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Federal Act on Second Homes (Second Homes Act, SHA)

of 20 March 2015 (Status as of 1 January 2016)

The Federal Assembly of the Swiss Confederation,

on the basis of Articles 75 and 75b of the Federal Constitution¹,
and having considered the Federal Council Dispatch dated 19 February 2014²,
decrees:

Chapter 1 General Provisions

Art. 1 Subject matter

This Act regulates the permissibility of building new homes together with changes to the structure and use of existing homes in communes with a proportion of second homes exceeding 20 per cent.

Art. 2 Definitions

¹ In this Act, «home» means a collection of rooms that:

- a. is suitable for residential use;
- b. forms a structural unit;
- c. has an access either from outside or from a common area shared with other homes within the building;
- d. has cooking facilities; and
- e. is not a moveable object.

² In this Act, «principal home» means a home that is occupied by at least one person who is permanently resident in the commune in which the home is located in accordance with Article 3 letter b of the Register Harmonisation Act of 23 June 2006³.

AS 2015 5657

¹ SR 101

² BBI 2014 2287

³ SR 431.02

³ The following homes are deemed equivalent to principal homes:

- a. homes that are permanently occupied for commercial or educational purposes;
- b. homes that are permanently occupied by a private household that permanently occupies another home in the same building;
- c. homes that are permanently occupied by persons who are not required to register with the residents' register office, such as diplomatic staff or asylum seekers;
- d. homes that have been unoccupied for no more than two years, are habitable, and are advertised for long-term rent or for sale (empty homes);
- e. homes that are used for agricultural purposes but which due to the altitude of their location are not accessible all year round for agricultural purposes;
- f. homes that are used by businesses for the short-term accommodation of staff;
- g. homes that are used as service accommodation for persons such as those working in the hotel and catering industry, in hospitals and in residential institutions;
- h. homes that are lawfully being used temporarily for non-residential purposes.

⁴ In this Act, «second home» means a home that is neither a principal home nor equivalent to a principal home.

Art. 3 Duties and powers of the cantons

¹ Where required, the cantons shall specify in their structure plan measures to encourage greater occupancy of second homes and to promote the hotel industry and reasonably priced principal homes.

² They may issue regulations that limit the construction and use of homes more strictly than this Act.

Chapter 2 Inventory of Homes and Proportion of Second Homes

Art. 4 Inventory of homes

¹ Each commune shall draw up an inventory of homes each year.

² The inventory of homes must as a minimum indicate the total number of homes and the number of principal homes.

³ The commune may also list homes deemed equivalent to principal homes as a separate category and add this category of homes to the principal homes.

⁴ The Federal Council shall regulate the requirements for the inventory of homes and determine the details of its publication.

Art. 5 Determining the proportion of second homes

¹ The Confederation shall determine the proportion of second homes when compared with the total number of homes for each commune based on the inventory of homes in accordance with Article 4.

² If a commune does not submit its inventory of homes within the required deadline, it shall be assumed that the commune concerned has a proportion of second homes in excess of 20 per cent. The competent federal authority may extend the deadline at the request of the commune if there is good cause.

³ The Federal Council shall specify the federal authority that determines the proportion of second homes.

⁴ This authority shall consult the canton in which the commune is located before reaching its decision.

Chapter 3 Ban on the Construction of New Second Homes**Art. 6**

¹ In communes in which the proportion of second homes determined in accordance with Article 5 exceeds 20 per cent, no building permits may be granted for new second homes. If the proportion is less than 20 per cent and if granting a building permit would result in the commune having a proportion of second homes in excess of 20 per cent, no building permit may be granted either.

² The construction of new homes in accordance with Article 7 paragraph 1 letter b and in accordance with Articles 8, 9, 26 or 27 is reserved.

**Chapter 4
Construction of New Homes in Communes with a Proportion of Second Homes in excess of 20 per cent****Section 1 New Homes with Restrictions on Use****Art. 7**

¹ In communes with a proportion of second homes in excess of 20 per cent, building permits may only be granted for new homes if they are used as follows:

- a. as a principal home or as a home deemed equivalent to a principal home in accordance with Article 2 paragraph 3; or
- b. as a home intended as managed tourist accommodation.

² A home is deemed to be managed tourist accommodation if it is permanently offered for the exclusively short-term use of guests on terms that are customary in the market and in the locality and in it:

- a. is located in the same building as its owner has his or her principal residence; or
- b. it is not suitable for the personal needs of the owner and is managed as part of an organised accommodation complex.

³ The building authority shall impose a restriction on use in accordance with paragraph 1 letter a or paragraph 2 letter a or b in the building permit by means of condition of use. If the building permit for a new home does not contain such a condition and in the absence of authorisation in accordance with Articles 8, 9, 26 or 27, it shall be assumed that the restriction on use in accordance with paragraph 1 letter a applies.

⁴ As soon as the building permit takes legal effect, the building authority shall instruct the land registry to note the restriction on use in the land register in respect of the property concerned.

⁵ The Federal Council shall regulate the details, in particular:

- a. the requirements that the organised accommodation complex must meet;
- b. the duty to report any change in use from a home used as managed tourist accommodation into a principal home; and
- c. the wording of its conditions of use.

Section 2 New Homes without Restrictions on Use

Art. 8 Homes used in connection with organised accommodation facilities

¹ In communes where the proportion of second homes does not exceed 20 per cent, organised accommodation facilities may be authorised to construct homes without restrictions on use in accordance with Article 7 paragraph 1 if:

- a. the complex can only be run or continue to be run profitably with the income from the construction of such homes;
- b. the owner or the operator on request provides proof that the income from the homes will be invested in constructing or running the organised accommodation;
- c. the main usable area of these homes does not exceed 20 per cent of the entire main usable area of the rooms and homes;
- d. the homes and the organised accommodation complex form a structural and functional unit, unless the regulations on preserving the appearance of the locality or cultural heritage management require otherwise; and
- e. there are no other overriding interests to the contrary.

² For homes in accordance with paragraph 1 that permanently remain the property of the organised accommodation complex and are rented out by the same, the total main usable area in accordance with paragraph 1 letter c may amount to a maximum

of 33 per cent. A related restriction on alienation must be noted in the land register. Article 7 paragraphs 4 and 5 apply by analogy.

³ If the complex constructs homes in accordance with both paragraph 1 and paragraph 2, the maximum percentage of 33 per cent shall be reduced by the value obtained by dividing the area of the homes in accordance with paragraph 1 by the sum of the area of the homes in accordance with paragraphs 1 and 2 and multiplying the result by 13 per cent.

⁴ In an organised accommodation complex that already existed on 11 March 2012, a maximum of 50 per cent of the main usable area may be converted for use as homes without restriction on use under Article 7 paragraph 1 provided:

- a. the complex has been run as such for at least 25 years;
- b. it can no longer be run profitably and cannot be converted for use as homes intended as managed tourist accommodation;
- c. the fact that the accommodation complex concerned can no longer be run profitably is not due to any failure on the part of the owner or operator; and
- d. there are no overriding interests to the contrary.

⁵ An independent expert report must be provided as proof that the requirements in paragraphs 1 or 4 have been met. The Federal Council shall regulate the details.

Art. 9 New homes in protected buildings

¹ In communes with a proportion of second homes in excess of 20 per cent, new homes without restrictions on use in accordance with Article 7 paragraph 1 may be authorised within the building zones in protected buildings or buildings that define the appearance of the locality provided:

- a. the conservation value of the building is not adversely affected, and in particular the outward appearance and basic structure of the building essentially remains unchanged;
- b. the long-term preservation of the building cannot otherwise be guaranteed; and
- c. there are no overriding interests to the contrary.

² Outside the building zones, the permissibility of new homes without restrictions on use as defined in Article 7 paragraph 1 is governed by the spatial planning legislation.

³ Other requirements of federal law and of cantonal law are reserved.

Chapter 5 **Alteration of Homes in Communes with Proportion of Second Homes** **in excess of 20 per cent**

Section 1 **Homes subject to the Previous Law**

Art. 10 Definition

A home subject to the previous law under this Act is a home that lawfully existed or was the subject of a legally effective building permit on 11 March 2012.

Art. 11 Changes to structure and use

¹ Homes subject to the previous law are not subject to any restrictions on residential use; existing or future restrictions on use under the cantonal or communal law are reserved.

² Such homes may be renovated, converted or rebuilt within the limits of their pre-existing main usable area. If by doing so additional homes are created, these may be authorised without any requirement to impose a restriction on use under Article 7 paragraph 1, subject to any other requirements of federal and cantonal law.

³ Homes subject to the previous law within building zones may be extended by a maximum of 30 per cent of the main usable area existing on 11 March 2012, provided no additional homes are created. Outside building zones, extensions are permitted in accordance with the regulations on building outside building zones.

⁴ Extensions that exceed the dimensions mentioned in paragraph 3 are permitted if the home is declared to be a principal home as defined in Article 7 paragraph 1 letter a or a home intended as managed tourist accommodation as defined in Article 7 paragraph 1 letter b in conjunction with Article 7 paragraph 2 letter a or b and the relevant authorisation requirements are met. The building authority shall order a corresponding restriction on use in the building permit and instruct the land registry to note the restriction on use in the land register as soon as the building permit becomes legally effective.

Art. 12 Abuse and undesirable developments

¹ The cantons and communes shall take the measures required to prevent cases of abuse and undesirable developments that may result from the unrestricted use of homes subject to the previous law as second homes.

² To this end, the cantons may impose more stringent restrictions than those contained in this Act on the change of use of homes previously used as principal homes to second homes together with the possible changes in accordance with Article 11 paragraphs 2–4. If these changes in use and structure do not require a building permit, the cantons may introduce a building permit requirement.

Section 2 Amendment and Suspension of Restrictions on Use

Art. 13 Amendment

The amendment of the following restrictions on use require a building permit:

- a. a change in use under Article 7 paragraph 1 letter a to use as a home intended as managed tourist accommodation;
- b. a change in use within the categories of use under Article 7 paragraph 2.

Art. 14 Suspension

¹ At the request of the owner, the building authority shall suspend a restriction on use under Article 7 paragraph 1 for a specific period if:

- a. the restriction on use cannot be complied with temporarily due to special circumstances, such as death, change of residence or change in civil status; or
- b. the owner provides proof that the home has been publicly advertised but the attempt to find persons who would make adequate payment in order to use the home in accordance with the law has been unsuccessful.

² The authority shall extend the suspension under paragraph 1 letter b if the owner provides proof that the requirements therefor continue to be met.

³ In ordering the suspension in accordance with paragraph 1 letter b and on any extension thereof, it shall also order a reassessment of the official value of the home at the owner's expense.

⁴ The Federal Council shall regulate the duration of suspensions and their extensions as well as the details of the proof to be provided in accordance with paragraph 1 letter b, in particular the requirements for publicly advertising the home.

Chapter 6 Implementation

Art. 15 Supervisory authority

Each canton shall appoint an authority to supervise the implementation of this Act.

Art. 16 Duties to notify

¹ The authority responsible for the residents' register office in a commune with a proportion of second homes in excess of 20 per cent shall notify the building authority of persons who:

- a. move home within the commune;
- b. move out of the commune; or
- c. relocate permanently to another commune.

² The land registry shall notify the building authority of the recording in the land register of any transfer of ownership of property located in a commune with a proportion of second homes in excess of 20 per cent in respect of which a restriction on use has been noted in accordance with Article 7 paragraph 1. The cantons shall regulate the notification procedure.

³ The information required from the residents' register offices and the land register in order to implement Articles 4 and 7 may be recorded in the Federal Register of Buildings and Dwellings. The information shall be recorded by the authority competent for updating this register.

Art. 17 Official measures in the case of unlawful use

¹ If a home with a restriction on use under Article 7 paragraph 1 is not used in accordance with the law, the competent authority shall set a deadline for the owner to restore the lawful position under notice of substitute performance and the penalty under Article 292 of the Criminal Code⁴ in the event of failure to do so. The authority may extend the deadline at the request of the owner in justified cases.

² If the owner fails to restore the lawful position within the relevant deadline, the competent authority shall prohibit the use of the home and order it to be sealed.

³ The competent authority shall take the measures required to restore the lawful position. In particular, it may rent out the home subject to compliance with the restriction on use under Article 7 paragraph 1.

⁴ If members of the competent building authorities or their employees become aware of offences in the course of their official activities, they are required to report the same immediately to the the supervisory authority in accordance with Article 15.

Art. 18 Official measures in the event of unlawful use

¹ The competent authority shall have all the rights and obligations that it requires to restore lawful use on behalf of the owner.

² It may instruct third parties to carry out the required measures.

³ The rental income in accordance with Article 17 paragraph 3 shall be paid to the owner under deduction of the administrative costs incurred by the competent authority and any third parties instructed.

Art. 19 Review of impact and proposed measures

¹ The Federal Office for Spatial Development, working with the State Secretariat for Economic Affairs, shall regularly review the impact of this Act. It shall in particular review its impact on tourism and the economy in the regions concerned.

⁴ SR 311.0

² The relevant departments shall report to the Federal Council periodically. If required, the reports shall also propose further measures, particularly in relation to location promotion. The first reports shall be filed four years after this Act comes into force.

Art. 20 Jurisdiction, procedure and rights of appeal

¹ The assessment of applications for building permits and notification of decisions on building permits shall be governed exclusively by the relevant cantonal provisions. Article 112 paragraph 4 of the Federal Supreme Court Act of 17 June 2005⁵ is reserved.

² In addition and subject to the provisions of this Act, jurisdiction, procedures and rights of appeal are governed by the Spatial Planning Act of 22 June 1979⁶ and the related cantonal implementing provisions.

Chapter 7 Criminal Provisions

Art. 21 Disregard of restrictions on use

¹ Any person who wilfully disregards a restriction on use in terms of this Act shall be liable to a custodial sentence not exceeding three years or to monetary penalty.

² If the offender acts through negligence, he or she shall be liable to a monetary penalty not exceeding 180 daily penalty units.

³ If the restriction on use is subsequently revoked, the offender shall be liable to a monetary penalty not exceeding 90 daily penalty units.

⁴ Prosecution shall be deferred until a legally binding decision has been taken on the suspension or amendment of a restriction on use.

Art. 22 Incorrect information

¹ Any person who wilfully provides the competent authorities with incorrect or incomplete information on matters that are relevant to the authorisation, suspension or amendment of a restriction on use under this Act or who deceitfully exploits an error on the part of those authorities shall be liable to a custodial sentence not exceeding three years or a monetary penalty.

² Any person who provides incorrect or incomplete information through negligence shall be liable to a monetary penalty not exceeding 180 daily penalty units.

⁵ SR 173.110

⁶ SR 700

Chapter 8 Final Provisions

Art. 23 Implementing provisions

The Federal Council shall issue the implementing provisions unless the law declares the cantons to be responsible therefor.

Art. 24 Amendment of other legislation

The following acts are amended as follows:

...⁷

Art. 25 Transitional provisions

¹ This Act applies to applications for building permits that are considered at first instance or on appeal after this Act comes into force.

² If a building permit that was granted and took legal effect before 11 March 2012 requires the execution of the work to be postponed pending a decision relating to quotas, the competent building authority may authorise the work to begin at the latest within two years of this Act coming into force provided the building permit did not specify a period within which the work must start or postponed the start of the work for a period that ends no later than two years after this Act comes into force.

³ If the proportion of second homes in a commune falls to 20 per cent or less, the building authority shall, at the request of the owner, revoke any restriction on use under Article 7 paragraph 1 and instruct the land register to delete the relevant note on the land register folio for the property concerned.

⁴ Building permits that were granted and took legal effect before 31 December 2012 under the relevant cantonal procedural law shall remain valid.

⁵ Building permits that were granted and took legal effect in accordance with relevant cantonal procedural law after 1 January 2013 but before this Act came into force shall remain valid provided they are based on the Ordinance of 22 August 2012⁸ on Second Homes.

Art. 26 Project-related special land use plans

¹ In communes with a proportion of second homes in excess of 20 per cent, homes that are the subject of a project-related special land use plan that at least to a significant extent involves the construction of second homes may be authorised without any restriction on use under Article 7 paragraph 1 if this plan:

⁷ The amendments may be consulted under AS 2015 5657.

⁸ [AS 2012 4583, 2013 1257 3549, 2014 3567, 2015 4143]

- a. received approval which took legal effect before 11 March 2012; and
- b. stipulates the essential elements of the building permit relating to location, layout, size and design of the buildings and installations as well as nature and extent of their use.

² Amendments to special land use plans in accordance with paragraph 1 are permitted provided there is no increase in the proportion of homes without restriction on use under Article 7 paragraph 1 and in the proportion of main usable areas occupied by such homes.

Art. 27 Preliminary inquiries before 18 December 2007

Irrespective of the requirements of Article 7 paragraph 2 and Articles 8, 9 or 26, a building permit application for a new home may be authorised without restriction on use under Article 7 paragraph 1 if:

- a. the competent building authority, in response to a sufficiently detailed preliminary request, provided a written answer before 18 December 2007 which:
 1. contained the essential elements of the building permit as defined in Article 26 paragraph 1 letter b,
 2. confirmed that the project was eligible for authorisation;
- b. it was not possible to grant the building permit before 11 March 2012 because the owner was prevented from submitting a building permit application on time through no fault of his or her own; and
- c. the other requirements for granting the building permit are fulfilled.

Art. 28 Referendum and commencement

¹ This Act is subject to an optional referendum.

² The Federal Council shall determine the commencement date.

Commencement date: 1 January 2016⁹

⁹ Federal Council Decree of 4 Dec. 2015.

