

REAL ESTATE & PLANNING

CHANGES TO THE LOCAL ACCOMMODATION
REGIME

VdA EXPERTISE



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On 23 October, Decree-Law no. 76/2024 was published, introducing the 6th amendment to Decree-Law no. 128/2014, of 29 August, which establishes the **Legal Regime for the Operation of Local Accommodation Establishments** ("RJEEAL" in the Portuguese acronym).

The recent amendments aim at implementing the current government's public policy for the housing and tourism sectors, seeking to create the conditions for local accommodation activity to be developed in a harmonious way with the housing environment, while respecting the rights of private initiative, private property and housing, and considering both the economic and urban impacts of this activity in Portugal.

The main changes can be grouped as follows:

- i. Changes to the general regime and in terms of registration;
- ii. Increased powers for municipalities, and the creation of a local accommodation ombudsman and of sustainable growth areas; and
- iii. Limitation of the powers of condominium owners.

The law enters into force on **1 November 2024**.



1. General Provisions and Registration



GENERAL PROVISIONS AND REGISTRATION

1. Capacity of establishments

The maximum capacity of local accommodation establishments, except for rooms and hostels, is **reduced from 30 to 27 users** (with the maximum limit of 9 rooms being maintained).

The new law also introduces the possibility of establishments **installing convertible and/or supplementary beds, provided these do not exceed 50% of the number of fixed beds.**

2. Opposition to registration

The deadline for the mayor to oppose prior notification with a deadline is **increased from 10 to 60 days**. This period will be extended to **90 days** in the case of applications to operate local accommodation in containment areas.

In the event of an opposition decision, the new regime allows the interested party to request an inspection by the competent municipal services, with a view to reviewing the decision, provided that the interested party bears the costs of this inspection.

3. Revocation of term and renewal

The term of registration of establishments (previously set at 5 years) is eliminated. As such, **registrations no longer have a time limit and can no longer be renewed.**

The suspension of the issuance of new registrations in the apartment and lodging establishment categories, which was in force across most of Portugal, is also repealed.

4. Cancellation of registration

New situations are foreseen allowing for the **cancellation of registration by decision of the municipality**, linked to (i) the lack of compulsory insurance, (ii) the practice of acts that disturb the normal use of the building, and (iii) establishments in containment areas, as further described below.

5. Transferability

The rule of non-transferability of the local accommodation establishment's registration number has been abolished and it is now possible to change the ownership of the operation or the share capital of the legal person holding the registration.

Situations of non-transferability are now **limited to the cases determined by the municipality in containment areas**. Even in these cases, the limitation can only apply to houses and apartments, and under no circumstances can it affect situations of (i) inheritance, (ii) free transfer to a spouse, common law partner, ascendants or descendants, and (iii) divorce, legal separation or dissolution of a civil partnership.

6. Insurance

The holder of the local accommodation establishment is **responsible for covering the risks set forth in RJEEAL and in Ministerial Order no. 248/2021, of 29 June**, inherent to the holding of the establishment, and the **municipality may require documentary proof** of the execution of the respective insurance contract. This proof must be provided within 3 days, failing which the registration will be cancelled.

7. Inspection

As regards inspection, this competence is now attributed to **ASAE** (the Portuguese Economic and Food Safety Authority) and the **city council** (excluding the parish councils), the former monitoring and ensuring compliance with the activity and the latter exercising the powers of authority and coercion established by regulation.



2. Competences of the Municipalities



COMPETENCIES OF THE MUNICIPALITIES

1. Administrative Regulation

The municipalities can now approve an **administrative regulation on local accommodation** applicable in the respective territory.

Whenever a municipality reaches the level of 1,000 registered local accommodation establishments, the municipal assembly has 12 months to deliberate whether it intends to exercise its abovementioned regulatory power. If the municipality has reached that number before the entry into force of the new changes, the 12-month deadline starts counting from that date (i.e., 1 November 2024).

2. Determination of valid uses

Uses considered valid and compatible with local accommodation activity **will now be determined by municipal regulation** or, in its absence, by decision of the competent city council.

The following rules shall be followed for this determination:

- i. For rooms, only residential use is permitted;
- ii. For apartments and houses, non-residential use is permitted, provided that the requirements set forth by the RJEEAL are met;
- iii. For lodging establishments (including hostels), the city council is allowed to provide for non-residential uses depending on the type of accommodation and the capacity of the establishment.

3. Local accommodation ombudsman

The administrative regulation on local accommodation can foresee the **designation of a local accommodation ombudsman**.

This ombudsman will aid the municipality in managing any disputes that may arise, being responsible for examining complaints, issuing recommendations, and approving and implementing best practices guides.

4. Containment and sustainable growth areas

With the entry into force of the new law, municipalities can now approve **sustainable growth areas**, in addition to the containment areas already foreseen, applying limitations to prevent situations of overload with undesirable effects on neighbourhoods and localities.

The deadline for the reassessment of containment areas (and now also sustainable growth areas) is **extended from two to three years**. This assessment must be founded on a prior study aimed at ensuring the proportionality of the measures adopted.

Furthermore, the limitation on the operation of seven local accommodation establishments per property owner in containment areas is **now eliminated**.

a) Containment areas

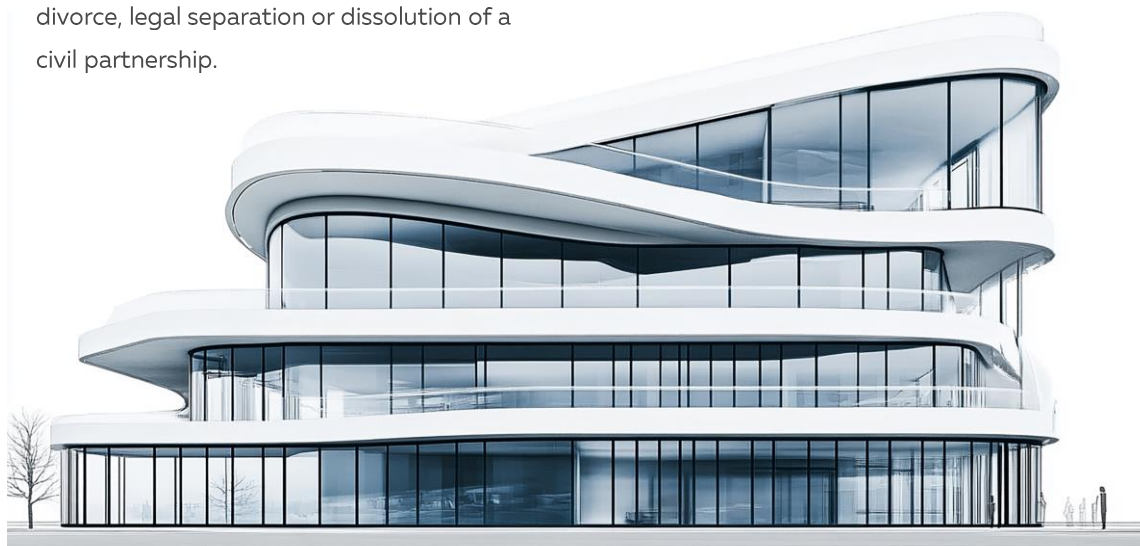
In containment areas, it is established that municipalities have the power to determine:

- i. The non-authorisation of new registrations for properties that have been the subject of a residential lease contract in the **previous two years**;
- ii. Limits on the number of local accommodation establishments, notably in proportion to the number of existing housing units;
- iii. Exceptional situations in which the installation of new establishments is considered admissible;
- iv. The subjection of new registrations to certain conditions and limits, notably as regards duration and allocation rules;
- v. Limits on the transferability of new registration numbers for apartments and houses, except in cases of (i) inheritance, (ii) free transfer to a spouse, common law partner, ascendants or descendants, and (iii) divorce, legal separation or dissolution of a civil partnership.

b) Sustainable growth areas

In sustainable growth areas, it is established that municipalities have the power to determine:

- i. The non-authorisation of new registrations for properties that have been the subject of a residential lease contract in the **previous two years**;
- ii. Limits determining the maintenance of a minimum proportion or number of units or parts of a building intended for residential use only;
- iii. That a good or better state of repair is a requirement for the installation of new local accommodation establishments (where a term of responsibility must be issued by a qualified technician);
- iv. That an energy efficiency rating of "D" or above is a requirement for the installation of new local accommodation establishments.



3. Powers of the Condominium Owners



POWERS OF THE CONDOMINIUM OWNERS

1. Repeal of the need for authorisation prior to registration

The need for the condominium's prior authorisation to register a local accommodation establishment in an autonomous unit of a building under horizontal property regime intended for residential use is eliminated.

In addition, it is established that **the installation and operation of a local accommodation establishment in an autonomous unit does not constitute a use other than that for which it is intended in the respective horizontal property deed**. As such, it must coexist within the framework of dominant urban uses admissible for the territorial area in question.

Note that the condominium's authorisation continues to be necessary in the case of hostels located in buildings with housing units.

2. Possibility of prohibition of activity prior to the application for registration

Without prejudice to the need for the condominium's prior authorisation having been eliminated, the condominium may still prohibit the exercise of local accommodation activity (i) in its constitutive title or in the condominium regulation which forms an integral part thereof, or (ii) through a resolution to create or amend the condominium regulation passed by a majority representing two-thirds of the building's ownership percentage.

This prohibition will only apply to applications for registration submitted after the referred resolution, not affecting existing registrations or any applications for registration that are pending at that time.

3. Changes to the condominium's powers relating to the cancellation of registration

The condominium owners are still entitled to request the cancellation of an existing registration, before the mayor, but only under the following terms:

- i. The resolution must be passed by **more than half of the building's ownership percentage** (not two-thirds, as previously foreseen);
- ii. The resolution must be justified and proven based on the repeated practice of acts that disturb the normal use of the building and cause nuisance or affect the tranquillity of the residents (a resolution without such justification, previously admitted, is no longer sufficient);
- iii. The request is subject to the decision of the mayor, who can delegate this power to councillors or heads of municipal services (this resolution does not in itself determine the cancellation of the registration).

Following the request, the mayor may, as an alternative to cancellation of the registration, invite the parties to reach an agreement, with the support of the local accommodation ombudsman. This negotiation process should be completed within a maximum of 60 days, with the approval of a final report detailing the measures to be adopted or concluding that an agreement is not viable. The final decision will rest with the mayor.

Cancellation of the registration ceases operation of the local accommodation establishment, and the property in question can no longer be exploited by any entity for a period fixed in the decision, **which may not exceed 5 years.**



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