

SPANISH HOUSING ACT

Today Act 12/2023 of 24 May on the right to housing (*Ley 12/2023, de 24 de mayo, por el derecho a la vivienda*) (the "**Housing Act**"), which enters into force tomorrow, May 26th (except the second final provision regarding tax measures concerning personal income tax (*IRPF*), which enters into force on 1 January 2024), was published in the Official State Gazette, containing a series of new matters of relevance for various real estate market agents such as major owners, investment funds or developers.

CONCEPT OF MAJOR OWNER

Several of the measures provided for in the Housing Act apply to those who are defined as Major Owners: individuals or companies holding (a) more than 10 urban residential properties (the Spanish Regions (*Comunidades Autónomas*) may reduce the number of properties to 5 or more), or (b) a built surface area of more than 1,500 sq. m. for residential use, always excluding garages and storage rooms.

RENT CONTAINMENT MEASURES

The Housing Act includes a series of measures to contain rents, some of which apply to agreements currently in force, while others will be applicable to those signed hereafter. The agreements concerned are those defined by the Spanish Urban Leases Act ("LAU") as housing leases, although a working group is expected to advance a proposal for regulation of leases for non-housing use (particularly seasonal housing).

DIRECTLY APPLICABLE MEASURES

Some of these measures will be directly applicable after the entry into force of the Housing Act, the most notable being the following:

1. Caps on rent reviews in 2023 and 2024. Creation of a new benchmark index to replace the CPI

The cap already being applied for annual rent reviews in 2023 (which, for Major Owners, entails rent increases being capped at 2%) is maintained, and a new cap is created for reviews taking place during 2024 (which, for Major Owners, is set at 3%). In addition, the National Statistics Institute will be asked to define, by the end of 2024, a new benchmark index to replace the CPI for the purpose of determining the annual rent review cap.

Key issues

- Consolidation of caps on rent reviews in 2023 and 2024 and plan to remove the CPI as the benchmark index.
- The Regions are given the power to declare stressed residential market zones where different mechanisms are applied to limit rent increases.
- Provision for surcharges of up to 150% on permanently vacant housing.
- Increase of the percentages of land to be reserved for protected housing in urban planning activities.
- Establishing indefinite periods for protected housing schemes (barring exceptions).
- New definition of parameters for collectives in a vulnerable situation.
- Intervention by the competent authorities in judicial proceedings involving the repossession of housing.
- Compulsory conciliation procedure for Major Owners.
- Greater difficulty in the preparatory work for summary proceedings for recovering possession and mortgage foreclosure.
- Definition of a greater number of formalities in these processes.

2. Extraordinary extension for vulnerable lessees

Those lessees in a situation of social and economic vulnerability - duly accredited - may request, at the end of the minimum term or the extensions provided for in the LAU, an extraordinary annual extension of their agreement on the same terms, which lessors who are Major Owners will be obliged to accept.

3. Allocation of agency expenses to lessor

The costs of real estate management and agreement formalisation shall be borne by the lessor.

MEASURES TO BE APPLIED BY THE REGIONS.

As the Spanish Regions are competent for housing matters, the application of another series of measures will require the corresponding prior implementation by the different Regions, meaning that it cannot be ruled out that certain Regions may not apply them. The most noteworthy of these measures are the following:

1. Declaration of stressed residential market zones

The Regions may declare as stressed residential market zones ("**Stressed Zones**") those areas in which (a) the average burden of the cost of a mortgage or rent in the personal/family budget, plus basic expenses and supplies, exceeds 30% of the average household income, and/or (b) the purchase price or rent for housing has, in the 5 years prior to the declaration as a Stressed Zone and in cumulative terms, increased by at least 3 percentage points more than the cumulative growth percentage of the corresponding regional CPI. The declaration shall remain in force for a period of 3 years (extendable annually if the circumstances that gave rise to it persist) and may prompt the authorities to request certain information from Major Owners with properties located there.

2. Extraordinary extension of contracts in Stressed Zones

Those lessees of housing in Stressed Zones may, at the end of the minimum term or the extensions provided for in the LAU, request an extraordinary extension of their agreement in the same conditions for one-year terms (with a maximum of 3 years), which lessors will have to accept, except in certain specific cases.

3. Caps on the rent of new agreements in Stressed Zones

The rent of new leases for housing located in Stressed Zones may not exceed the last one in force in the last 5 years on the same property (once updated in accordance with the rules of the annual revision of the previous agreement), and no costs other than those provided for in the previous agreement may be charged to the lessee. Exceptionally, the new rent may be increased by up to 10% compared to the last one in force, if certain refurbishments have been carried out during the previous 2 years or a term of at least 10 years has been set.

The above notwithstanding, for agreements for housing in Stressed Zones owned by a Major Owner which are signed once the system of benchmark price indices has been approved, rent will not exceed the limit established by that system. This limitation may also apply when the housing is in a Stressed Zone and has not been leased for the past 5 years.

IBI SURCHARGES FOR EMPTY HOUSES

City Councils may apply a surcharge of up to 50% of the Real Estate Tax ("IBI") quota for those residential properties that (i) remain unoccupied, continuously and without just cause, for a term of more than 2 years, and (ii) belong to owners of 4 or more residential properties. The surcharge may be up to 100% when the period of vacancy is over 3 years, and up to 150% when the owner of the property has 2 or more vacant residential properties in the same municipality.

SOCIAL HOUSING MEASURES

The Housing Act also introduces certain amendments with respect to social housing, with the most relevant being as follows:

1. Social housing reserve land

The minimum percentages of social housing reserve land foreseen under the Spanish Land and Urban Refurbishment Act (*Ley de Suelo y Rehabilitación Urbana*) are increased from (a) 30% to 40% in the case of new developments in rural areas, and (b) 10% to 20% in the case of the renewal or renovation of developments in urban areas. The land classification as social housing reserve land may not be amended, except in exceptional cases. In addition, the Regions will be required to establish the percentage of such reserve land to be made available for lease, which as a general rule will not be less than 50%.

2. Permanent protection regime

The protection regime for housing built on reserve land will remain in force for an indefinite period of time, meaning said housing cannot be disqualified as social housing as long as such land classification remains in place. Any other social housing will also be subject to a permanent protection regime, unless their disqualification (*descalificación*) or the establishment of a set term (which may not be less than 30 years) is for a just cause duly explained by the corresponding Region; in the event of disqualification and subsequent sale of any of these dwellings, the corresponding regulations may require the refund of all (or part) of the subsidies received. The above does not apply to social housing that has obtained definitive qualification prior to the entry into force of the Housing Act.

3. Assignment of planning capacity

In those municipalities where one or more Stressed Zones have been declared, the land obtained pursuant to the obligation to assign planning capacity (*aprovechamiento urbanístico*) must, as a general rule, be devoted to the construction and management of social housing or public housing (*viviendas dotacionales*).

4. Compatibility with public use land

Territorial and urban planning instruments may establish the construction of public housing as a compatible use of the public use land (*suelo dotacional*).

MEASURES RELATING TO THE JUDICIAL REPOSSESSION OF HOUSING

The Housing Act also establishes a series of measures aimed at protecting households at risk of vulnerability in court proceedings whose purpose is to repossess a property that constitutes their usual place of residence. The

majority of these measures are implemented through the amendment of the provisions of the Spanish Civil Procedure Act ("LEC").

The new regulation mainly affects two procedures: summary repossession procedures and mortgage foreclosures.

Although many of these measures only affect Major Owners, there are other important measures that are more broadly applicable.

1. Definition of vulnerability under the Housing Act

The Housing Act establishes new vulnerability parameters in order to define who should benefit from special protection measures in scenarios of eviction of tenants and occupants. A household will be deemed vulnerable if two conditions are met on a cumulative basis:

- that expenditure on rent and utilities (water, gas and telecommunications) represents more than 30% of the household income. The wording of the provision suggests that this requirement is only applicable in cases of eviction for non-payment; and
- that the total household income does not reach 3 times the Spanish minimum wage index per month (IPREM) (the monthly IPREM for the year 2023 is fixed at 600 euros), i.e., income should not exceed 1,800 euros per month, with it being possible to increase this threshold in specific circumstances (if there are children, children with disabilities, single-parent families, dependent persons over the age of 65 years, etc.).

To assess the existence of risk of vulnerability, in addition to the above criteria, the judge can also take into consideration whether any of the occupants of the house is a dependent person, a minor and/or a victim of gender violence.

The Housing Act does not provide for these new parameters to be applicable to foreclosure proceedings but restricts their application to summary repossession procedures.

2. Participation of the competent authorities

Many of the amendments made in the LEC seek to ensure the participation in the court proceedings of authorities competent in the field of housing, social services and emergency care for persons facing or at risk of social vulnerability when this is necessary to establish protective measures.

To this end, the Housing Act introduces, inter alia, an ex officio notification procedure to these public bodies whenever a date is set by the court for the eviction of the occupants of a property. It also establishes the need to obtain a mandatory report on the vulnerability situation of the defendant (the "**Vulnerability Report**") in certain proceedings involving the repossession of a property and mortgage foreclosure procedures.

In summary repossession procedures, the public authority is also granted a period to submit allegations, in order to determine the existence of a situation of vulnerability and the measures to be implemented.

3. Modification of documentary evidence required in the filing of claims

The Housing Act modifies the mandatory documentary requirements in claims for the summary repossession of a property and in foreclosure claims.

In the first scenario, those affected are mainly the Major Owners, as they have to submit, together with the claim for the summary repossession procedure, the Vulnerability Report and evidence of having commenced a conciliation or mediation process before the competent housing authorities (run by the Regions) when this risk of vulnerability exists.

In the second scenario, the said Vulnerability Report will have to be submitted by any party that intends to commence a mortgage foreclosure procedure in relation to a property that may constitute the defendant's usual place of residence. Only the Major Owners are obliged to provide evidence of having commenced the above-mentioned conciliation or intermediation process.

4. Possible suspension of repossession proceedings

The Housing Act introduces a number of additional steps in the summary repossession procedures, which may end in the suspension of the proceedings for a period of 2 months (if the claimant is an individual) or 4 months (if the claimant is a legal entity) for the adoption of the protective measures proposed by the Public Administration.

As a result of the addition of these steps, the timing for holding such proceedings will probably tend to spread, being the current average 9-10 months¹.

It should be borne in mind that these additional steps alter the nature of the abbreviated process to secure court protection in cases where properties are illegally occupied, and which was included in Act 5/2018 of 11 June (whose constitutionality was confirmed by the Constitutional Court in its judgment of 28 February 2019).

5. Proof of non-vulnerability in ongoing foreclosure proceedings

The new regulation establishes that in all mortgage foreclosure proceedings in which the creditor is a Major Owner it will be necessary to provide documentation to prove whether or not the defendant is in a situation of vulnerability. In the event of a situation of vulnerability, the Major Owner must provide evidence that it has participated in the corresponding conciliation or intermediation process.

6. Recommencement of foreclosure proceedings suspended pursuant to COVID regulations

Any lessees at risk of vulnerability who were involved in eviction or dispossession proceedings that were suspended pursuant to COVID regulations, in force until 30 June 2023, will not be recommenced unless the Major Owner expressly requests it and proves that it has participated in the corresponding conciliation or mediation process. This will entail an extension of the *de facto* suspension measures presumably until at least the end of 2023.

It is envisaged that the entry into force of the regulation will lead to a significant increase in the time required to prepare claims for repossession and mortgage foreclosure, given the additional documents that have to be submitted and the availability of which does not depend on the claimant. It is also expected that the handling of proceedings will take longer.

According to data published by the General Council of the Judiciary (CGPJ)

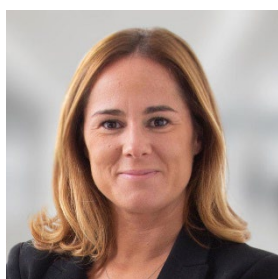
In addition, failure to adopt the necessary measures to support the entry into force of the Act could result in bottlenecks at the competent authorities due to the increased number of requests for Vulnerability Reports and/or conciliation or mediation processes. In this regard, it will be essential for the authorities to be provided with the necessary resources to adequately deal with the measures imposed by the Housing Act.

CONTACTS



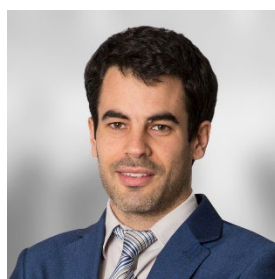
Carlos Portocarrero
Partner

T +34 34 91 590 7510
E carlos.portocarrero
@cliffordchance.com



Laura del Campo
Senior Associate

T +34 91 590 9479
E laura.delcampo
@cliffordchance.com



Andrés Tirado
Associate

T +34 91 590 4125
E andres.tirado
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, Paseo de la Castellana, 110
28046 Madrid, Spain

© Clifford Chance 2023

Abu Dhabi • Amsterdam • Bangkok •
Barcelona • Beijing • Brussels • Bucharest •
Casablanca • Doha • Dubai • Düsseldorf •
Frankfurt • Hong Kong • Istanbul • Jakarta* •
London • Luxembourg • Madrid • Milan •
Munich • New York • Paris • Perth • Prague •
Rome • São Paulo • Seoul • Shanghai •
Singapore • Sydney • Tokyo • Warsaw •
Washington, D.C.

*Linda Widyati & Partners in association with
Clifford Chance.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.