

SPAIN SEEKS MORE FLEXIBILITY IN THE HOUSING RENTAL MARKET - BROSETA ABOGADOS

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On May 11th, 2012, the Spanish Government submitted a draft bill that, once enacted, will modify the existing Law of Urban Leases (LAU) with the main objectives of increasing flexibility and promoting the housing rental market in Spain. However, the measures to be implemented will not apply to contracts signed prior to the entry into force of such measures.

In reference to the operation and clauses of leases, the amendments focus on the following.

Freedom of the parties

In housing leases, as a general principle, priority is given to the will of the parties, provided that they respect the limits expressly laid down in Title II of the LAU.

The tenant is allowed to waive the pre-emption rights that the current LAU gives them in the case of transfer of the leased housing. Today, this right is inalienable, and if a disclaimer is included, it will be null and void.

Landlords can recover the property at the end of any of the lease annual periods without observing the relevant compulsory extension period (referred to below) and without having to include this option in the contract (as they do under the current regime) provided that they need the housing for themselves, immediate relatives, or a spouse after a divorce or marriage annulment, and have notified this fact to the tenant two months prior to that date.

Flexibility in duration

The compulsory extension for the landlord is reduced from five to three years.

As regards the automatic tacit extension, once completed, the above referred compulsory extension goes down to one year instead of three. Therefore, if the parties do not indicate otherwise, once the compulsory extension of three years has elapsed, the contract will be tacitly extended for one further year.

Legal certainty

In order to take effect against third persons who have registered their right, leases must be registered at the Land Registry.

The current regulation in the case of a transfer of the leased housing is amended so that the buyer of this housing, previously leased, will only be subrogated to the landlord if the lease has been previously registered in the Land Registry. Otherwise, if the purchaser in good faith had no knowledge of the lease, they will not be obliged to respect it and the tenant will lose their rights. The tenant, however, can ask for a three-month notice period and compensation for damages. Under the current regulation, tenants are protected, even if they had not registered their rights, until the contract at least complies with its compulsory extension (now reduced from five to three years).

Rent update

In housing leases, payable rent may be updated pursuant to any methodology agreed by the parties, regardless of the contract duration. Under current regulation, payable rent during compulsory extension can only be updated in accordance with Consumer Price Index.

Litigation streamlining

Applicable both for housing leases and for uses other than housing, a less complex procedure is foreseen in the case of non-payment of rents under the lease, provided that such a lease has been registered at the Land Registry.

Also, the power of judicial proceedings is accelerated, so that, within a period of ten days, a rent payment must be made or eviction will be enforced.

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