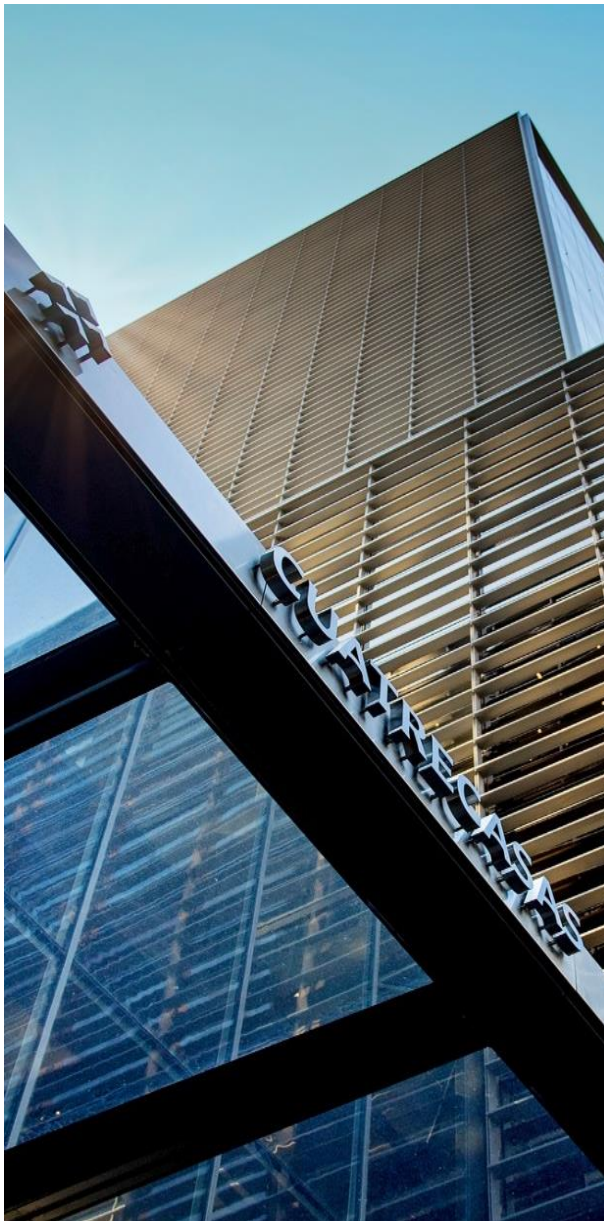


New housing and rental measures

March 11, 2019

Spanish Royal Decree-Law 7/2019, of March 1, on urgent housing and rental measures



Key aspects

- > It affects housing leases entered into from March 6, 2019.
- > It introduces significant changes that will benefit housing lessees, such as extending the minimum lease duration from three to five years (or seven years if the lessor is a legal entity), and limiting rent increases to the rise in the CPI as a maximum.
- > It establishes that leases will survive mortgage foreclosures and sales occurring during their minimum legal term, without the need for entry in the property registry.
- > Housing legislation is now expressly given the power to grant rights of preferential acquisition or preemption to the competent administration if the leased home is sold together with the other homes or premises owned by the lessor in the same building, or if all of the building's apartments and premises are sold by various owners to a single buyer.
- > It introduces changes that will make it easier to apply a surcharge of up to 50% of the property tax due for residential properties that are permanently unoccupied.



Justification and objectives of new regulation

Following the repeal of [Royal Decree Law 21/2018, of December 14](#), [Royal Decree Law 7/2019, of March 1, on urgent housing and rental measures \("RDL 7/2019"\)](#) has been published in the Official Gazette of the Spanish State. This new legislation again amends several acts (Spanish Act 29/1994, of November 24, on Urban Leases ["Spanish Urban Leases Act"]; Spanish Act 49/1960, of July 21, on Condominiums ["Spanish Condominium Act"]; Spanish Act 1/2000, of January 7, on Civil Procedure; and several tax acts), with the goal of increasing the supply of homes available for rent.

In addition to the legal measures to protect lessees, RDL 7/2019 orders the Ministry of Development to take measures that boost the supply of homes on the Spanish rental market. Therefore, the ministry has been tasked with taking steps such as (i) using public-private partnerships to mobilize public land to develop social rental homes (particularly, by assigning the development rights of public land), (ii) refocusing the state housing plan to support rental homes exclusively, and (iii) streamlining urban planning permits. Also, to (i) ensure transparency and knowledge of the market in relation to housing leases, and (ii) facilitate application of public policies intended to increase the supply, a national system of reference indexes is being created for residential lease prices. Spain's autonomous regions can also create their own indexes as a way of exercising their authorities and designing their own public housing policies and programs.

Below we discuss the main changes under RDL 7/2019. Although RDL 7/2019 came into force on March 6, 2019, its ratification by the relevant committee from Spain's Congress of Deputies is still pending within the 30-day period allowed by law.

Changes to housing leases

The reform of the Spanish Urban Leases Act will affect housing lease agreements signed after RDL 7/2019 comes into force, i.e., lease agreements entered into from March 6, 2019. Any housing lease agreements signed before then will still be governed by the previous rules that were applicable to them.

This reform will not affect holiday lodging rentals, regardless of whether they are marketed over tourism platforms, e.g., on p2p platforms, because they are expressly excluded from the Spanish Urban Leases Act's scope of application and instead regulated under tourist sector regulations. It will also not affect leases of surface areas over 300 m² or rents that are more than 5.5 times the inter-professional minimum wage as calculated on an annual basis, and where the lease corresponds to the entire home, as these leases will still be governed by the



parties' intent (and only secondarily by the Spanish Urban Leases Act and the Spanish Civil Code).

The main changes to housing leases are as follows:

- **Minimum term:** The minimum duration for lease agreements will be increased in favor of the lessee, from three to five years, or to seven years if the lessor is a legal entity.
- **Automatic renewal:** Renewal will take place automatically once the lease agreement or any of its extensions has expired, after the legally prescribed minimum term has elapsed (five or seven years), and unless notice has been given four months in advance by the lessor or two months in advance by the lessee. If that notice does not occur, it is now mandatory for the agreement to be renewed for one-year periods up to a maximum of three years, unless the lessee gives notice that it does not want to renew at least one month before the end of each of these annual extensions.
- **Limits for rent updates:** During the term of the lease agreement, the rent can only be updated annually under the agreed terms and, in no case, can a rent increase exceed the rise stipulated in the CPI.

However, in cases where improvement work is carried out, the law continues to state that once the minimum legal term of the agreement has expired (five or seven years), the lessor is entitled, unless it has been agreed otherwise, to increase the rent by the amount established by law, with a limit of 20%.

- **Survival of lease in cases of mortgage foreclosure or sale:** The lessee can continue with the lease during the minimum legal term (five or seven years), even if the lessor's rights have been eliminated by a mortgage foreclosure or option to buy, among other causes. If a longer duration had been agreed on, once the legal minimum term has elapsed, the lease is terminated, unless it has been entered in the property registry.

If there is a sale, the buyer will take over the lease agreement for the duration of the minimum legal term (five or seven years), even if that buyer is a third-party acquirer of the mortgage in good faith. If the lease duration that has been agreed on is longer than the minimum legal term, the buyer will take over the lease for that entire period, unless the buyer is a third-party acquirer of the mortgage in good faith (in which case the buyer is only required to maintain the lease for the time remaining in the minimum legal term, and the seller must compensate the lessee with one month of rent for each year remaining beyond the minimum term), or unless some other agreement exists in the lease agreement.



- **Expenses:** Lessors that are legal entities will assume real estate agency expenses and the costs of entering into agreements.
- **Additional guarantees:** It is now established that for housing leases with the minimum legal term (five or seven years), the amount of any guarantee that the parties may agree on in addition to the deposit cannot exceed the amount represented by two months' rent.
- **Rights of preferential acquisition or preemption:** Housing legislation is now expressly given the power to grant the body designated by the competent administration rights of preferential acquisition or preemption if the leased home is sold together with the other homes or premises owned by the lessor in the same building or if all of the building's apartments and premises are sold by various owners to a single buyer.
- **Security deposit:** It continues to be applicable by law that Spain's autonomous regions can impose an obligation on lessors to deposit the amount of the legally permissible security deposit with the regional government or with another public entity designated for that purpose. Another new development is that the legislation that regulates depositing of the security deposit will determine the information that the lessor must provide, which will include as a minimum the identification data of the parties and of the housing (including its constructed surface area and year of construction and, if applicable, year of renovation) along with the characteristics of the lease agreement (including the term, the rent and its system for updating, the amount of the security deposit, and any additional guarantees that may exist).

Changes to Condominium Act

The main changes to the Spanish Condominium Act are as follows:

- **Accessibility improvements:** Several amendments have been made to the act to promote these types of improvements. More specifically: (i) reserve funds (which have been increased from 5% to 10% of the last ordinary budget) can be allocated to carry out these improvements; and (ii) the obligation to carry out these improvements has been expanded for condominium owner associations that have access to aid for 75% of the corresponding amount.
- **Adoption of condominium owner association resolutions:** RDL 7/2019 regulates the majority required (three fifths of the total number of owners if they represent three fifths of the ownership interest) to adopt resolutions that would limit or condition tourist rentals of homes, as well as for resolutions that establish special payments of



expenses or increased shares of common expenses by the owners of housing dedicated to such uses, with those increases being limited to a maximum of 20%.

Tax developments

Property tax

The economic and tax measures passed by RDL 7/2019 include two changes to the consolidated text of the Spanish Local Revenue Service Regulation Act approved by Spanish Royal Legislative Decree 2/2004, of March 5, that affect Spanish property tax (IBI).

First, RDL 7/2019 has amended the regulation of the power granted to city and town councils to establish in their respective tax ordinances a surcharge of up to 50% of the property tax due for residential properties that are permanently unoccupied. This surcharge was not applicable until this royal decree law was passed, because the regulations on the concept of an unoccupied home still had to be implemented. RDL 7/2019 refers to the concept established in national and regional housing sector regulations (which have the rank of acts) and to the requirements, evidence and procedures specified in the municipal tax ordinances. Changing the regulatory references clears the way to implementing the surcharge.

Once this change is rolled out, it will also be relevant, because it will affect, for example, the Catalan tax on unoccupied homes, because that tax's regulations call for compensation and coordination if the surcharge is to come into force.

Second, lessors that are public bodies will no longer be required to charge lessees property tax in residential use rentals with rent controlled by law. For these residential properties with their rent limited by a legal provision, RDL 7/2019 also creates a new optional credit for city and town councils of up to 95% of their entire property tax payment.

Transfer tax and stamp duty

As is well known, although lessors are classified as entrepreneurs or professionals under the Spanish VAT Act, and housing leases are generally exempt from VAT (article 20. 1. 23 of the Spanish VAT Act), lease agreements are subject to transfer tax and stamp duty under article 7.5 of the Consolidated Text of the Spanish Transfer Tax and Stamp Duty Act approved by Spanish Royal Legislative Decree 1/1993 (the "TRITPAJD").

Since, under article 8(f) of the TRITPAJD, lessees must pay this tax, RDL 7/2019 frees them of this tax by adding a new exemption for the stable and permanent housing leases referred to in article 2 of the Spanish Urban Leases Act. This change will apply to lease agreements entered into from March 6, 2019.



In addition to these more common cases, it should also be noted that, as an exception, housing developer leases of homes with an option to buy will still be subject to VAT (where the property is delivered with VAT due to the first delivery not having been exhausted). Take note that entering into these lease agreements as public deeds will mean that stamp duty tax will accrue from both covenants (the lease and the purchase option), although as we understand it, the new exemption will cover the exemption from stamp tax duty on the lease agreement, therefore significantly reducing the tax burden.

Changes to Code of Civil Procedure

Establishing exact time and date of eviction

The lawmaker has changed the eviction processes for housing, with the law now specifying that the court must establish the exact date and time of the eviction process in the notice given to the defendant in cases where the claim has not been opposed, and in the resolution in cases where it has been opposed but where the ruling goes against the defendant and is not appealed.

Suspension of eviction processes against vulnerable tenants

For eviction processes due to failures to pay rent and other outstanding sums, it will now be necessary to notify the lessees of their right to social service assistance. The court will also be required, by operation of law, to notify social services of the eviction process, and if they determine that the household affected is in a situation of social or economic vulnerability, then the process will be suspended for a maximum of one month (if the claimant is an individual) or three months (if the claimant is a legal entity). This grace period will not apply to enforcement of rulings ordering eviction for lack of payment or expiry of a lease's term, although if a primary residence is involved, then social services must have been notified before enforcement of the eviction.

Suspension of foreclosures of mortgaged assets that would affect vulnerable households

RDL 7/2019 extends the mentioned obligation to payment orders in court orders authorizing foreclosure of mortgaged assets.

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