

# Compulsory registration of tourist rental properties in Andalusia

## What do I need to do to rent my house to tourists? Is it now forbidden to rent properties in Andalusia for holiday periods? Do I need to register my property with the Andalusian Tourism Council to be able to rent?

Following press publications about the new laws ruling the tourist homes and accommodation in Andalusia we have been asked a lot of questions of this kind. Let us shed some light on the issue.

After the last amendment of the Law of Urban Rentals (LAU) by Law 4/2013 of 4 June, of easing measures and promotion of the property rental market, “the temporary transfer of use of a furnished and equipped property ready for immediate use, marketed or promoted in tourism channels and with the aim to obtain a profit, when it is subjected to a specific regulation, derived from its industry regulations” was excluded from its scope.

As a result of this modification of the LAU the touristic rentals (very short term) were placed under the control of the regional Governments (Comunidades Autónomas) forcing them to adopt specific laws to rule such activity. The regions with more tourist weight are the first that have already carried out such regulation, and now, after Catalonia, the Balearic and Canary Islands, Andalusia has approved the Decree 28/2016, of 2 February, of Tourist Homes of Andalusia. The Decree was published in the Official Gazette of Andalusia (BOJA) on 11 February 2016 and according to its fourth final provision it will come into force three months later, that is on 11 May 2016.

## What are the reasons for this change in regulation?

There are several and varied, and they are expressed in the preambles to the aforementioned legal texts:

- Strong pressure from hostelry and tourism entrepreneurs and companies that fight the unfair competition from not regulated “private” tourist rentals. This situation has worsened considerably with the emergence and rise of web platforms and applications that allow unlimited access to the users to this type of private accommodation at more affordable costs.
- The need to establish minimum guarantees of control, quality and safety for users of tourist accommodation.
- For reasons of public safety, as regulated establishments have to keep control and record of the identity and particular details of the users of tourist accommodations.
- Protection of the nature and urban environment, as areas with an eminent residential use have become areas with a massive affluence of tourists looking for cheaper accommodation away from downtown or most crowded tourist areas.
- The need to bring out the underground and non declared activity that exists in tourism. Being a key industry for the Spanish economy, the authorities cannot afford to leave any activity related to tourism exempt from taxation.

## What is a tourist rental property or a holiday property?

According to Article 3 of the Decree they are those dwellings located in buildings placed in residential land, where accommodation for tourist purposes is provided for a price and on regular basis. Regularity and tourist use will be presumed when the property is offered and promoted in tourism channels (travel agencies, real estate agents, companies that intermediate to supply accommodation, internet platforms, applications, etc. that offer the property rental and include the possibility to book the accommodation).

## What is not considered a tourist rental property or a holiday property in the light of the wording of the law?

Article 1.2 of the Decree excludes:

- Properties that are offered as tourist or holiday accommodation free of any charge.
- Dwellings that are rented to the same person for continuous use for more than two months.
- Properties located in rural areas that have a specific regulation.
- The group of three or more dwellings of the same owner located in the same building or in different developments, as they shall be ruled by the laws applicable to Tourist Apartments.

**In addition, and interpreting Article 3 cited above, we can conclude that those houses that can be rented sporadically by less than two months but that are not offered through tourist channels (agencies, brokers, platforms, applications, etc., that allow to promote, offer and book the accommodation) would be also excluded and would therefore be regulated by the LAU. Thus, when the offer is not made by tourist channels, the properties are outside the regulatory scope of this decree and, therefore, they do not have to comply with the requirements contained therein.**

### **What requirements must be met by the tourist rental or holiday properties?**

Article 6 of the Decree establishes the following requirements:

- The property must have Occupation License.
- The rooms must have direct ventilation to the exterior or to inside patios and a system to darken the windows light.
- They must be adequately furnished and equipped with the appliances and utensils required for immediate use and according to the number of people that can be accommodated.
- The property must have fixed air conditioning systems if rented from May to September and heating if they are rented from October to April. Owners will have one year from the entry into force of the Decree to adapt their properties to this requirement.
- They need to have a first aid kit.
- They must provide tourist information about the place, leisure areas, restaurants, grocery stores, closest parking facilities, medical services, transportation, as well as maps of the city and entertainment guides.
- To have a complaints book.
- To provide cleaning service at the entrance and exit of new customers.
- To provide bedding and household clothes in general according to the accommodation capacity, as well as a set for replacement.
- To provide the owner or operator's phone number for incidents.
- To provide information on the use of the appliances and installations.

The decree in Article 5 distinguishes between two types of holiday properties:

- Complete: when the whole dwelling is rented.
- By rooms: when only certain rooms in the house are rented. In this case the owner must also reside in it.

The use will be restricted to what is allowed by the Occupancy License for that property, although in the case of complete use the lodging shall not exceed fifteen people and six, if it is rented by rooms. In both cases, moreover, places are limited to a maximum of four per room.

### **What should I do if my dwelling falls into the category of tourist rental or holiday property?**

Before starting to give the service the owner or operator must formalize the declaration of responsibility to the Andalusian Council of Tourism in which the compliance with the requirements of the Decree has to be stated. Having made this statement, you can advertise your home for tourist use and begin the activity.

In accordance with the decree this declaration must contain at least:

- Identification details of the property, including the cadastral reference and its capacity determined by the Occupation License or equivalent document.
- Information about the owner and address for notifications.
- If the operator of the activity is not the property owner, the operator's details must be provided, as well as the title allowing him/her to rent (contract with owner). If the property is owned by several people, the operator must have an empowering title (contract) granted by each and every one of them.

These homes will be officially registered in the Tourism Register of Andalusia and the ups and downs will be communicated to the municipalities where the properties are located and to the Council responsible for housing.

Once the property is registered, the applicant will be notified and will receive the registration code which must be included in all advertising and offers made for the property by any means.

### **When do I have to submit the declaration of responsibility and register my property as tourist rental accommodation? Can I do it now?**

The technicians of the regional Government (Junta de Andalucía) have already confirmed that there is no obstacle to submit now the responsible declaration to the Council of Tourism of the Junta de Andalucía, although the Council will not proceed to register and therefore will not provide the registration number until the Decree comes into force on the 11th May 2016. Bearing in mind that the Decree will entry into force at the start of the summer high season and there will be a rush of applications at that time, it would be convenient to start proceedings as soon as possible in view of the sanctions that can bring their lack once the norm enters into force.

The responsible declaration does not need to be accompanied by documentation of ownership, licenses, etc. This documentation must be available to the inspectors in the actual property.

The declaration can be submitted online if you have an enabled digital signature. Otherwise, after being completed and signed, the application form given by the authorities can be presented before the delegation of the Tourism Council in the province where the property object of the declaration is located.

After the responsible declaration pending from resolution that will eventually give you the registration number is submitted, you will have the right to offer the property in the tourist channels without it being considered a clandestine activity. Therefore, from the submission of the responsible declaration the property can be openly offered and the activity can take place, although the relevant registration number that must be included in offers or advertising has not been received yet.

### **Who is responsible and what could be the sanctions?**

Article 4 clearly states that the operator of the activity is responsible before the Administration and the users. It is presumed that the operator is the owner (or owners) of the property, unless otherwise indicated in the responsible declaration, and in this case, as we have seen, he/she must have a qualifying title granted by all the owners.

With regard to the penalties, Article 10 of the Decree brings us to Title VIII of Law 13/2011 of 23 December.

Breaches of the tourism legislation are classified as minor, serious and very serious.

Minor infringements are, among others:

- Not to provide all the documentation on time.
- Deficiencies in the service in accordance with the contracted or agreed terms, deficiencies in maintenance and malfunction of facilities or cleaning service.
- To treat the users rudely.

- The non-compliance of customer registration, preservation of documents, etc.

These infractions expire six months after they were committed.

Serious offenses are, among others:

- The clandestine provision of tourist services and the mediation in the recruitment of these clandestine services.
- A serious offence to the user of the service.
- The failure to provide the required communications upon request made to that effect and false data provided in the declaration of responsibility.
- To charge or try to charge higher prices than those agreed, published or exhibited to the public.
- The lack of procurement or maintenance of insurance and guarantees required, the lack of complaint book, etc.

These offenses expire a year after they were committed.

Very serious infringements are:

- The access restriction or the unjustified expulsion of users for reasons of race, religion, sex, etc.
- Obstructing inspection services.
- The offenses that seriously jeopardize the tourist image of Andalusia.
- Recidivism in the commission of grave breaches, etc.

These infractions expire two years after their commission.

Sanctions could be main, ranging from a warning to a fine, and accessory, that may result in the temporary suspension of the activity and the temporary closure of the establishment and even in the termination of the activity and the definitive closure of the establishment.

Minor penalties carry from a simple warning to fines of € 2,000 maximum.

Severe penalties will be punished with fines ranging from € 2,001 to € 18,000 and a possible closure of the establishment for less than 6 months.

Very serious infringements are punishable by fines between € 18,001 and € 150,000 and a possible closure of the establishment for a period between 6 months and 3 years.

Sanctions will be imposed taking into account the circumstances in which they were produced and they are regulated according to a serie of criteria, such as: intentionality, injury or risks caused, recidivism, benefit obtained from the infringement, the economic volume of business, the social significance of the infringement and the amendment of irregularities during the procedure, among others.

## **How must the contract with the users of the tourist accommodation be formalized?**

At reception users will be given a document, like a contract, stating at least the name of the person or company that operates the activity, the registration number in the Registry of Tourism of Andalusia, the number of people who will occupy the property, checking in and checking out dates, the agreed price for the stay and the operator's contact telephone.

Users must present their identification documents so that the operator can complete the corresponding customer registration.

A copy of the contract, once signed by the user, must be kept by the operator of the service, and must be available to the competent authorities for a period of one year.

The parties are free to agree the checking in and checking out hours. If nothing is agreed, it will be understood that the right of occupancy of the dwelling begins at 16:00 hours of the first day of the contracted period and ends at 12:00 pm on the last contracted day.

## **Guest Register Book**

The operator of the service is obliged to keep a guest register book and to forward a copy of the guest registration forms to the Police.

The guest registration forms must be filled in and signed by all guests over the age of 16 and should include at least: number, date of issue and type of identification document, full name, sex, date of birth and country of nationality of the customer, arrival date and registration code of the holiday property in the Registry of Tourism of Andalusia (or name of the person or company that operates the activity).

The guest registration forms must be incorporated to a guest register book that shall be kept within 3 years after their arrival.

The information contained in the guest registration forms must be forwarded to the Police Authorities within 24 hours following the guest arrival date by any of the following means:

- Delivering in person at the Police Station or, failing this, at the Civil Guard office, copies of the guest registration forms or sending them by fax.
- Submitting the data in person using magnetic media.
- Via Internet. Access to the online system created to this effect must be requested by the interested party in person before the Police Authorities.

## **Price and booking**

The prices of tourist services can be freely stipulated.

The prices must be displayed in a visible place in the holiday home.

The price list, as well as invoices for tourism services actually rendered or contracted, must be broken down by concepts and written, at least in Spanish.

Prices for all services that are offered shall be final and complete, including taxes. Where applicable, any price increase or discount and all the additional costs passed on to the user must be broken down.

In all cases the price shall include the supply of water, electricity, heating, cooling, cleaning upon arrival and use of bedding, kitchen and bathroom clothes.

The terms of price, reservation and advance cancellations shall be governed by the agreement between the parties and in any case they must be publicized prior to the booking. When making the reservation, a receipt including those terms must be provided. If nothing has been agreed, operators may require a deposit at the time of booking of a maximum of 30% of the total cost of the stay.

In case of booking cancellation by the user, the operator may retain up to 50% of the deposit paid at the time of booking if the cancellation is made up to 10 days before the entry date and the total amount if the cancellation is made within a shorter period.

## **Taxation**

Tourist rentals will be taxed as any other urban leasing included in the LAU, that is, the income from the activity has to be incorporated to the annual income tax return. There is no need to register as self-employed at the Tax Office and it does not either imply the payment of VAT, unless the exploitation is carried out by a company.

## **Summary**

**If your intention is to rent for long periods or for vacation periods but over two months and to the same person, or even if you rent for shorter periods but do not offer such services through the usual tourism channels (estate agencies, travel agencies, intermediate management and maintenance companies or other platforms, channels and applications that allow offering the property and direct booking), this rule is not applicable to you and therefore there is no need to do anything.**

**Otherwise you must take the appropriate steps to ensure that you or the person you have entitled to provide those services proceed to register before the Council of Tourism by delivering on time the responsible declaration and meet the requirements set out in the Decree to the effect of preventing the substantial penalties that could be faced.**

**At VO Lawyers we can verify if your rent agreements or the use you give to your property are regulated by these new rules, and if that is the case, we offer a comprehensive service that includes advisory on compliance of the law requirements, collection of all relevant documents and preparation and presentation of the responsible declaration before the appropriate delegation of the Council.**