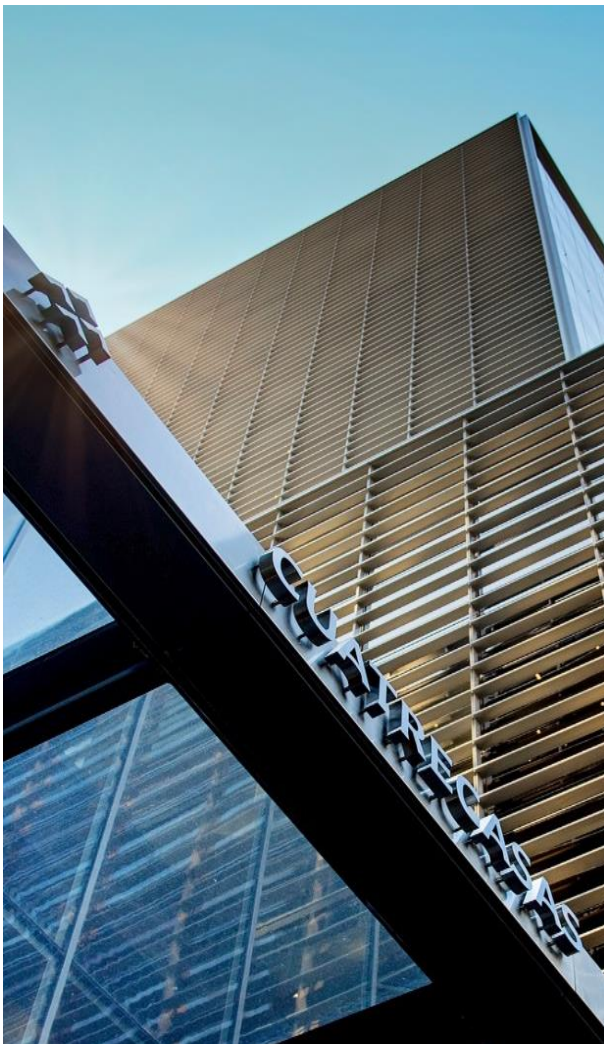

Decree law by Catalan government on urgent measures to improve access to housing

January 29, 2020

On December 30, 2019, Decree Law 17/2019, of December 23, on urgent measures to improve access to housing (“DL 17/2019”) was published in the Official Journal of the Catalan Government. Although DL 7/2019 came into force on December 31, 2019, its ratification by the Catalan parliament is still pending within the 30 business days established by law.



Main developments

- > It amends the concept of empty housing.
- > It amends the concept of large housing asset holder to include individuals and legal entities owning over 15 dwellings in Catalonia, and capital venture funds and asset-backed securities funds.
- > It reinforces the protection of tenants and establishes the possibility for unoccupied homes to be expropriated.
- > It regulates the right of first refusal in transfers of housing and extends the right to rented dwellings when they are transferred together with the rest of the dwellings or premises forming part of the same property.
- > It establishes a specific regulation for non-conventional housing.
- > It increases the mandatory reserve for subsidized housing.
- > It introduces new rules for moderating prices in the rental market.
- > It enables the renewal of works permits expired from January 1, 2008, without having to adapt them to the current regulations on technical aspects and maximum buildable area; and establishes the obligation for demolishing unfinished structures if deadlines are not met.



Summary of DL 17/2019

DL 17/2019 aims to “effectively increase the general offer of housing at moderate prices, particularly of public subsidized housing under the rental scheme, and to enable individuals with insufficient financial resources to access that housing.”

It amends several regulations: Legislative Decree 1/2010 of August 3, approving the Act Consolidating the Urban Planning Act (“Urban Planning Act”); Act 18/2007, of December 28, on the right to housing (“ARH”); Decree Law 1/2015, of March 24, on special and urgent measures for making available dwellings resulting from mortgage foreclosures (“Decree Law 1/2015”); and Act 24/2015, of July 29, on urgent measures for handling the urgent housing and energy poverty situation (“Act 24/2015”).

It includes important measures for managing residential and real estate assets in Catalonia: (i) it increases sanctions against large property owners with unoccupied dwellings without sufficient justification; (ii) it establishes the offer of social rent contracts before filing for legal action against certain tenants in the case of non-payment; (iii) it establishes the change of the calculation method of prices and maximum rent of subsidized housing; and (iv) it introduces new conditions for transferring certain assets.

It establishes conditions and planning criteria that have an impact on the business expectations linked to the residential real estate assets due to the increase in the public and private housing stock available on the market.

It establishes favorable decisions for developing innovative business models (non-conventional housing) and for renewing works permits expired due to project suspension without the need to adapt the project to the current regulations on technical aspects and maximum buildable area and habitability.

Measures for resolving urgent social housing situations

- It defines the concept of empty housing, classifying the permanent emptiness of housing as non-compliance with the social function of the right to property, thus enabling the authorities to expropriate the use and the domain by paying 50% of the price. It also amends the concept of empty housing by establishing that occupying a dwelling without holding legitimate title does not prevent the dwelling from being classified as empty.
- It defines large housing asset holders as individuals and legal entities (alone or through a group of companies) owning over 15 dwellings in Catalonia, and capital venture funds and asset-backed securitization funds.



- It makes the possibility to file action for mortgage foreclosure or eviction for non-payment of rent conditional on the prior proposal of a social rent contract and classifies the non-compliance as a serious offense.
- It extends the minimum duration of social rent contracts to five years for individuals and to seven years for legal entities.
- It establishes a six-month deadline for the Catalan government to issue a regulation on the specific habitability conditions for non-conventional housing.
- It establishes the obligation for all empty dwellings, not only those resulting from mortgage enforcement or dation-in-payment procedures, to be registered in the Registry of Empty Housing.

Housing rental prices

A set of measures are introduced to favor a moderation of housing rental prices using price reference rates. This leads to the following obligations: (i) in advertisements including housing rental prices, the price reference rate must appear; (ii) in leasing offers, before any down payments are made, a document showing the reference rate obtained through the corresponding public consultation system must be delivered to the lessee; and (iii) in the lease agreement, the reference rate must be indicated and the document justifying it must be attached.

Regulation of rights of first refusal and setting aside

In addition to the right of first refusal in certain ad hoc areas, to increase public land and housing assets, two new rights of first refusal and setting aside are established for the public authorities and other beneficiaries.

Right of first refusal and setting aside in certain transfers of leased housing

The right of first refusal and setting aside is established for the public authorities when leased housing is sold together with the rest of the dwellings or premises forming part of the same property.



Right of first refusal and setting aside in transfers of land used for subsidized housing

A new right of first refusal and setting aside is established for the Catalan Land Institute (and in Barcelona for the city council), which is to be applied to the transfer of privately owned land reserved for the use of subsidized housing by urban planning.

Conditions for exercising the rights of first refusal and setting aside mentioned above

- Apart from the public authorities, other potential beneficiaries are the legal occupants of the dwelling object of the right of first refusal or of any other dwelling in the building where the latter dwelling is located, provided that the conditions for accessing the Registry of Applicants for Subsidized Housing are met.
- Exercising the right of first refusal can lead to the acquisition of the entire asset by the public authorities or by any of the possible beneficiaries.
- The right of first refusal expires if the authorities do not exercise it within two months of the communication.
- If the authorities do not exercise this right, the communication loses effect if the transfer is not carried out within six months.
- The deadline for exercising the right of setting aside is three months from the registration of the transfer in the Land Registry.
- If there are several rights of refusal for different authorities associated with the same transfer, it is sufficient to notify any of the authorities, and the notified authority must inform the other affected authorities.

Right of first refusal and setting aside in transfers of dwellings acquired in mortgage foreclosure proceedings

There are new developments regarding this right of first refusal and setting aside that was introduced by Decree Law 1/2015:

- Its scope of application is extended to all of Catalonia instead of being limited to municipalities with proven high demand.



- DL 17/2019 expressly states that this right applies to the first and any subsequent transfers of dwellings acquired in mortgage foreclosure proceedings.
- The duration of this measure will be 12 years instead of the original 6 years, meaning that it will apply until 2027.

Developments in subsidized housing

- DL 17/2019 establishes that urban planning will classify the residential land and link it to the subsidized housing implementation. The classification of the land as subsidized housing in the planning and the classification of subsidized housing must specify whether it is (i) generic, i.e., whether the dwelling can be accessed through sale, rental or other ways to transfer use; or (ii) specific, i.e., it only allows access through rental.
- DL 17/2019 amends the rules for setting maximum sale and rental prices for subsidized housing with the aim of these kinds of properties gradually covering the needs of a large percentage of the population.

Conditions applicable to regional and urban planning to be approved from when DL 17/2019 comes into force

- DL 17/2019 establishes that general planning can impose minimum land reserves for subsidized housing on consolidated urban land.
- It regulates a new classification of residential unit known as *alojamientos dotacionales* (small subsidized apartments for short-term leasing for young people and based on income levels) included in the community service system whether of public or private initiative.
- It gives the Catalan regional government one year to approve a regional and sectoral housing plan establishing the conditions for reserving land to be used for subsidized housing in the municipalities included in the areas with proven high residential demand, which will include 50% of the total area available for dwellings to be used for new residential buildings on zoned developable land and 40% on unconsolidated urban land; in the latter case, it is possible to reduce to 30% when necessary to ensure financial viability. A minimum of half of these reserves must be used for the leasing regime.
- It links the duration of the classification of the subsidized housing with the indefinite validity of the urban planning classification as land to be used for subsidized housing.



- It introduces new rules on calculating surface areas to be used for facilities in the planning.

Renewal of works permits expired from January 1, 2008, and possible obligation to demolish unfinished structures

It permits the renewal of works permits expired from January 1, 2008, when the following conditions are met:

- If, after having started to work on the authorized building works, it was not possible to finish the works in the established deadline due to the financial crisis in the building sector.
- If the building structure has been put in place but the adaptation of the executed works to the requirements arising from the technical regulations regarding building and housing applicable when this decree law came into the force are not financially viable.
- If the authorized works are in line with legislation and with the urban planning applicable when the request was made for renewal and extension in all aspects not related to the requirements specified in point b.

Applicants have one year from the date of publication of DL 17/2019 to request renewal. If the permit renewal or the extension of a renewed permit is not requested within the deadline and the authorized building works are not finished, the unfinished structures must be demolished within an additional one year and there is the risk that the authorities apply enforcement proceedings.

This possibility to renew expired licenses does not exclude the possibility to obtain a new license to implement a project adapted to the current and applicable regulations and urban planning.

For additional information, please contact Cuatrecasas.

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