



## Legal Alert

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### Accommodation support for Ukrainian citizens fleeing war

Because of the war in Ukraine, many Poles are allowing Ukrainian citizens to use their apartments. For the most part, this is temporary and short-term help. However, some Poles want to provide accommodation for a longer period. How can you do so legally and safely? We answer these questions in our most recent newsletter.

#### LENDING AN APARTMENT FOR USE

*We want to lend an apartment to people to use who are fleeing from Ukraine. How can we protect ourselves in a lending-for-use agreement?*

If you enter into an unpaid lending-for-use agreement, it is a good idea to put all the terms in writing.

A lending-for-use agreement concluded for an undefined period ends when the lendeer has made use of the property in accordance with the agreement or the period in which they could have done so has expired. In the case of lending for use to private individuals, it may be difficult to determine this point in time; therefore, we recommend concluding a lending-for-use agreement for a defined period of time.

The content of the agreement should indicate information, e.g.:

- the contracting party's I.D.,
- the definition of the subject that is being lent for use,
- the duration of the agreement,
- the obligation on the lendeer to use the premises in accordance with its purpose,

- the prohibition on handing over the subject of the agreement with the purpose of lending for use, or lease to third parties, and
- provisions governing the lender's and the lendeer's obligations, e.g. who will bear the costs of administrative charges and fees, and repairs during the period of the lending-for-use agreement.

In addition, it is important to determine how the premises should be returned and how the agreement should terminate. To avoid disputes over the condition of the premises before and after the lending, we recommend that you sign a handover report. We recommend attaching photographic documentation to this report.

The person who lends the premises for use may terminate the agreement without notice if the person using the premises:

- misuses it,
- causes significant damage to it, or
- behaves inappropriately towards the users of neighbouring premises.

According to established judicial practice, the lender may also demand the return of the lent item if they wish to dispose of it in another way.

*What happens if the owner, after a month or two, wants to reclaim the apartment and the assisted persons cannot move out? Can we protect ourselves in advance?*

We suggest that lending-for-use agreements are concluded for a defined period of up to several months; then the duration of the agreement will be fixed in advance. If the parties agree to extend it, it will be possible to conclude an annex to extend the duration of the agreement.

If the agreement terminates due to the end of its term, the owner may demand that the premises be vacated and returned to them, and if they do not receive their property despite this, they may start eviction proceedings.

However, for certain tenants, e.g. pregnant women, the elderly, or minors, the court grants the right to social premises under Article 14 of the Tenant Protection Act. The court may also grant the right to social premises to other tenants. The municipality is obliged to provide social premises.

Eviction from previously occupied premises cannot be carried out until the municipality provides social premises. The waiting time for social premises is already long, lasting about several months. We assume that, due to the increased demand for this type of premises, the waiting time will be longer.

### ***Does lending for use have to be reported to the Tax Office or any other authority?***

There is no obligation to report the conclusion of a lending-for-use agreement to the Tax Office. A lending-for-use agreement or establishing the free use of real property is not subject to tax on civil law transactions (PCC). The person lending the premises also does not generate income, so there is no obligation to pay personal income tax (PIT).

## **LEASING AN APARTMENT**

### ***Which lease agreement should I sign with a foreigner?***

From a legal point of view, the best option is to enter into an occasional lease agreement.

A requirement to conclude an occasional lease agreement is that the agreement is accompanied by the lessee's statement in the form of a notarial deed, in which the lessee submits to enforcement and undertakes to vacate and hand over the used premises on the date indicated by the lessor. In addition to this, it is necessary to include a statement in which the lessee specifies other premises in which they may reside if the obligation to enforce the vacation of the premises arises.

However, we assume that it may not be possible to conclude such an agreement with persons arriving

from Ukraine due to the inability of Ukrainian nationals to indicate an alternative place of residence.

Therefore, when drafting a traditional lease agreement, we recommend that you enter into it for a defined period of time, e.g. three months, and after this time, if circumstances require, extend it.

As with a lending-for-use agreement, the agreement should include information, e.g.:

- the contracting party's I.D.,
- the definition of the subject of the lease,
- the duration of the agreement,
- the amount of rent,
- the lessee's obligation to use the premises in accordance with its purpose,
- the prohibition on handing over the subject of the agreement with the purpose of lending for use, or leasing to third parties, and
- provisions governing the lessor's and the lessee's obligations, e.g. who will be responsible for different types of repairs to the premises.

In addition, it is important to determine the manner in which the premises are to be returned and the agreement is terminated. Again, we suggest signing a handover report with photographic documentation.

A lease agreement may only be terminated in the cases specified in Article 11 of the Tenant Protection Act. These are, i.a. such cases as:

- the lessee's use of the premises that is contrary to the agreement or contrary to its intended use, despite a written warning from the lessor, or
- default in the payment of rent, other charges for the use of the premises, or charges independent of the lessor, levied by the lessor, for at least three full payment periods despite the lessor having given notice of their intention to terminate the lease.

### ***What happens if an owner, after a month or two, wants to reclaim the apartment for their needs and the assisted persons cannot move out? Can we protect ourselves in advance?***

If, at the end of the lease term, the lessees do not move out of the occupied premises, the owner may start eviction proceedings.

Please note that, in the case of an eviction, also persons using the premises under a lease agreement have rights under the Tenant Protection Act. Also, in this case, the court may rule on the right to social premises. In this case, the eviction will be delayed until the municipality offers the tenants suitable premises.

***Does the lease have to be reported to the Tax Office or any other authority?***

A standard lease agreement does not have to be reported to the Tax Office. However, the lease rent constitutes revenue which must be properly accounted for.

If you decide to conclude an occasional lease agreement, to benefit from the privileges reserved exclusively for this type of agreement, it is necessary notify it to the Tax Office.

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