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COULD AIRBNB'S BECOME A THING OF THE PAST IN SOUTH AFRICA?

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Introduction

Why is the South African tourism industry up in arms about the latest craze to hit our shores since Uber?

Well this article, seeks to explore and answer this question. Hospitality groups are placing pressure on government to implement laws legislating Airbnbs' and enforce stricter rules on persons involved in running Airbnbs'. This has resulted in the proposed Tourism Amendment Bill, which was gazetted on the **12th of April 2019**.

The Bill has led to question being raised as to why the legislature is adhering to certain hospitality groups demands and placing more rigorous rules on landlords who are utilizing Airbnbs' as a way to make extra money. Well,

this is due to the fact that the hotel industry in South Africa is losing millions daily, as tourists seem to prefer Airbnbs' to conventional hotels.

The decrease in hotel stays in South Africa can be attributed to the fact that staying in Airbnbs' allows tourist to properly immerse themselves in the day to day lives of everyday South Africans as Airbnbs are predominantly located in individuals' homes in residential areas thus offering tourists a real taste of what it means to be South African. Furthermore, Airbnbs' have proved to be a convenient mode of travel, that assists in fighting tourism overcrowding and offers competitive pricing making it virtually impossible to resist.



While the CEO of the Tourism Business Council of South Africa, has claimed that the “stab” at Airbnb is not in any way of a personal nature, he stands by his argument that Airbnbs’ need to be regulated¹. The just of the argument is that Airbnbs’ are not regulated like other ordinary establishments in the tourism fraternity (i.e. hotels) and thus do not have to adhere to the same uniform rules and standards. Owing to this, Airbnbs’ are able to undercut their competition by virtue of their meniscal operational costs and/or overheads², which the proposed Bill aims to bring to an abrupt end in the near future.

What changes are proposed by the bill?

The Bill proposes that the Minister of Tourism will be given legislative powers to determine “thresholds” with regards to short-term home rentals. The change proposes to come in the form of an amendment to **Section 7** of Act 3 of 2014³ to include subparagraph (v)-

Section 7 of the Tourism Act states the following:

- (1) The Minister may, by notice in the government gazette and after following the consultation process contemplated in subsection
- (2), determine— (a) norms and standards for—
 - (i) practising responsible tourism contemplated in section 2(2);
 - (ii) achieving service excellence in the tourism sector;
 - (iii) promoting the objects of this Act;
 - (iv) the provisioning of tourism information services to the public; and
 - (v) thresholds with regard to short-term home rentals.

The next question on everyone’s mind is what constitutes a short-term home rental? The amendment Bill defines short-term letting as “renting or leasing on a temporary basis, for reward, of a dwelling or part thereof, to a visitor”⁴.

¹ <http://www.sacommercialpropnews.co.za/property-companies-news/8998-knives-out-for-airbnb.html>

² n 1 above.

³ Tourism Act 3 of 2014.

⁴ Tourism Amendment Bill Notice 228 of 2019.

The amendments will allow the Minister, more specifically government to place restrictions on the amount of nights an Airbnb may host guests, the amount of money an Airbnb and/or landlord may charge and the location of the Airbnb. All of which is argued to be in the interest of “fairness”.⁵ However, the proposed restrictions imposed on Airbnb’s could be devastating to those using the platform as a source of income, especially considering that in last year alone Airbnb’s accounted for R8.7 billion and twenty-two thousand jobs.⁶

Airbnbs’ and Sectional Title Schemes?

It should be borne in mind that, sectional title schemes operate differently to full title households. Instead of individual decisions being the focal point, as in the latter scenario, sectional titles require the collective to decide on the operations within a sectional title scheme. Furthermore, owners and tenants (“members”) living within a sectional title scheme are obliged to comply with the relevant schemes conduct

and management rules and may be levied with a fine or penalty (provided that the schemes rules provide for same) for failure to abide by the scheme’s rules.

Body corporate’s rules frequently contain provisions that prevent “short-term letting”. This is due to the belief that disallowing “short-term letting” / Airbnbs’ in sectional title schemes will uphold the schemes reputation, prevent delinquent tenants/guests and mitigate any potential security risk as travellers are not permanent tenants and are often able to escape liability for failure to abide by the schemes rules as they enter and leave as they please.

This however, gives rise to a clash of competing interests. On the one hand, you have the landlord and his interest in making money from his sectional title unit. On the other hand, you have the trustees, trying to ensure compliance with the scheme’s rules.

⁵ <https://www.thesouthafrican.com/travel/airbnb-south-africa-new-laws-tourism-potential-changes/>

⁶ n 1 above.



It could be argued that preventing “short-term letting” in sectional title schemes infringes on members proprietary rights as it restricts their use and enjoyment of the property which could otherwise be used to yield a profit. When considering the current economic climate and its stronghold on the general populations pocket, it becomes more apparent that many landlords may be affected by restrictions placed on letting out their properties.

However, in October 2019 the issue of short term letting in sectional title schemes was brought before the High Court in the Body Corporate of the Paddock Sectional Title Scheme No 249-1984 v Nicholl (29534/18) [2019] ZAGPJHC 437 (2 October 2019). In this matter the body corporates had its conduct rules approved and certified by CSOS in 2017. The schemes rules prohibited short -term rentals for periods less than 6 (six) months. In this case the Judge appeared to be of the view that owners in this scheme were in terms of the rules of the scheme accordingly prohibited from renting out their units to tenants for any period shorter than

6 (six) months. However the Respondent will be taking this matter on Appeal.

Conclusion

The proposed amendments to the Act as described above could be argued to infringe landlords’ proprietary rights and may well be grounds on which one may dispute the proposed amendments.

However, according to the High Court judgment in Paddock Sectional Title Scheme No 249-1984 v Nicholl landlords should always be mindful of any restrictions on short-term letting that are imposed under their schemes conduct rules. Nevertheless, it must be noted that the aforementioned ruling has been taken on appeal.

Furthermore, if your schemes rules are vague or do not prohibit short-term letting you may continue to use your unit as an Airbnb and if you are restricted from doing or met with opposition



in this case, it would be advisable to contact a lawyer who is experienced in property law to assist you dealing with the matter in and lodging a dispute with the appropriate forum for deliberation (i.e. CSOS or Court).



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