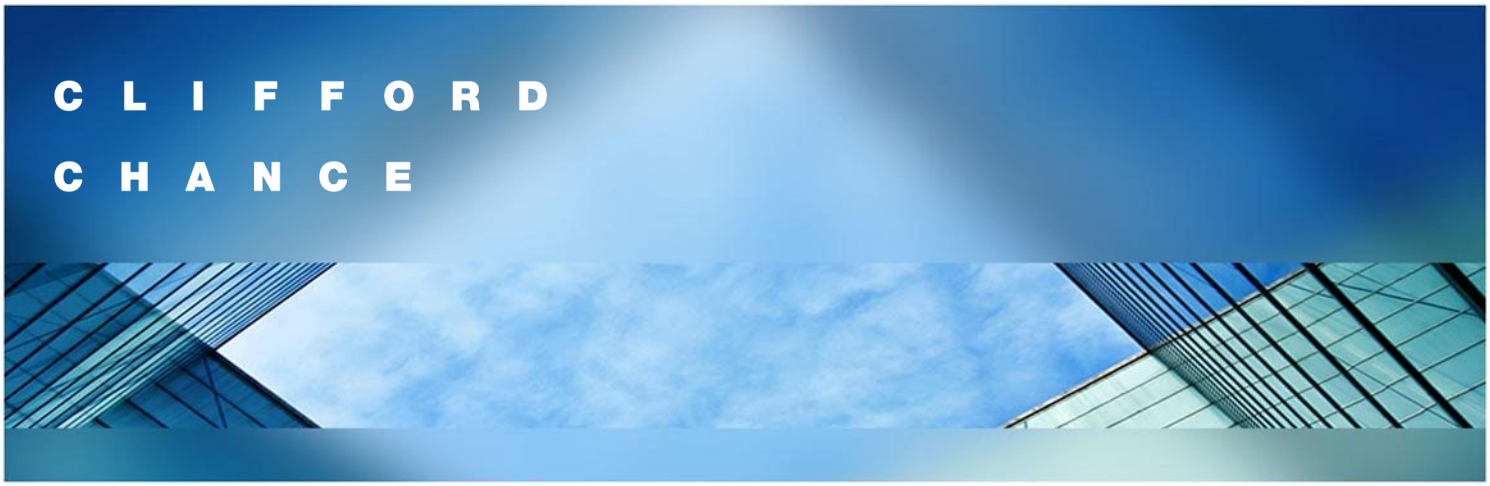

A PRACTICAL OVERVIEW OF THE DIFFERENT FORMS OF ACCOMMODATION AGREEMENTS IN SPAIN

Key points

- There might be some confusion in the market as to which sort of agreement is the most appropriate to regulate the relationship with a tenant/guest.
- Housing leases have traditionally offered several protections in favour of tenants.
- The accommodation agreement does not have a specific regulation in Spanish law. This form has been used to regulate a heterogenous variety of relationships.
- Seasonal leases may have been fraudulently used to avoid the protections of the Urban Lease Act intended for tenants.

INTRODUCTION

In Spain, real estate market trends have been evolving and different types of use have emerged in practice as alternatives or supplements to the usual housing uses. As a result, the use of novel concepts such as “co-living” or “flex living” that coexist with other more traditional figures such as housing leases or seasonal leases has become commonplace. However, to date, the legislation has not kept up with this evolution. On the contrary, the types of agreement used in these new trends have been adapted to existing types, the object and cause of which may not exactly match.

Given the confusion that may exist in practice as to which type of agreement is most appropriate for regulating each legal relationship, this note aims to provide some guidelines for clarifying which type of agreement should prevail in each situation.

I. HOUSING LEASES

Definition and object

As established by the Urban Lease Act (*Ley 29/1994, de 24 de noviembre, de Arrendamientos Urbanos*, the “**Urban Lease Act**”), housing leases are intended to satisfy an individual’s permanent need for housing. Likewise, this legislation indicates that, in order for the building to serve this purpose, it must be classed as suitable for habitation.

The purpose of this type of agreement limits its scope to situations where a person, with or without a family, for work, social or any other reasons, has a permanent need for residence in a specific domicile. In this way, the leased property becomes the tenant’s primary residence. Therefore, this type of agreement should only be entered into in those situations in which the tenant intends to live indefinitely in the leased property or, at least, within the timeframes determined by the Urban Lease Act.

Similarly, the Urban Lease Act states that only buildings that are classed as suitable for habitation can feature in lease agreements, i.e. the regulations themselves establish an objective requirement that the property to be leased has to meet so that it can qualify for this type of agreement. In this regard, the administrative and, in particular, the urban planning regulations applicable in each municipality have to be met in order to determine whether a property is suitable for habitation.

Applicable legislation

Lease agreements for housing are regulated in the Urban Lease Act, specifically Title II.

Unlike leases for uses other than housing, the regulatory framework established by the Urban Lease Act for housing leases is quite rigid. In this regard, the following points should be highlighted:

(a) Minimum mandatory period of five years (or seven years if the lessor is a legal person). If, at the expiry date of the agreement, neither party has notified the other of its intention not to renew it, the agreement will be mandatorily extended for one-year periods up to a maximum of three more years.
(b) The lessor is obliged to make all necessary repairs to keep the dwelling in habitable condition to serve the agreed use (except where the deterioration is attributable to the tenant).
(c) In accordance with the provisions of the Housing Act (*Ley 12/2023, de 24 de mayo, por el derecho a la vivienda*, the "**Housing Act**"), in lease agreements for properties located in an area that has been declared as a stressed residential market, the agreed rent will not exceed the last rent under the primary residence lease agreement that was in force for the last five years in the same property, once the clause on the annual review of the rent of the previous agreement has been applied.
(d) The annual rent review agreed by the parties will under no circumstances exceed the result of applying the percentage change of the Consumer Price Index as of each review. However, in accordance with the Housing Act, an Additional Provision has been included in the Urban Lease Act so that, by 31 December 2024, the Spanish Statistics Institute defines a reference index for the annual review of housing leases to be set as a reference limit in order to avoid disproportionate increases in the rent of leases.

II. ACCOMODATION AGREEMENTS

Definition, object and applicable regulations

The purpose of the accommodation agreement is the provision, by the owner of an establishment, of a temporary accommodation service to third parties. However, although this type of agreement will mainly be defined by the third party's need for accommodation, the owner of the accommodation establishment may provide other supplementary services apart from accommodation, such as, on the one hand, safeguarding the guest's possessions and, on the other, services such as catering, cleaning, internet connectivity or room service.

This agreement has traditionally been used in the tourism sector through the acceptance by guests of the general conditions of service offered by the owners of the establishments. In fact, the tourism regulations applicable in each Autonomous Region also partly define the minimum services, in addition to accommodation, to be provided by the owner of the establishment.

Unlike lease agreements, accommodation agreements do not have specific regulations. In this regard, only a few references to this type of agreement can be found in the Civil Code in relation to the responsibility of the owner of the establishment in the event of non-observance of its safeguarding duty.

Although there is some discussion in legal opinion as to the nature of this type of agreement and, in particular, as to whether it is an agreement of a mixed nature (which, on the one hand, includes the lease of a space together with the provision of other supplementary services) or a specific service agreement (defined mainly by the continued provision of services, including accommodation), it is clear that the accommodation agreement differs from the lease agreement as a result of the heterogeneous nature of the services provided by the owner of the establishment.

Cases in which the application of this type of agreement would be possible

The lack of an express regulation of this type of agreement is likely to give rise to suspicion in practice as to what scenarios this type of agreement should cover. As indicated, this type of agreement has traditionally been used in the tourist sector to regulate the contractual relationship applicable to third-party stays in tourist-type establishments (e.g. hotels, hostels, aparthotels). In fact, the provision by the owner of the establishment of supplementary services to accommodation can be imposed by the tourism regulations applicable in each Autonomous Region.

Likewise, the use of this type of agreement (but with different configurations regarding the supplementary services that are included in its object) has been extended to other sectors such as student residences, retirement homes or health centres in which a person is expected to stay overnight for a number of days. As for the tourist sector, the

provision of other services supplementary to the accommodation itself may also be imposed by the sector-specific regulations applicable to each case.

The accommodation agreement has also been used in those cases colloquially called "*co-living*" or "flex living" in which the client, as a guest, requires an accommodation service for a period of time which, in principle, should have been defined by the parties in advance. This accommodation service often involves other supplementary services provided by the owner of the establishment. Although it might seem that the inclusion of these supplementary services was not imposed by a specific sector regulation (such as the one applicable in the field of tourism), the reality is that many establishments that carry the adjective of "*flex living*", from a legal point of view, function as aparthotels to all intents and purposes. Therefore, the regional regulations on aparthotels (or apartment hotels) are fully applicable to them. This will determine the obligation of the owner of the establishment to apply for the corresponding authorisation from the competent regional department for tourism, as well as conditioning the characteristics of the accommodation units of the establishment (for example, in terms of surface area and the obligation to have a unit for the consumption and preparation of food).

Nailing down what is colloquially termed "*co-living*" is more difficult. In practice, this type of building may not include the usual features of hotel establishments. Furthermore, the accommodation units would be unlikely to meet the minimum requirements to qualify as housing (in particular, in terms of size). On the other hand, the guest's stay would be characterised by a temporary intention that would contrast with the permanence of a housing lease but that, on the other hand, it would have a longer time horizon than an accommodation agreement for a tourist establishment. What is clear is that this type of establishment would be equally susceptible to accommodation agreements since, on the one hand, the legal relationship will be conditioned by the guest's stay and, on the other hand, together with the accommodation service, the owner of the establishment and host will provide other services of a supplementary nature to the above one that will ultimately define the legal relationship.

III. SEASONAL LEASES

Definition, object and applicable regulations

The Urban Lease Act provides for another type of agreement for third-party accommodation, seasonal leases. This aforementioned law envisages this type of agreement in the case of leases for use other than housing. Therefore, the tenant in an agreement of this kind will not enjoy the typical protections provided for tenants under housing agreements. On the contrary, the regulations grant the parties full flexibility regarding the configuration of the term without the tenant having the possibility to extend it unless the parties had agreed otherwise.

The Urban Lease Act itself indicates that "*the leases of urban properties entered into seasonally, whether for the summer or any period*" will be considered leases for uses other than housing. Therefore, the use of this category of agreement would depend on a specific time horizon defined in view of a particular event related to the tenant.

Another important point to take into account in relation to this type of agreement is that, when it appears defined by the Urban Lease Act as a lease for uses other than housing, the obligation of the tenant to pay the lessor (and the lessor to request from the tenant) a deposit for the amount of two months' rent to guarantee the fulfilment of its obligations under the lease agreement automatically applies.

Cases in which the application of this type of agreement would be possible

Although the regulations do not give further clues as to the configuration of the time horizon of seasonal agreements, applying *sensu contrario* the provisions of the rules for housing leases, the seasonal lease category would apply to all those cases in which the tenant's need for seasonal housing is not intended to be permanent, that is, the tenant will not be using the leased object as a primary residence. Therefore, the season may be defined as a certain period of time (not necessarily less than a year) associated with a specific condition of the tenant, for example, to satisfy a need for temporary housing as a result of a job posting, training, holiday or merely meeting a temporary need for accommodation on the occasion, for example, of the refurbishment of the tenant's primary residence.

As with residential leases, provided that the purpose of this agreement is to meet a tenant's need for housing in a time horizon defined in response to a specific event, the leased object should comply with the requirements defined in the corresponding regulations so that the building qualifies as housing. In this regard, the Urban Lease Act does not prevent this category of agreement from being applicable to other types of buildings that do not qualify as housing. This fact would allow the application of this type of agreement to the above-mentioned buildings that are

commonly known in the market as "*co-living*" or "*flex living*". However, the obligation of the tenant to provide a deposit could render this type of agreement less than optimal in terms of the operation of this type of buildings since it may reduce the flexibility of the overall configuration of the tenant's stay with respect to other options such as accommodation agreements.

Recently, the Government of Spain has expressed its intention to restrict the use of this type of agreement in the market because, in practice, it may have been used fraudulently to lease properties used by tenants as a primary residence (in this way avoiding the protections that the Urban Lease Act provides for tenants in housing leases). To this end, the Government has just announced its intention to issue a Royal Decree in the coming weeks which, on the one hand, establishes the need to prove why the agreement is being signed and, on the other, provides for the implementation of a registration platform facilitating the exchange of data relating to the short-term accommodation rental service (which will also include tourist leases).

IV. TOURIST LEASES

Definition, object and applicable regulations

Article 5 section e) of the Urban Lease Act excludes from its scope those agreements regulating the temporary transfer of use of a furnished and equipped dwelling to a third party, when marketed or promoted via tourist marketing channels or by any other form of marketing, when it is subject to a specific regime derived from the tourist sector regulations. Provided these requirements are met, the legal relationship between owner and occupant will fall outside the scope of application of the Urban Lease Act and the parties may configure such regulation within the framework of the provisions of the Civil Code regarding leases.

In general terms, the Civil Code imposes hardly any requirements with respect to leases and leaves the parties ample flexibility to regulate their legal relationship. However, as the Autonomous Regions are responsible for tourism matters in Spain, it would also be necessary to look at what the corresponding regional regulations establish regarding the requirements that must be met by the object to be leased. In the case of the Region of Madrid, Governing Council Decree 79/2014, of 10 July, regulating tourist apartments and housing for tourist use establishes a series of requirements that must be met by properties intended for this type of accommodation in terms of maximum occupancy capacities, composition of the house and services included as part of the price to be paid by the occupant.

Cases in which the application of this type of agreement would be possible

This type of agreement will necessarily apply in those cases in which the reason for the occupation by the tenant is purely for tourism and the lessor is not assuming an obligation vis-à-vis the occupant to safeguard his/her possessions or the provision of other supplementary services (unless imposed by the regional regulations applicable in each case).

The regulations do not in any case establish a requirement regarding the time horizon that is necessarily applicable to tourist leases. However, the fact that this type of agreement is designed for tourism would perhaps make it incompatible with longer stays or situations in which the tenant performs an activity other than tourism in the municipality of the leased object.

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