

## Draft housing bill

The suspended parliamentary process to debate and pass the draft bill on the right to housing, initially published in the State Official Gazette on 18 February 2022, was reactivated on 20 April 2023.

In October 2021, the Ministry of Transport, Mobility and Urban Agenda (*Ministerio de Transportes, Movilidad y Agenda Urbana*) published a preliminary draft bill on the right to housing. Following a period of public consultation that ended on 18 November 2021, it was formally submitted to Parliament as the Government's proposal for a bill on the right to housing ("**2021 Draft Bill**"). The 2021 Draft Bill met with some resistance from several parliamentary groups (in the form of *enmiendas a la totalidad*) during the parliamentary session of 10 March 2022 in which it was debated and, subsequently, the legislative procedure was suspended.

According to the press, as a result of recent conversations between the parliamentary groups forming the coalition Government and those that normally support their parliamentary initiatives (also known as "*el bloque de investidura*"), the process of getting the 2021 Draft Bill through parliament has been restarted, albeit on the basis of a more measured proposal from which some of the more controversial measures have been removed.

However, the text approved by Congress in the parliamentary session of 27 April 2023 ("**Amended Housing Bill**") still includes a number of far-reaching measures, such as a definition to be applied at a national level of the concept of large property owner (*gran tenedor*) and provisions on controlling lease prices in "stressed residential market areas" (*zonas de mercado residencial tensionadas*, "**SRMA**"). There are also tax incentives to encourage individuals to rent their properties. These measures will allow autonomous regions to designate SRMA within their territories, which will make the intended rent-control mechanism more effective. One of the measures included in the 2021 Draft Bill that has not made it to the Amended Housing Bill is the regulation on advanced payments to developers before or during construction of a dwelling.

The Amended Housing Bill may yet suffer additional changes as after being approved by Congress it will be sent to the Senate, which will have 20 days to process the draft under the fast-track legislative procedure. After that 20-day period there are three possible scenarios:

- The draft is approved without amendments to the draft sent by Congress, in which case the Amended Housing Bill will be definitively approved.
- The draft is amended, in which case the Amended Housing Bill will be returned to Congress, which, in a plenary session, may accept or reject the amendments by a simple majority.

- The Senate proposes a veto (which requires an absolute majority of the Senate). In this case, the Congress may still pass the Amended Housing Bill if it ratifies, by an absolute majority, the text it had initially approved. Otherwise, after two months, the voting procedure will be repeated in Congress and a simple majority will suffice to override the veto.

The measures included in the Amended Housing Bill can be divided into four main blocks: (i) those implementing public policy on housing matters; (ii) protection and transparency measures on purchasing and leasing residential property, including controlling lease prices; (iii) procedural measures; 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) create new plots of land for social housing in the context of urban regeneration/transformation plans by way of the appropriate planning instruments.

The protection regime for social housing built on plots intended for this purpose will now be permanent. If they are located on other types of plots, regional regulations may result in them being declassified as social housing for justified reasons or a declassification deadline could be imposed, provided that the social housing classification lasts for a minimum of 30 years. If properties are sold after they are declassified, the public subsidies that have been received must be returned.

Authorisation must be sought from the autonomous region before selling or leasing subsidised housing (while it is still classified as such). Authorisation will only be granted if the housing is to be sold or leased to eligible individuals who are registered for this purpose and at prices that are below the maximum set for leases and sales. Autonomous regions are encouraged to pass their own regulations giving the competent public authorities pre-emption rights that can be exercised in these types of transfers within the period to authorise sales and transfers. These pre-emption rights may be paired with repurchase rights that may be exercised for an equivalent period of time if the corresponding autonomous region's legislation so provides.

As regards reserving land for social housing, the Amended Housing Bill slightly increases the percentages currently set out in the national urban planning regulations (i.e. from 30% to 40% for new urbanisation proceedings and from 10% to 20% for transformation or rehabilitation of urban plots—but does not stipulate how a transitory regime for such increase—). It also states that the percentage that must be allocated to leased social housing may not be less than 50% of the total social housing built or developed, except in exceptional cases when this can be justified because of the specific characteristics of those in need of housing or other economic and social circumstances in the local area.

The Amended Housing Bill also creates the category of “**incentivised affordable housing**” (*vivienda asequible incentivada*). The owners of these types of privately owned dwellings will be

entitled to urban planning benefits (e.g. increases in building capacity or new permitted uses), tax and other benefits if they lease these properties (i) to individuals who have difficulties accessing housing at market prices; (ii) for a minimum period of time; and (iii) at capped rents pursuant to the limits set out in the applicable regulations. These properties may be new-builds or existing properties as long as the aforementioned requirements are met.

- With a view to **aligning housing supply and demand**, town councils are encouraged to promote **new types of housing** tailored to different forms of cohabitation (which might extend to co-living although this is not specifically mentioned), living arrangements and life cycle demands in light of the characteristics of their own area (including whether or not they are rural).
- In order to **guarantee the right to access housing** in municipalities with one or more SRMA, the possibility of monetizing transfers of urban development rights is limited to aiming at land being used for social housing and/or temporary social housing.

*“Stressed residential market areas” (SRMA) will be those the autonomous regions determine as such by way of a procedure to be set out for this purpose, which, among other formalities, requires a report justifying, on the basis of objective and substantiated data, the existence of a risk of an insufficient supply of residential housing, when one of the following criteria are met:*

- a) households spend more than 30% of the average household income on rent or mortgage costs and basic expenses; and*
- b) in the immediately preceding five (5) years, 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 (3) years, which may be extended), the competent authority must draft a specific plan setting out the necessary measures to correct the imbalances detected, as well as the calendar for applying it over the next three (3) years.*

The requirements to be met by an area to be classed as an SRMA will be reviewed three years after the Amended Housing Bill enters into force.

- **Large property owners** (*grandes tenedores de vivienda*) must collaborate with the authorities in charge of housing matters, which may require large property owners with properties in SRMA **to provide information on the characteristics and uses of their properties** (e.g. data identifying the property, year of construction, surface area and proof that they comply with their statutory duties as home owners). The intention is that the authorities may use this information to establish collaboration schemes with owners to increase the supply of affordable rental properties.

The Amended Housing Bill defines the concept of **“large property owner”** as an individual or legal entity that **owns more than ten urban properties or a total built surface area for residential use measuring more than 1,500 m<sup>2</sup>**, excluding garages and storage rooms.

This definition can be modified so that it applies to owners of **five or more urban residential properties**. To this end, the report that is attached to an SRMA declaration proposal must set out the requirements to be considered a large property owner within such SRMA. It may incorporate

additional criteria to those set out in the Amended Housing Bill that reflect the reality and characteristics of the area, or in accordance with the specific regulations applicable to or issued by the competent administration responsible for housing.

- In order to reduce **homelessness**, the competent authorities must adopt measures in their area to facilitate homeless people's access to housing in appropriate conditions and their social inclusion.
- In order to achieve the aim of the Amended Housing Bill, the planning and programming instruments adopted at a state level (*Administración General del Estado*) will support the competent regional bodies to implement housing policies that ensure a **sufficient and adequate supply of affordable housing**. Priority will be given to (i) refurbishing and improving existing housing, as well as promoting social housing; (ii) adapting existing housing to current social needs; and (iii) putting together specific assistance packages for individuals and households who are in the most need when it comes to accessing housing.

## 2. RESIDENTIAL PURCHASE AND LEASING TRANSACTIONS - PROTECTION AND TRANSPARENCY

- The information to which **purchasers or lessees of residential properties are entitled to** is regulated by referring to, and using wording similar to, existing national and regional regulations currently in force (such as the Revised Text of the General Law for the Protection of Consumers and Users (*texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios*)) and setting out the minimum information that will have to be provided in such transactions (including, the certificate of habitability or equivalent document, although some regions have removed this requirement), as well as setting out the obligations of those who transfer or lease residential property/dwellings, be it in their own name or on behalf of third parties (such as developers, owners or real estate agents).

It must be noted that the Amended Housing Bill ends with a catch-all provision that is drafted in somewhat vague terms: “*Any other information that may be relevant to the person interested in the purchase or lease of the dwelling, including relevant aspects of a territorial, urban, physical-technical or administrative nature*”.

Furthermore, the potential purchaser/lessee may request information about the detection of asbestos or other dangerous or hazardous substances. Finally, and in line with Law 18/2007 of 28 December 2007 on the right to housing in Catalonia (*Ley 18/2007 de 28 de diciembre, del derecho a la vivienda de Cataluña*), if the residential property is located in an SRMA, the owner and, where appropriate, the real estate agent, must inform the lessee of this and indicate (i) the rent that was being paid under the previous lease (if a lease agreement existed within the last five years); and (ii) the price that would be applicable according to the housing rent price index/house price index. This information must be provided prior to the lease agreement being signed and must be included in the same.

- The public authorities must guarantee **universal accessibility** to public residential properties, in particular, with regards to the functional needs of their residents, with special attention to disability due to age, an accident, acquired illness or other causes, and to families, households and cohabitation units with dependent minors as well as taking into account specific needs for properties/dwellings located in rural areas. The same principle applies to the private sector: accessibility must also be guaranteed in all new developments and in residential properties where refurbishment works are carried out, provided that those works are of a nature that, in accordance with the Construction Law (*Ley de Ordenación de la Edificación*), require an architecture project (*i.e.* new construction works, works on existing buildings when they alter their architectural configuration, their structural system or they modify the use of the relevant building, as well as those that are executed on listed or protected buildings).
- A **public register of residential lease agreements** is to be created, which will be linked to the regional legal deposit registers and to the land registry. The intention is to have as much information as possible in order to set the reference rental price index<sup>1</sup> and to monitor compliance with the objective of increasing the supply of rental housing at affordable prices.
- The **extensions system contained in the Urban Leases Law** (“ULL”)<sup>2</sup> is amended to provide that, if a leased property is located in an SRMA, once the mandatory period (five or seven years, depending on whether the landlord is a natural or a legal person) or the tacit extension period (three years) ends, the tenant may request additional one-year extensions for a maximum of three years. The landlord must accept these requests except when (a) the parties have agreed other extension terms; (b) the parties have entered into a new lease agreement subject to rent limitations—as detailed below—; or (c) the landlord has notified the tenant, within the statutory term, that they or an immediate family member intend to use the leased property as their permanent residence.

It also includes an extraordinary extension of one year, which is compulsory for the landlord, if the landlord qualifies as a large property owner and, upon termination of the lease agreement, the tenant is a vulnerable tenant. Their vulnerable situation must be accredited by a report or a certificate issued by the municipal or regional social services within the last year.

- The **ULL provisions on determining rent** are amended as follows:
  - For lease agreements for residential properties in an SRMA, the rent agreed at the beginning of the lease agreement may not exceed the last rent payable under the previous lease agreement (if the dwelling was leased for residential use within the last five years) updated per the rent review clause of the previous contract, and the landlord

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<sup>1</sup> Established in the second additional provision of Royal Decree-Law 7/2019 of 1 March on urgent housing and rental measures (*Real Decreto-ley 7/2019, de 1 de marzo, de medidas urgentes en materia de vivienda y alquiler*).

<sup>2</sup> Other than the extraordinary extension measures linked to the pandemic that have been in place since March 2020 and which were extended by Royal Decree-Law 21/2021 of 26 October (*Real Decreto-ley 21/2021, de 26 de octubre*) until 28 February 2022.

may only pass on to the tenant the costs and expenses that were effectively passed on in the previous lease agreement.

Additionally, the rent may be increased, but never by more than 10%, in the following cases:

- If the residential property has undergone (i) refurbishment works<sup>3</sup> or (ii) other works intended to achieve a 30% reduction/saving in non-renewable primary energy use; in both cases when the works have taken place within the last two years.
- If, within the last two years, works have been carried out to improve access to the dwelling.
- If the lease agreement has a duration of ten years or the tenant has the right to extend it by up to ten years or more.

In all other cases, the maximum rent for new residential leases in an SRMA will be the rent under the previous lease increased per paragraph one of this section.

- In residential lease agreements for properties in an SRMA that are owned by large property owners, the rent agreed under the new lease agreement cannot exceed the maximum price set out in the rental price index/the housing rent price index/house price index.<sup>4</sup>

This will also apply to determine the rent under residential lease agreements for properties that have not been leased in the immediately preceding years (irrespective of whether or not the landlord is a large property owner), provided that this is expressly stated in the resolution of the Ministry of Transport, Mobility and Urban Agenda declaring the area an SRMA.

- Although article 20 of the ULL already establishes that the **costs of property management and formalising the lease agreement** were to be borne by the landlord when they are a legal entity, the Amended Housing Bill extends this obligation to all landlords in general, regardless of whether they are a natural or legal person.
- It is important to highlight that, except for the amendments relating to extraordinary measures (*i.e.* those resulting from the measures adopted in the context of the economic impact of the war in Ukraine on the Spanish economy), the Amended Housing Bill's amendments to the ULL will only apply to lease agreements entered into after the entry into force of the Amended Housing Bill.
- Regarding **rent increases/reviews in residential lease agreements**:
  - The National Institute of Statistics (*Instituto Nacional de Estadística*) shall create, before 31 December 2024, a new index for annual rent updates that will replace the current

<sup>3</sup> Pursuant to article 41.1 of the Personal Income Tax (*IRPF*) Regulation.

<sup>4</sup> The 18-month *vacatio legis* for this measure foreseen in the 2021 Draft Bill has been eliminated.



index referred to in article 18 of the ULL. Although not expressly mentioned, it is expected that the new index will vary less than the consumer price index.

- The extraordinary limitation on rent increases introduced by Royal Decree-Law 6/2022 of 29 March on urgent measures to tackle the economic and social consequences of the war in Ukraine (*Real Decreto-ley 6/2022, de 29 de marzo, por el que se adoptan medidas urgentes para hacer frente a las consecuencias económicas y sociales de la guerra de Ucrania*) is extended so that:
  - Until 31 December 2023, the current regime introduced by article 46 of Royal Decree-Law 6/2022 will remain in force, that is: (a) if the landlord is a large property owner, the rent increase will be that agreed by the parties and which may not exceed the variation in the Competitiveness Guarantee Index (*Índice de Garantía de Competitividad*);<sup>5</sup> and (b) if the landlord is not a large property owner, the rent increase will be that agreed by the parties and, in the absence of an agreement, it will be updated in accordance with the variation in the Competitiveness Guarantee Index.<sup>6</sup>
  - Between 1 January 2024 and 31 December 2024, the limit for the annual update/increase will be: (a) if the landlord is a large property owner, the rent increase will be that agreed by the parties and may not exceed 3%; and (b) if the landlord is not a large property owner, the rent increase will be that agreed by the parties and, in the absence of an agreement, it will be updated by 3%.

This regulation seems to indicate that the Government expects inflation to remain above 3% during 2024. If this were not the case, as the text of the Amended Housing Bill does not establish a “lessor of” type formula, it could be that the Competitiveness Guarantee Index would be less than 3% and in the absence of an agreement between the tenant/lessee and landlord, the latter could impose a 3% increase. However, common sense will most likely prevail despite the poor legislative technique implemented, which could once again work against the objectives pursued by the Amended Housing Bill/the groups promoting this rule/behind the Amended Housing Bill.

- The creation of a working group to **regulate non-residential lease agreements** is proposed with particular focus on the regulation of **seasonal rental contracts for urban property**.

<sup>5</sup> Under Law 2/2015 of 30 March 2015 on the de-indexation of the Spanish economy (*Ley 2/2015, de 30 de marzo, de desindexación de la economía española*), this is limited to 2%.

<sup>6</sup> Also limited to 2%.

### 3. PROCEDURAL ASPECTS

- Proceedings brought by **large property owner** to recover possession of a property that, on the date the Amended Housing Bill enters into force, still suspended under articles 1<sup>7</sup> and 1 bis<sup>8</sup> of Royal Decree-Law 11/2020 of 31 March adopting urgent and complementary social and economic measures to address COVID-19 (*Real Decreto-ley 11/2020, de 31 de marzo, por el que se adoptan medidas urgentes complementarias en el ámbito social y económico para hacer frente al COVID-19*), will only be **resumed at the express request of the large property owner if it proves that it has taken part in a conciliation or mediation procedure** established for that purpose.
- Article 150.4 of Law 1/2000 of 7 January 2000 on civil procedure (“CPL”) will be amended to provide that the public authorities competent for matters relating to housing, social assistance, evaluating and informing on situations of social need and immediate attention to be given to persons in a situation of or at risk of social exclusion must be informed when a court issues a ruling setting a date for an eviction.
- New paragraphs (6 and 7) will be added to article 439 of the CPL setting out new requirements to file lawsuits seeking to **recover possession of a residential property**. After the Amended Housing Bill enters into force, the claim must specify: (i) if the property is the claimant’s permanent residence; (ii) if the plaintiff is a large property owner; and (iii) whether or not the defendant is in a situation of economic vulnerability. With regards to proceedings regulated in sections 1, 2, 4 and 7 of article 250.1 of the CPL, if the plaintiff is a large property owner and the residential property is the permanent residence of the individual occupying it, if the latter is in a situation of economic vulnerability, claims will only be admitted if the claimant accredits that he/she has taken part in a **conciliation or mediation procedure** established for this purpose by the competent public authorities.
- In **criminal proceedings** brought to evict squatters (*delito de usurpación*) from a property that is not the owner’s residence, if the eviction is petitioned as a precautionary measure and among those occupying the property there are dependent persons, victims of domestic violence or minors, the competent regional and local authorities will be notified so that they can adopt appropriate support and protection measures.

<sup>7</sup> Which relate to oral proceedings concerning claims for rent or sums owed by the tenant, or the expiry of the term of lease agreements governed by the ULL, which seek to recover possession of the property.

<sup>8</sup> Which relate to oral proceedings in which claims of the type referred to in sections 2, 4 and 7 of article 250.1 of the CPL, and criminal proceedings in which the property in question is the habitual residence of those persons who are inhabiting it without the right to do so.



#### 4. 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 of the new lease agreement is 5% lower than the rent under the previous lease agreement.
    - 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 tenant is aged between 18 and 35; (ii) the tenant is a public authority or non-profit entity that allocates the property to social leases or a public housing programme with capped rents.
    - By 60% when the previous requirements are not met but the property has been refurbished in the two years preceding the date of the lease agreement.
    - By 50% in any other case.

This measure will enter into force on 1 January of the year following the publication of the law passing the Amended Housing Bill 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 (2) 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 (4) 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).*

This is a substantial change from the regulations currently in force, which make the application of the Real Estate Tax surcharge conditional on the definition of "vacant dwelling" contained in the regional regulations, which means that autonomous regions that have not defined this concept cannot impose this surcharge. Now, with the incorporation in Royal Legislative Decree 2/2004 of 5 March approving the revised text of the Law Regulating Local Tax Agencies (*Real Decreto Legislativo 2/2004, de 5 de marzo, por el que se aprueba el texto refundido de la Ley Reguladora*

*de las Haciendas Locales*) of a standalone definition, unrelated to the regional regulations, the surcharge will be enforceable in all Spanish municipalities.

Local councils may increase the surcharge by up to an additional 50% (i.e. up to 150%) in the case of properties belonging to owners of two or more unoccupied residential properties in the same municipality.

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

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