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New Law on the Right to Housing

The new draft Law on the Right to Housing was finally approved by the Plenary of the Senate on 17 May 2023, and sent for publication in the Official State Gazette (“**BOE**”) on 18 May 2023. This is one of the reforms included in the Recovery, Transformation and Resilience Plan.

As such, to a large extent, the state legislature follows the approach taken by the Autonomous Community of Catalonia with its Law 1/2022, to tackle the emergency in the housing sector. Among other aims, the new regulation seeks to increase the supply of rental housing, promote public housing and implement new measures to protect against evictions. To this end, it introduces the following new features:

1. Rental market

The Law allows Autonomous Communities (“**AC**”) and City Councils to declare the existence of stressed market areas in order to establish limitations on rental prices in these areas. These limitations will particularly affect those property owners considered to be “large holders” for the purposes of the Law:

- **Stressed areas:** the AC and City Councils will be able to designate stressed market areas in which to establish limits on rental prices. For an area to be considered stressed, it must meet at least one of the following requirements: (i) the average cost burden of the rent or mortgage, together with basic utilities, must exceed 30% of the average household income, or (ii) the purchase or rental price of housing must have increased by at least 3 percentage points more than the regional CPI during the 5 years prior to the declaration of the area as a stressed area.

The respective AC will be responsible for defining those areas that are considered to be stressed areas under the Law. The declaration will be valid for 3 years and may be extended annually.

- **Large Holders:** a large holder (“**LH**”) is any natural or legal person that owns 10 or more dwellings in the national territory, or a constructed surface area of more than 1,500 m² for residential use (excluding garages and storage rooms). However, the AC may lower this threshold to 5 urban residential properties located within the same stressed area.
- **Limits on the annual updating of rents:** Until 31 December 2023, the upward revision of the rent of existing contracts may not exceed 2% (as of today’s date). From 1 January 2024 to 31 December 2024, the maximum permitted variation shall be 3%. From 1 January 2025, the updates shall refer to a new price index system to be established by the National Statistics Institute (“**INE**”) by 31 December 2024, which shall, in any case, be lower than the CPI.

In areas declared as stressed:

- For new contracts that are concluded, the initially agreed rent may not exceed the last rent of the rental contract that had been in force in the last 5 years in the same dwelling, once the annual rent update clause of the previous contract has been applied, and no new costs that were not provided in the previous contract may be passed on to the tenant. An increase of up to 10% over the last rent of the previous contract will only be allowed when certain circumstances are verified (e.g., refurbishment of the property, improvements for energy efficiency or accessibility,

or when the new contract is signed for 10 or more years or provides for extensions that allow the tenant to remain in the property for 10 or more years from the signing of the contract).

- If the landlord is an LH, the maximum rent of the new contracts may not exceed the threshold set by the price index system established by the INE, as soon as it is approved by the corresponding ministerial housing department. This limit also applies (irrespective of whether the landlord is an LH or not) if the property has not been rented in the previous 5 years.
- **Electronic Payment:** a general obligation to pay rent by electronic transfer is established for greater control (except in cases where one of the parties does not have a bank account or access to electronic payment)
- **Execution costs:** the Law establishes that the landlord will always be responsible for the costs of property management and the execution of the contract. Until now, this issue was not regulated, and depended to a large extent on the local market standard (e.g. in Madrid, it was customary until now for these costs to be borne by the tenant).
- **Obligation to collaborate:** the competent public administrations may require the LHs in the stressed areas to provide information on the use and purpose of the dwellings they own that are located in these areas, with reference to the previous calendar year. This information must be communicated within a maximum period of 3 months of the administration's request.

2. Measures to protect against evictions

- **Extension of housing rental contracts:** once the contract or the mandatory legal extension (5 or 7 years, depending on whether the landlord is a natural or legal person) has ended, an extraordinary extension of 1 year may be applied under the same agreed terms if the tenant can prove that he/she is in a situation of social or economic vulnerability using a report issued by the social services in the previous year. The landlord may not refuse such an extension if he has the status of an LH.

If the dwelling is located in a stressed area, the extension may be up to 3 years, and the landlord must accept it, even if he does not have the status of an LH (unless he has communicated the need to occupy the dwelling for himself or his first-degree relatives, or for his spouse in cases of separation, divorce or marriage annulment).

- **Extension and suspension of evictions:** the Law of Civil Procedure is amended in relation to proceedings for the recovery of possession of property (including eviction actions for non-payment of rent and cases of illegal occupation). The plaintiff must state in his claim whether or not he has the status of an LH (which he must prove using a certificate from the Land Registry showing the list of properties in his name). In the case of an LH, the Plaintiff must state whether or not the defendant is in a situation of economic vulnerability, which must also be proven using a report from the social services¹.

The Court may assess vulnerability ex officio in eviction proceedings for non-payment, if the rent plus electricity, gas, water and telecommunications expenses accounts for more than 30% of the household's income and these do not reach certain thresholds (generally 3 times the IPREM). Similarly, judgments in which the eviction is ordered must necessarily state the date and time of the eviction.

If the plaintiff is an LH and the defendant is in a situation of vulnerability, claims will not be allowed if the plaintiff does not prove that he/she has attended the conciliation or mediation procedure established by the competent public administrations. Likewise, the Court will notify the public administrations so that they can propose immediate assistance measures, as well as possible financial aid and subsidies for the

1. **Report from the social services** _ The statement of compliance issued by the plaintiff that he/she has attended the competent services in the 5 months prior to the filing of the application, without having been attended to or having initiated the procedures within 2 months of filing the application, is admissible.

defendant. If necessary, the Court may decide to suspend the hearing or the eviction so that the measures proposed by the administration can be adopted, for a maximum period of 2 months (if the plaintiff is a natural person) or 4 months (if the plaintiff is a legal person).

The reform establishes a similar procedure for real estate auctions in attachment and foreclosure proceedings.

3. Tax benefits for homeowners

The Law provides for a series of personal income tax credits as of 1 January 2024, if a series of requirements are met when the lease contract is signed (to be applied to the positive net income from real estate capital arising from the lease), in accordance with the following:

- A 70% rebate (i) for first-time landlords, provided that the property is in a stressed area and the tenant is between 18 and 35 years old or (ii) where the tenant is the public administration or a non-profit entity or when the property is part of a public housing programme or qualifies for a rent limitation established by the competent administration.
- A 90% rebate for owners of a rented property in a stressed area who, after applying the annual updating clause, reduce the rental price by 5% compared to the last rent.

On the other hand, as stated in the second final provision of the new regulation, a 60% rebate may also be applied to landlords who have carried out a refurbishment of the property in the 2 years prior to the conclusion of the rental contract. In all other cases, the applicable rebate is 50%.

4. Surcharges for permanently unoccupied dwellings

Local councils may levy a surcharge on Property Tax ("IBI") on dwellings that are permanently unoccupied without just cause for more than 2 years, provided that the owner has a minimum of 4 residential properties.

Similarly, a modification of the surcharge of between 50% and 150% of the net IBI charge is established, depending on the length of the vacancy (for a period of more than 3 years) and the number of unoccupied dwellings of the same owner in the same municipality (2 or more properties).

The justified grounds for a vacant property include, among others, work transfers, the carrying out of refurbishment works, the existence of legal proceedings that prevent the use or enjoyment of the property or in the case that the property is a second residence, applying in this case a maximum limit of 4 years of continuous vacancy.

5. Public housing

The Law establishes the obligation to prepare and keep up-to-date an inventory of the public housing stock and an annual report specifying the actions taken to strengthen this stock and adapt it to existing demand, establishing the creation of a Housing Advisory Council whose composition, powers and operation will be established by regulation.

Furthermore, the percentages of land reserved for subsidised housing are increased from the 30% initially considered to 40% for land zoned for development (new development) and from 10% to 20% for unconsolidated urban land (reform or renovation of development), establishing a minimum percentage of 50% for rental housing within the aforementioned land reserve.

Subsidised housing will maintain a minimum classification regime of 30 years, except for exceptions provided for in the regional regulations, and in the case of housing developed on land subject to a public protection regime, it

will be subject to a permanent protection regime that prevents its de-classification, as long as the classification of said land is maintained.

Finally, and with the aim of increasing the supply of affordable housing, the existence of incentivised affordable housing is also promoted, which, without being subject to the formal procedure of classification as subsidised housing, will be exclusively intended for the habitual residence of tenants with difficulties in accessing housing at market prices and subject to specific limitations as to its use and maximum rental price limits.

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