

Holiday home rentals

A guide for holiday home owners and agents

Owners who rent out their homes or investment properties in holiday destinations make an important contribution to the tourism industry in NSW. Each year large numbers of holiday-makers use the services they provide. However, these transactions are not without problems. Owners and agents who are aware of their rights and responsibilities can avoid unpleasant and time consuming disputes.

Should I manage it myself, or use an agent?

Anyone can rent out their property. But if you use an agent or broker, the person you select must be licensed in NSW as a real estate agent. You can check whether an agent is licensed by phoning NSW Fair Trading on 13 32 20 or do a licence check online by visiting www.fairtrading.nsw.gov.au

Dealing with an unlicensed agent or broker exposes you to unnecessary risks.

When deciding whether to manage the property yourself, your decision should be based on your knowledge of the industry, your ability to handle the property, your customers and your willingness to be directly involved.

If you choose to deal through an agent you must have a written agency agreement setting out what the agent will do for you. The agreement will include instructions for such matters as cancellations and return of deposits, how to handle minor repairs or damage to premises, security deposits, minimum fees and the agent's fees and commissions. It would also be useful to include instructions on how to handle disputes (eg. do they need to be referred to you?) and emergency contact numbers.

To avoid coming under the general tenancy laws of NSW the property must ordinarily be used for holiday purposes or if not, rented for periods of no more than 3 months for the purpose of a holiday.

What services will you provide?

When supplying accommodation, clarify in writing to the occupants what services and facilities are included in the rental fee. For example:

- whether the premises are serviced (and how often)
- furnishings supplied with the unit
- the appliances provided (include instructions for use).

The written agreement should also specify the period of the arrangement, security deposit (see over) and rental fees. Include any additional charges for other services you can provide (eg. cleaning, gardening, dry-cleaning or laundry services). You should also include any charges the occupant may incur for early departure.

If you are using an agent, the written agreement must contain clear instructions from the person renting the property about when the agent may release any money from their trust account to you or to the agent as commission or to recoup expenses. An agent must pay any money they receive into their trust account and cannot pay it to you without clear instructions unless the contract has ended, ie the person has left the premises.

Information about the premises, its location and services in the area is also useful. For example:

- whether the accommodation is rated according to an accommodation classification system (a star rating) and how that system works
- the proximity of the accommodation to attractions, event venues and transport
- what to do in the event of a problem, repair or damage to the property or its facilities
- requirements on leaving the premises (cleaning, keys etc)
- the dispute resolution processes you have put in place
- where any security deposit (bond) is held and the process for its return.

IMPORTANT – Never deal with an unlicensed agent. Check on an agent's licence by calling 13 32 20 or do a licence check online by visiting www.fairtrading.nsw.gov.au

Agents should be aware that any misrepresentation about accommodation may be subject to the misleading and deceptive conduct provisions of the *Property, Stock and Business Agents Act 2002* and the Australian Consumer Law.

Security deposits

Problems can arise with holiday lettings. Your property could be accidentally – or even deliberately – damaged by the occupants. As the owner, your primary protection against financial loss is the security deposit (sometimes called a bond). It is designed to protect you from early departure (ie. the occupant breaking the rental agreement) or damage to your property or its fixtures, fittings and appliances.

For short-term holiday accommodation not covered by the *Residential Tenancies Act 2010* the security deposit does not have to be lodged with NSW Fair Trading. Nor is there any legislation covering the amount you are allowed to charge for a security deposit. The amount will depend on the circumstances. For example, a security deposit might be higher for a longer term arrangement, or for a property of higher value with more inclusions.

Whatever the amount charged, the conditions of the security deposit, how it will be held and the procedure and method of refund should be detailed in writing. If it is to be paid to the agent, it must then be deposited into the trust account and a trust account receipt issued to the person who paid the money.

IMPORTANT – It should be noted that if a booking is made and subsequently cancelled by either party, costs incurred may be recoverable by the other party.

Receipts

When taking rental payments, always provide a receipt. An agent is required to issue a trust account receipt.

Inspections and safety of the property

You (or your agent) and the occupant should make an inspection of the property before they move in. You should make a report of what is in the property, noting any existing damage, faulty or missing appliances. All parties should keep a copy of the report. This can help prevent disputes when the occupant moves out.

The occupant will be responsible for damage to the property or its equipment, fixtures or fittings caused by their negligence, but not 'fair wear and tear'.

You must also ensure that the property you rent out is safe to occupy. It is recommended that you conduct regular checks of electrical and gas installations and appliances to make sure they are in safe working order. If the property has a pool, you should ensure it complies with the necessary safety requirements, including secure fencing.

Consumer protection and dispute resolution

NSW Fair Trading can provide advice to owners and occupants on issues relating to short term residential agreements. Call 13 32 20 for assistance.