

## NOTE ON THE PRELIMINARY DRAFT OF THE HOUSING BILL

The Ministry of Transport, Mobility and Urban Agenda (*Ministerio de Transportes, Movilidad y Agenda Urbana*) has published for public consultation the preliminary draft bill on the right to housing ("**Preliminary Draft**"), which sets out the Government's proposal on the matter. As it is being fast-tracked by means of the urgency proceeding, we expect to have access to the bill ("**Bill**") on or around 18 November, when it will be submitted to Congress and begin its passage through Parliament<sup>1</sup>.

The Preliminary Draft is more measured than the proposals some parliamentary groups<sup>2</sup> sent the Government on 8 October, since it does not include some of the most controversial measures, such as extending the term of residential leases, doing away with the special tax rules for SOCIMIs or the obligation to transfer some vacant properties. It does however include the control of lease prices in "stressed residential market areas" (*zonas de mercado residencial tensionadas*, "**SRMA**"), which the autonomous regions will be responsible for identifying and which come with tax incentives to encourage owners natural persons to rent their properties (which are in turn designed to encourage autonomous regions to designate SRMA so that the limits on income generated are effective).

Very briefly, the following steps will be taken from the moment the Bill is approved in order to complete its passage through Parliament: after its publication in the Official Gazette of the Spanish Parliament, the parliamentary groups may submit amendments, which must be debated and put to a vote. The length of this process varies depending on the type of amendments that are proposed and approved. After the last debate in a plenary session of the Congress, the Bill will be sent to the Senate, which will have two months to approve, modify or veto it. Bearing in mind the various stages that the Preliminary Draft has still to go through (which will take at least five months), it is quite possible that its content may vary.

The measures included in the Preliminary Draft to protect the right to adequate housing, which are based on basic competences of the State in the areas of basic guarantees of equality of all citizens, general planning of economic activity, civil and procedural legislation and general taxation, can be divided into four main blocks: (i) implementing public policy on housing matters; (ii) residential purchase and leasing

---

<sup>1</sup> As it is being fast tracked, we do not expect the Bill to differ significantly from the Preliminary Draft.

<sup>2</sup> Unidas Podemos-En Comú Podem-Galicia en Común; Republicano; Plural; Euskal Herria Bildu; Mixto.

transactions - protection and transparency (including control of lease prices); (iii) procedural aspects; and (iv) tax incentives and surcharges.

## 1. IMPLEMENTING PUBLIC POLICY ON HOUSING MATTERS

- In order **to be able to offer more social housing (*vivienda social*) and temporary social housing (*vivienda dotacional*)**, the autonomous regions and local councils are encouraged to (i) allow temporary social housing to be constructed on land not currently intended for residential use; and (ii) increase the offer of plots of land for social housing or for public use by means of urban transformation actions included in the appropriate planning instruments.

Subsidised housing built on plots intended for subsidised housing will now be permanently classified as such. In the case of subsidised housing located on other types of plots, regional regulations may declassify it as subsidised housing for just cause or set a deadline for reclassification as subsidised housing, in which case the classification will be for a minimum of 30 years. If properties are sold after they are declassified, the subsidies received must be returned.

Selling or leasing subsidised housing (while still classified as such) will require authorisation from the corresponding autonomous region. It will grant the authorisation if the housing is to be sold or leased to people eligible for subsidised housing (and registered with the relevant registries) and within the maximum set prices for leases or sales. Within the term for granting authorisation, the regional authority may exercise its rights of first refusal and preferential acquisition and, for the same length of time after granting authorisation, its rights of withdrawal or preferential acquisition that may be provided in the applicable regional legislation.

The current requirements to reserve plots for subsidised housing under the Land Law (*ley del suelo*) are maintained (30% for new-builds and 10% for refurbished or renovated housing), but compensation mechanisms for reserving plots for subsidised housing on developed plots (*suelo urbanizado*) must be established. In this sense, the Preliminary Draft establishes that at least 50% of the plots must be used for rental properties (with few exceptions).

The Preliminary Draft also creates the category of “**incentivised affordable housing**” (*vivienda asequible incentivada*). The owners of this type of privately owned housing will be entitled to planning (e.g. increases in building capacity or new permitted uses), tax and other benefits if they (i) rent these properties to individuals who have difficulties accessing housing at market prices, (ii) for a minimum period of time, and (iii) at capped rents. These properties may be new-builds or existing properties.

- With a view to **aligning housing supply and demand**, local councils are also encouraged to promote **new types of housing** that are tailored to different forms of cohabitation, living arrangements and life cycle demands (e.g. co-living).

- In order to **guarantee the right of access to housing** in municipalities with one or more SRMAs, the possibility of monetizing transfers of urban development rights is limited to force land to be used for social housing and/or temporary social housing.

*The “stressed residential market areas” (SRMA) will be those the autonomous regions designate by following the procedure established for this purpose, which, among other formalities, requires that they prepare a report justifying that the areas present the following characteristics:*

*a) households spend over 30% of the average household income on rent or mortgage costs and basic expenses; and*

*b) that, in the five years prior to the designation of the area as an SRMA, property purchase prices or rents have risen by at least 5% above the consumer price index in the autonomous region.*

*Upon designating an area as an SRMA (for an initial period of three years, which may be extended), the competent authority must draft a specific plan with the necessary measures to correct the imbalances detected, as well as its application calendar for a reference period of three years.*

- In the SRMAs, the authorities in charge of housing matters may require **large property owners (grandes tenedores de vivienda)** to **collaborate and provide information on what the properties they currently own are used for** (e.g. data identifying the property, construction year, surface area and proof that they comply with the duties associated with home ownership, as established in the Preliminary Draft). The intention is that the authorities may use this information to establish formulas for working with owners to increase the supply of affordable rental properties. The authorities will determine who or what qualifies as a large property owner based on the definition in the Preliminary Draft and criteria specific to the SRMA.

*The Preliminary Draft defines the concept of “large property owner” (in line with the emergency measures adopted during the pandemic) as an individual or legal entity that owns more than ten urban properties, excluding garages and storage rooms, or properties with a total built surface area of more than 1,500 m<sup>2</sup>.*

## RESIDENTIAL PURCHASE AND LEASING TRANSACTIONS - PROTECTION AND TRANSPARENCY

- The information to which **purchasers or lessees of residential properties are entitled** is regulated by referring to and using wording similar to existing national and regional regulations, as are the obligations of those who transfer, lease and assign housing in their own name or on behalf of others (such as developers, owners or real estate agents).
- The first additional provision of the Urban Development Law (*Ley de Ordenación de la Edificación*) is repealed and its provisions on the developer’s obligation to **secure advance payments** made to purchase a new-build property are slightly modified and rearranged in the regulation. The obligation to secure is no longer triggered when the building permit is obtained but when the developer receives the advance payment from the purchaser. If a guarantee (*aval*)

has been given as security to secure advance payments, it must be in place for four years (instead of the current two years) from the date on which the obligation to hand-over the property is breached. In addition, if the purchaser fails to pay an instalment of the purchase price, the developer may not terminate the contract until 30 days after demanding payment.

- A **public register of residential lease contracts** is to be created, which will be linked to the regional deposit registers and to the land registry. The intention is to have as much information as possible to compile the system of reference indexes of lease prices<sup>3</sup> and to monitor compliance with the objective of increasing the supply of housing for lease at affordable prices.
- The extensions system contained in the **Urban Lease Law ("LAU")**<sup>4</sup> is amended to provide that, if a leased property is located in an SRMA, once the mandatory extension period (five or seven years) or the tacit extension period (three years) ends, the lessee may request additional one-year extensions for a maximum of three years. The lessor must accede to these requests except when (a) the parties have agreed other terms for extensions, (b) the parties have entered into a new lease that complies with the limitations on rent explained in the next point, or (c) the lessor has notified the lessee within the statutory term that they intend to use the leased property as a permanent residence for themselves or their family members.
- The **regulations on determining rent** are amended as follows:
  - The rent agreed at the beginning of a new contract for a property located in an SRMA may only be increased above the rent payable over the previous five years, and never by more than 10%, in the following cases:
    - In the two years prior to the date of the new contract, work to renovate the property or achieve 30% savings in non-renewable primary energy use has been completed.
    - In the two years prior to the date of the new contract, measures are taken to improve access to the property.
    - When the contract is signed, or the lessee has a right to extend, for a minimum of ten years.

In all other cases, the maximum rent for new residential leases located in an SRMA will be the rent under the previous lease increased in line with the consumer price index.
  - In contracts in which the lessor is a legal person large property owner and the property is located in an SRMA, the rent agreed at the beginning of the new contract may not exceed the amount determined according to the reference price index system. This measure will apply to contracts signed once the regulation has entered into force for 18 months and once that the reference price index system has been approved.

---

<sup>3</sup> Established in the second additional provision of Royal Decree-Law 7/2019 of 1 March on urgent housing and rental measures.

<sup>4</sup> Other than the extraordinary measures linked to the pandemic approved since March 2020, which Royal Decree-Law 21/2021 of 26 October has extended until 28 February 2022.

## PROCEDURAL ASPECTS

- Measures adopted during the pandemic to protect lessees and other vulnerable housing occupants facing eviction are made permanent.<sup>5</sup> In this sense, once the date is set for an **eviction** of someone that is illegally occupying a house, the public authorities responsible for housing and social welfare matters will be automatically notified (without having to request the occupant's consent).
- **The procedure to recover possession of a property<sup>6</sup> is modified** when it is the permanent residence of someone considered to be in a vulnerable situation.<sup>7</sup> Under the new procedure the process is suspended for two or four months, depending on whether the owner is a natural or legal person (respectively), so that measures the public authorities have proposed to help the occupant can be adopted. The procedure will continue after these measures have been taken or after the maximum suspension period.
- In **criminal proceedings** for squatting houses that are not the owner's dwelling or second residence (*usurpación*), if the eviction is petitioned as a precautionary measure and among those occupying the property are dependent persons, victims of violence against women or minors, the competent regional and local authorities will be notified so that they can adopt appropriate support and protection measures.

## TAX INCENTIVES AND SURCHARGES

- Measures applicable to **Personal Income Tax (IRPF)** on income from residential leases signed after the new legislation enters into force:
  - Net taxable income will be reduced:
    - By 90% when the leased property is located in an SRMA and the initial rent is more than 5% less than the rent under the previous contract.
    - By 70% when the previous requirements are not met but any of the following circumstances occur: (i) the taxpayer is renting the property for the first time, provided that it is located in an SRMA and the lessee is aged between 18 and 35; (ii) the lessee is a public authority or non-profit entity that allocates the property to social renting or a public housing programme with capped rents.
    - By 60% when the previous requirements are not met but work to renovate the property has been completed in the two years prior to the date of the lease agreement.

---

<sup>5</sup> Royal Decree-Law 21/2021 of 26 October has extended them until 28 February 2022.

<sup>6</sup> For non-payment of rent and other amounts owed, expiry of the lease's contractual or statutory term, allowing occupation with legal tenancy, or by holders of in rem rights registered in the land registry.

<sup>7</sup> For example, this would be the case if the rent plus basic utility bills represent more than 30% of a household's income and that income exceeds certain thresholds.

- By 50% in any other situation.

This measure will enter into force on 1 January of the year following the publication of the new legislation in the Spanish Official Gazette. The requirements to apply the reduction must be met when the lease agreement is signed and the reduction will apply while the requirements continue to be met.

- **Real Estate Tax (IBI)** measures: the definition of vacant or unoccupied housing is amended so local councils may impose a surcharge of up to 50% of the Real Estate Tax payable on residential properties that are permanently unoccupied. The surcharge may be increased to 100% when the property is unoccupied for more than three years.

*A "permanently unoccupied property" is that which remains unoccupied, continuously and without justified cause, for a period of more than two years and belongs to owners who own four or more residential properties. The following causes will be considered justified: temporary transfer for work or training reasons; change of domicile due to a situation of dependency or health reasons or social emergency; second residences unoccupied continuously for a maximum of four years; properties subject to works or rehabilitation or other circumstances that make it impossible to occupy them; the property is the subject matter of litigation that prevents its use or whose owners, under market conditions, offer it for sale (up to a maximum of one year) or rent (up to a maximum of six months).*

Local councils may increase the surcharge by a further 50% (i.e. to 150%) for properties whose owners have two or more unoccupied residential properties in the local area.

The surcharge will accrue on 31 December each year and be payable to the local council annually once it has confirmed that the property is unoccupied on that date and the taxpayer has been given the opportunity to explain why that is the case.

**CONTACT LAWYERS**



**Diego Armero Montes**  
**Partner**  
+34915860646  
diego.armero@uria.com

---



**Belén Simbor Ortega**  
**Senior associate**  
+34963532341  
belen.simbor@uria.com

---

**BARCELONA  
BILBAO  
LISBOA  
MADRID  
PORTO  
VALENCIA  
BRUXELLES  
LONDON  
NEW YORK  
BOGOTÁ  
LIMA  
SANTIAGO DE CHILE**

[www.uria.com](http://www.uria.com)

This newsletter provides general information and does not constitute legal advice