
Regulating affordable rentals and controlled-cost housing

Summary of the regulation of the More Housing Law (Law 56/2023) by Ordinances 69-A/2024 and 69-B/2024 of February 23

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Key aspects

- We highlight the regulation of the terms and conditions for supporting the promotion of affordable housing through the assignment of public land and buildings under a surface rights regime.
- We also cover the controlled-cost housing regime, which includes housing funded by the financing line provided for in the More Housing Law, as well as the certification of the Housing and Urban Rehabilitation Institute (the “IHRU”) for the purpose of applying the reduced value-added tax (“VAT”) rate to the construction or rehabilitation of affordable rental housing.
- Finally, we address the new technical recommendations for controlled-cost housing.



Assignment of public land and buildings under the surface rights regime

Law 56/2023 of October 6 (the “More Housing Law”) approved a set of measures for the housing sector, including support for promoting affordable rental housing. For more information, please see our *Practical Guide to the More Housing Program*.

One of the support measures provided for in the More Housing Law is the assignment of public land and buildings under the surface rights regime, with the aim of promoting, providing and managing affordable rental housing.

In this context, Ordinance 69-A/2024 of February 23 (“Ordinance 69-A/2024”) regulates the terms and conditions for promoting affordable housing by assigning surface rights to public land and buildings.

> **How are state-owned land and properties selected for assignment?**

The IHRU is responsible for identifying public land and buildings for surface rights assignment. It then submits a proposal regarding assets suitable for assignment and their respective conditions to the government member responsible for housing.

> **Assignment conditions**

The assignment of surface rights:

- is “likely to be free of charge;”
- can be made for a maximum period of 90 years, renewable by agreement between the parties;
- does not involve the assignment of full ownership to the beneficiaries; and
- will require the beneficiary to assume the obligation to repair, maintain and conserve the properties throughout the assignment period, after which time the properties and any respective improvements will be reverted.

As provided for in the More Housing Law, surface rights may be assigned, provided all inherent rights and obligations are safeguarded, including the obligation to allocate the properties for the promotion of affordable rental housing.



> Tender for selecting surface right beneficiaries

As expressly provided for in the More Housing Law, the beneficiaries can be:

- a) **housing and construction cooperatives** that meet the access conditions provided for in article 4 of Decree-Law 145/97 of June 11, which regulates the granting of financing to housing and construction cooperatives to build controlled-cost housing;
- b) **companies that work in civil construction, in a consortium or in another form of association with companies whose corporate purpose includes housing rental and asset management**, which meet the access conditions provided for in article 4 of Decree-Law 165/93 of May 7, regulating the granting of financing to private civil construction companies to build controlled-cost housing under housing development contracts, **or companies in which they have a stake, as well as entities working in real estate development and investment**;
- c) Madeira Housing Investments (*Investimentos Habitacionais da Madeira, EPERAM*) and the Regional Housing Directorate of the Azores (*Direção Regional da Habitação dos Açores*), alone or in partnership with the entities referred to in the previous subparagraphs;
- d) municipalities and parish councils, alone or in partnership with the entities mentioned in the previous subparagraphs; and
- e) charity institutions (*misericórdias*), private social solidarity institutions, and legal persons of administrative public utility or recognized public interest.

The tender is subject to the general conditions provided for in Ordinance 69-A/2024. Among these rules, we highlight that:

- (i) the areas allocated for housing must be used for the Rental Support Program during the entire assignment period; and
- (ii) the beneficiaries are responsible for all risks involved in promoting, operating and maintaining the housing.

The bid assessment model must be clear and objective, prioritizing proposals that ensure (a) lower rental values, (b) longer initial lease terms, (c) the use of sustainable materials and construction solutions, and (d) a maintenance management plan that ensures the good condition of the properties.



The beneficiaries of the surface right assignment are responsible for selecting the tenants.

It is established that beneficiaries can lease the entire housing area to municipalities, in line with the general price limits provided for in the Rental Support Program, for subsequent sublease by municipalities.

➤ **Exception regime: Pilot projects to be included in the new generation of cooperatives**

Ordinance 69-A/2024 also provides for a transitional rule that temporarily exempts the application of tender rules to the pilot projects to be included in the new generation of cooperatives for the promotion of affordable housing, as provided for in article 12 of the More Housing Law.

Controlled-cost housing

Ordinance 69-B/2024 of February 23 (“Ordinance 69-B/2024”) is the second amendment to Ordinance 65/2019 of February 19 (“Ordinance 65/2019”), which revises the controlled-cost housing regime (“CCHR”).

The main objective of this amendment is to adapt the CCHR to the More Housing Program measures.

➤ **Controlled-cost housing: More Housing financing line**

The CCHR now includes housing that was built or rehabilitated using the financing line with the mutual guarantee and subsidized interest rate provided for in the More Housing Law for promoting affordable rental housing.

Consequently, article 12-A has been added to Ordinance 65/2019. Under this article, the maximum sale price for homes built for affordable rental using the support provided for in the More Housing Law does not apply in cases where this housing is transferred, provided (i) the existing lease agreements are safeguarded, and (ii) the housing is allocated to promote affordable rental housing for a minimum period of 25 or 90 years, depending on the specific case.



> **Changes to definitions provided for in the CCHR**

We highlight the following amendments to the definitions provided for in the CCHR:

Definition	Previous wording	New wording introduced by Ordinance 69-B/2024 of February 23
Controlled-cost housing building	A single- or multi-family building or property in which the gross area intended for controlled-cost housing and its respective ancillary parts are equivalent to at least 75% of its total gross area, with the remaining area being intended for additional facilities or commercial and service areas.	A single- or multi-family building or property in which the gross area intended for controlled-cost housing and its respective ancillary parts are equivalent to at least 70% of its total gross area.
Additional facilities	The spaces in the housing development intended for cultural, social, sporting, or recreational purposes, which are functionally additional to the development and primarily allocated for the collective use by the residents.	The spaces in the housing development intended for cultural, social, sporting or recreational purposes that are functionally additional to the development.
Controlled-cost housing development	The building complex in which the sum of the gross areas of the controlled-cost housing and its ancillary parts is equivalent to at least 75% of its total gross area, with the remaining area being used as additional facilities or commercial and service spaces.	The building complex in which the sum of the gross areas of the controlled-cost housing and its respective ancillary parts is equivalent to at least 70% of its total gross area.
Ancillary part	The space intended as an individual garage, enclosed parking area, parking space, or storage room for the exclusive use of the residence.	The space intended as an individual garage, enclosed parking area, parking space, or storage room for the exclusive use of residents or the additional common area for socializing and assisting residents.

Housing built or rehabilitated with state support or with the financing line provided for in the More Housing Law will now have the following caps on gross area as a reference, depending on their type:

	Types					
	Studio	One bedroom	Two bedrooms	Three bedrooms	Four bedrooms	Five bedrooms
Gross area (m2)	57	73	95	117	128	150



They must also have maximum limits based on their respective promotion cost (CP), with the respective calculation formula being updated accordingly. The reference cost (CS) is now updated monthly based on the new housing construction cost index (Base – 2021) published by the National Statistics Institute. The base of 100 corresponds to €785.

For housing built or rehabilitated for rental purposes, with certified area and cost limits, the maximum rental prices are established in accordance with the Rental Support Program provided for in Decree-Law 68/2019 of May 22 (“Decree-Law 68/2019”). However, this development cost only applies to the built or rehabilitated area.

> **IHRU certification for properties built or rehabilitated for rental**

The More Housing Law amended item 2.18 of List I annexed to the VAT Code. This amendment allows for the reduced VAT rate to be applied to the construction or rehabilitation of controlled-cost or affordable housing for rental, provided certain requirements are met and certification is obtained from the IHRU or regional entities in Madeira and the Azores.

Ordinance 69-B/2024 now regulates this certification, establishing that it must comply with the following requirements:

- a) The promotor must send a communication to the IHRU to issue a certification statement, identifying the properties and the number and typology of the homes in question, agreeing to allocate them for rental purposes under the Rental Support Program (Decree-Law 68/2019).
- b) The lease agreements must comply with the Rental Support Program regime.

The certification may expire if any of the following situations arise:

- Within one year from the date the respective use licenses were issued, the lease agreements are not signed under the Rental Support Program—it is interesting to note that legislators have terminated use permits through the Urban Development Simplex but continue to produce new legislation alluding to them.
- The units are used for a purpose other than the one established in the certification.
- The lease is withdrawn before the 25- or 90-year period has elapsed.



The expiration of the certification may lead to (a) the loss of any tax benefits that the respective works have benefited from, including the reduced VAT rate; and (b) the promoter being liable for paying any tax amounts and penalties.

> **Technical recommendations for controlled-cost housing**

In the context of the Urban Development Simplex approved by Decree-Law 10/2024 of January 8, the annex to Ordinance 69-B/2024 establishes technical recommendations for controlled-cost housing (RTCCH).

For more information on the contents of this document, please contact Cuatrecasas.

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