the model regulations) state that the owner may only use the apartment according to the purpose stated in the deed. If the apartment's purpose is living, then the question is whether renting for AirBnB or Short Stay is contrary to that purpose.

Case law shows that especially with regular short stay rentals this is contrary to the purpose of living. In several judgments it has been determined that living is a matter of 'permanent residence' and that a short stay does not fit in with this. See, for example, this judgment.

For an VVE, it is advisable to explicitly include the ban on renting out for AirBnB or Short Stay in the demerger deed or the internal regulations (the latter is easier to achieve in practice than amending the demerger deed). In this way, there is clarity for all apartment owners. The VVE often also has the possibility to impose fines in case of violation of this prohibition, in order for an extra means of pressure to prevent unwanted rentals. These fines must also be recorded.

However, it is not always the case that a rental on the grounds of AirBnB or short stay is in conflict with the purpose of living. If, for example, an apartment owner is abroad once for 3 months and rents out once for that period, this does not have to detract from the sustainable use as a home. In that case, such an occasional rental does not conflict with the purpose of living. An example of this in this ruling.

It must therefore always be taken into consideration whether a rental for short stay or AirBnB purposes is prohibited. Usually, this rental will be in conflict with the living purpose, so that the VVE can prohibit this use and even impose fines. If it is an occasional rental, it may be different in some cases, but that is an exceptional situation.

Does this situation look familiar to you or would you like to discuss the situation in your home office? Feel free to contact us.

Lawyer Ginio Beij (beij@m2advocaten.nl)