

# AS AMENDED BY THE HOUSE OF ASSEMBLY

A BILL

entitled

VACATION RENTALS ACT 2018

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WHEREAS it is expedient to amend the Bermuda Tourism Authority Act 2013, the Rent Increases (Domestic Premises) Control Act 1978 in relation to vacation rentals, and to make minor amendments to the Hotels (Licensing and Control) Act 1969 and the Hotels (Licensing and Control) Regulations 1976;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

### Citation

1 This Act may be cited as the Vacation Rentals Act 2018.

### Amends the Hotels (Licensing and Control) Act 1969

2 In the definition of "hotel" in section 1 of the Hotels (Licensing and Control) Act 1969, delete "six or more guests" and substitute "ten or more guests".

### Amends the Bermuda Tourism Authority Act 2013

3 (1) In section 2 of the Bermuda Tourism Authority Act 2013, insert the following definitions in alphabetical order—

“hotel” has the meaning given in the Hotels (Licensing and Control) Act 1969;

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“vacation rental fee” means the vacation rental fee provided for under section 15A.”.

(2) After section 15 of that Act, insert—

“Vacation rental fee

15A (1) In this section—

“vacation rental (rent control) certificate” has the meaning given in section 6 of the Rent Increases (Domestic Premises) Control Act 1978;

“vacation rental unit” means any place, land-based or not, which provides sleeping accommodation for nine or fewer guests for which a charge is made.

(2) A proprietor of a vacation rental unit, other than a proprietor who holds a vacation rental (rent control) certificate, shall register with the Minister and supply such details in relation to the vacation rental unit as the Minister may reasonably require.

(3) A proprietor of a vacation rental unit or a holder of a vacation rental (rent control) certificate, or an agent acting on behalf of either, shall pay to the Authority a vacation rental fee, at the rate of 4.5% of the rack rate charge made by the proprietor in respect of the vacation rental unit.

(4) Section 15(2) (application of Miscellaneous Taxes Act 1976 definition of “rack rate charge”) applies with the necessary modifications.

(5) The Minister may in the regulations made under this Act, from time to time, vary the percentage rate of the rack rate charge payable in respect of the vacation rental fee.

(6) A proprietor of a vacation rental unit or a holder of a vacation rental (rent control) certificate, or an agent acting on behalf of either, shall include on any invoice or receipt delivered to a guest in respect of a vacation rental unit a separate entry for the amount of the vacation rental fee payable in respect of that unit.

(7) The vacation rental fee is payable to the Authority on a monthly basis, and shall be collected by the Authority in such manner as it considers appropriate.

(8) Any proprietor of a vacation rental unit or any holder of a vacation rental (rent control) certificate, or an agent acting on behalf of either, who fails to comply with the requirements of this section shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding \$10,000.

(9) Regulations made by the Minister under subsection (5) shall be subject to the affirmative resolution procedure.

Vacation rental certificate

15B (1) On registration under section 15A(2), the Minister shall issue a certificate to operate a vacation rental unit to the proprietor.

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(1) (2) A certificate to operate a vacation rental unit issued under subsection

- (a) shall be in such form as the Minister may specify;
- (b) shall be issued subject to any terms and conditions the Minister sees fit;
- (c) shall be issued to a named premises;
- (d) shall remain valid for a period of twelve months from the date of issue;
- (e) is not transferable.

(3) A certificate issued under subsection (1) may be renewed for a like period and the provisions of subsection (2) shall apply to the renewal of a certificate as they apply to the issuing of a certificate.

(4) The Minister may revoke a certificate issued under subsection (1) if—

- (a) the certificate is obtained as a result of any misleading, false or fraudulent representation;
- (b) the premises is let or sub-let for more than an aggregate of six months in any consecutive period of twelve months, being a period subsequent to a certificate being issued, to any person who is ordinarily resident in Bermuda;
- (c) the proprietor fails to comply with any provision of this Act, any regulations made under this Act or any of the terms and conditions of a certificate.

(5) No certificate shall be issued under this section unless the Minister is satisfied that use of the premises as a vacation rental unit will not displace any tenants renting the property at the time of registration.”.

(3) In section 24(2)(a) of the Bermuda Tourism Authority Act 2013, after “tourism authority fee” insert “, vacation rental fee”.

(4) In section 25(2)(a) of the Bermuda Tourism Authority Act 2013, after “tourism authority fee” insert “, vacation rental fee”.

Amends the Rent Increases (Domestic Premises) Control Act 1978

4 Section 6 of the Rent Increases (Domestic Premises) Control Act 1978 is repealed and replaced with the following—

“Vacation rental (rent control) certificate

6 (1) In this section—

“vacation rental (rent control) certificate” means a certificate to operate a vacation rental unit;

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“vacation rental unit” has the meaning given in section 15A(1) of the Bermuda Tourism Authority Act 2013.

(2) The Minister may on written application made to him by a landlord, and after consultation with the Minister responsible for tourism, issue a vacation rental (rent control) certificate.

(3) An application for a vacation rental (rent control) certificate shall be in such form as the Minister may specify.

(4) A vacation rental (rent control) certificate—

- (a) shall be in such form as the Minister may specify;
- (b) shall be issued subject to any terms and conditions the Minister sees fit;
- (c) shall be issued to a named premises;
- (d) shall contain the assessment number relating to the premises;
- (e) shall remain valid for a period of twelve months from the date of issue;
- (f) is not transferable.

(5) A vacation rental (rent control) certificate may be renewed for a like period and the provisions of this section shall apply to the renewal of a certificate as they apply to the issuing of a certificate.

(6) The Minister may revoke a vacation rental (rent control) certificate if—

- (a) the certificate is obtained as a result of any misleading, false or fraudulent representation;
- (b) the premises is let or sub-let for more than an aggregate of six months in any consecutive period of twelve months, being a period subsequent to a certificate being issued, to any person who is ordinarily resident in Bermuda;
- (c) the landlord fails to comply with any provision of this Act, any regulations made under this Act or any of the terms and conditions of a certificate.

(7) No certificate shall be issued under this section unless the Minister is satisfied that use of the premises as a vacation rental unit will not displace any tenants renting the property at the time the application is made.”.

### Minor amendments

5 The amendments in the Schedule shall have effect.

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### Transitional provision

6 (1) Any tourist accommodation licence in force immediately before the coming into operation of this Act, shall be deemed to be a vacation rental (rent control) certificate issued under this Act and shall remain in force until the expiration of such licence.

(2) In subsection (1), “tourist accommodation licence” means a licence issued by the Minister responsible for tourism under section 6 of the Rent Increases (Domestic Premises) Control Act 1978 (repealed by section 4).

(3) Any premises licensed as a hotel under section 2 of the Hotels (Licensing and Control) Act 1969 providing sleeping accommodation for nine or fewer guests, immediately before the coming into operation of this Act, shall continue to operate as a hotel until 31 March 2019 (the expiration date of such licence).

### Commencement

7 This Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

SCHEDULE

(Section 5)

MINOR AMENDMENTS

Amends the Hotels (Licensing and Control) Act 1969

1 (1) In section 1 of the Hotels (Licensing and Control) Act 1969—

- (a) delete the definition of “the Department”;
- (b) delete the definition of “the Director”;
- (c) insert the following definitions in alphabetical order—

“the Ministry” means the Ministry responsible for tourism;

“the Permanent Secretary” means the Permanent Secretary of the Ministry responsible for tourism;”.

(2) In sections 13 and 23 of that Act, delete “the Department,” and substitute “the Ministry,”.

(3) In section 15A(2) of that Act, delete “Department of Tourism Hotels Division” and substitute “Ministry”.

(4) In each of the following provisions of that Act, delete “Director” and substitute “Permanent Secretary”: sections 3(4), 6(3), 12(5) (in both places), 13(4) and 15A(2).

Amends the Hotels (Licensing and Control) Regulations 1976

2 (1) In regulation 32(2) of the Hotels (Licensing and Control) Regulations 1976, delete “the Department,” and substitute “the Ministry,”.

(2) In regulations 19B(1) and 39(1) of those Regulations, delete “Director” and substitute “Permanent Secretary”.

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### EXPLANATORY MEMORANDUM

This Bill seeks to amend a number of enactments to make provision regarding vacation rental units. These are: (1) providing for registration of vacation rental units that are not under rent control with Minister responsible for tourism, (2) the payment of a vacation rental fee to the Authority in respect of such units as well as rent controlled vacation rental units; (3) introducing protection for tenants where a landlord seeks to register the premises as a vacation rental unit under the Bermuda Tourism Authority Act 2013; (4) providing for the registration of vacation rental units that are rent controlled with the Minister responsible for rent control; (5) introducing protection for tenants if a landlord applies for a vacation rental (rent control) certificate under the Rent Increases (Domestic Premises) Control Act 1978.

Clause 1 is self-explanatory.

Clause 2 amends the Hotels (Licensing and Control) Act 1969 by amending the definition of a "hotel" to mean a place which provides sleeping accommodation for ten or more guests (increased from six or more).

Clause 3 amends the Bermuda Tourism Authority Act 2013 ("the Act"). Subsection (1) inserts a definition of "vacation rental fee". Subsection (2) inserts new section 15A which imposes a vacation rental fee payable to the Bermuda Tourism Authority by the vacation rental unit proprietor. This new section is modelled on section 15 of the Act which provides for the tourism authority fee to be paid to the Authority by hotel proprietors. The proposed vacation rental fee matches the current tourism authority fee as 4.5% of the rack rate charged in respect of a vacation rental unit which can be increased by the Minister responsible for tourism, by regulations subject to affirmative resolution procedure. Failure to register with the Minister or pay the vacation rental fee will be a criminal offence punishable on summary conviction with a fine of \$10,000. Subsection (2) also inserts new section 15B to provide for the registration of a premises as a vacation rental unit. Subsections (3) and (4) amend sections 24 and 25 of the Act so that rules and regulations applying to tourism authority fees (regarding collection and remission of fees, late payment etc.) will also apply to vacation rental fees.

Clause 4 amends section 6 of the Rent Increases (Domestic Premises) Control Act 1978 to provide for the registration of a rent controlled premises as a vacation rental unit rather than a licensed tourist accommodation. This clause also provides that the Minister responsible for rent control shall issue a certificate on registration and it also provides that such a certificate shall not be issued under that section unless the Minister is satisfied that use of the premises for the accommodation will not displace any tenants renting the property at the time of registration.

Clause 5 introduces the Schedule which contains amendments deleting references to the Director and Department of Tourism in the Hotels (Licensing and Control) Act 1969 and Hotels (Licensing and Control) Regulations 1976 (as they no longer exist), and substituting references to the Permanent Secretary and the Ministry responsible for tourism.

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Clause 6 provides the transitional provisions for a licence issued under section 6 of the Rent Control (Domestic Premises) Control Act 1978 (now repealed) to be considered a vacation rental certificate under the new section 6 and for those licensed hotels providing sleeping accommodation for nine or fewer guests (the new definition of a “hotel” provides for ten or more guests) to continue to operate as a hotel until the expiration of the licence on 31 March 2019.

Clause 7 provides for commencement.