
Key aspects of the future state housing act

On October 26, the Council of Ministers considered on first reading the draft bill on the right to housing. The draft bill is the product of months of negotiations and introduces measures that will have a major impact on the housing sector, affecting investors and real estate developers and construction companies.

Legal flash

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Key aspects

- > The competent housing authorities are empowered to declare strained residential market areas.
- > In strained residential market areas, a rent ceiling system is established, which varies according to whether the lessor is a large property holder.
- > Property tax surcharges will be charged on vacant housing.
- > A provision is made for establishing in urban planning legislation a 30% reserve for social housing on developed land not subject to refurbishment or renovation development works, with the requirement to establish compensation schemes.
- > It is guaranteed that social housing cannot be removed from that classification, with some exceptions.
- > Amendments are made to the regulation on eviction processes in situations of vulnerability.



Introduction and parliamentary process

On October 26, 2021, the Council of Ministers considered on first reading the draft bill on the right to housing (the “**Draft Bill**”), thus beginning its parliamentary process. As a tentative date, although this will depend on the many factors involved, we expect it to be definitively approved during the second quarter of 2022.

Although the text of the Draft Bill will inevitably be amended, below are the main aspects covered in the reform.

Declaration of strained areas and rent ceiling systems

The Draft Bill allows the competent housing authorities to declare strained residential market areas in districts where there is a risk of the housing offer being insufficient, in line with the regulations already introduced in Catalonia.

For a neighborhood or district to be declared a strained residential market area, (i) the average cost of the mortgage or rent as part of the personal or household budget, plus expenses and basic utilities (electricity, water, fixed-line and mobile telecommunications, and condominium association expenses) must exceed 30% of the average household income; and (ii) the purchase or rent price of the home must have risen in that area by more than five points above the CPI in the autonomous region in the previous five years. The term of the declaration will be applicable for three years, which can be extended yearly.

The implications of declaring a strained residential market area will affect lease agreements.

- > If the **mandatory extension period or tacit renewal period** of the rental agreement expires, the tenant will be entitled to extend the agreement on an exceptional basis for one-year terms, up to three years, under the same terms and conditions.
- > If a **new lease agreement is signed**, the new rent amount cannot exceed the amount set out in the previous agreement plus CPI, except in certain situations in which it can exceed up to 10%, e.g., if in the two previous years, works have been carried out that contribute to non-renewable primary energy savings, that improve accessibility, or if the term of the agreement is 10 or more years.
- > Additionally, if the **lessor is a large property holder** (for the purposes of the rent restrictions, legal entities owning over 10 urban housing properties or a built surface area of over 1,500 m, excluding parking lots and storage spaces), the rent set out in the new agreement cannot exceed the cap on the price applicable under the system of reference price indexes. This regulation will apply to agreements entered into



from 18 months following the date the act comes into force, as long as the index system has been approved.

Surcharges on property tax

Current legislation allows city councils to impose a 50% surcharge on property tax (“IBI”) for vacant housing. The Draft Bill introduces the following developments:

- > It allows this surcharge to be **increased by up to 100%** when the housing property has been vacant for over three years.
- > It allows this surcharge to be **increased by an additional 50%** (between 100% and 150%) when the property belongs to lessors that own two or more housing properties in the same district.

For these purposes, under the Draft Bill, a “vacant housing property” is one that has been vacant on an ongoing basis for over two years, unless for justified reasons (e.g., temporary transfer for work reasons, and properties requiring building or refurbishment works). The vacancy situation must be declared through an administrative procedure in the presence of the taxpayer.

Although these IBI measures are expected to enter into force on the day following the publication of the act in the Official Gazette of the Spanish State, the declaration of vacancy must be sought before they can be effectively applied.

Measures on the protected housing scheme

The main measures are explained below:

- > **Classification of land reserves for social housing:** It is guaranteed that the classification of land reserves for social housing cannot be changed, save in exceptional cases where the urban planning instrument justifies that it is unnecessary or unfeasible for the land to be used for this purpose.
- > **Percentage of the land reserve destined to rented social housing:** Also in relation to the land reserve for social housing, it is established that urban planning and land-use legislation must establish the percentage to be destined to rented social housing, which cannot be less than 50% save in exceptional cases.
- > **Removal of social housing from that classification:** It is guaranteed that housing developed on land destined to housing subject to a public protection scheme of any kind cannot be removed from the social housing classification as long as it is classified as such, unless it is developed on land with an urban planning classification



that does not make it obligatory to use the land for that purpose, and that has not received any state aid for development, or save in exceptional cases where it is justified under regional legislation. The classification period cannot be less than 30 years. Housing definitively classified as being subject to a public protection scheme before the act enters into force will be governed by the provisions of the previous scheme, except those referring to periods in which the classification can be removed, which will apply to all housing classified under a public protection scheme.

- > **Introduction of the new concept of “incentivized affordable housing”:** This refers to housing properties that are privately owned, including third-sector entities, and their owner is granted urban planning, tax or other benefits by the competent authorities in exchange for allowing the properties to be used as a habitual residence leased at a reduced price, or under any other temporary lease agreement, to people whose income makes them unable to afford housing at the market price.
- > **Reserve for social housing on developed land:** It is clarified that urban planning legislation can establish a 30% reserve for social housing on developed land not subject to refurbishment or renovation development works, as long as the urban planning authorities establish compensation schemes adjusted to the affected parties. In any case, autonomous regions are not obliged to adopt this measure.
- > **Public housing supply:** The Draft Bill regulates the basic legal system applicable to public housing supply, establishing, among other matters, that any assets included in the public housing supply can only be sold to other public administrations, bodies carrying out functions or tasks for them, or non-profit legal entities dedicated to housing management for social purposes.
- > **Transparency:** The Draft Bill imposes the obligation to compile and keep an updated inventory of the public housing supply and an annual report specifying the actions taken to increase that supply and adjust it to the existing demand.

Amendments to the regulation on eviction processes in situations of vulnerability

The Draft Bill introduces significant changes regarding the eviction processes provided under the Spanish Code of Civil Procedure (the “LEC”) in situations of vulnerability. These amendments extend beyond the COVID-19 pandemic and significantly modify social protection measures to address situations of social or economic vulnerability (known as the “social shield”) in eviction processes.

The main measures are explained below:

- > The competent public administrations will be in charge of **verifying the situation of vulnerability** of the inhabitants of the home undergoing an eviction process.



- > **The scope of protection is extended** when situations of vulnerability are identified. Although the current wording of the LEC only refers to people in a situation of vulnerability undergoing an eviction process (owing to rent arrears or lease expiration) in cases of leased housing (regardless of whether it involves an ordinary, financial or shared lease), the Draft Bill extends this protection to those in a situation of vulnerability undergoing a process to evict them from their homes (i) to repossess rural or urban land leased at will by the owner, beneficial owner or any other person entitled to own the land; (ii) to seek summary relief for the ownership or possession of an object or right from the person who deprived them of that object or right or prevented them from enjoying it; and (iii) at the request of the holders of in rem rights registered in the land registry, who seek to make those rights effective against those who oppose them or prevent them from being exercised without holding a registered title of ownership entitling them to do so.

It also broadens the concept of person in a situation of vulnerability, extending the income criteria to be classified as such, and it establishes that judges must take additional criteria into consideration on establishing vulnerability in personal situations, e.g., when underage children live in the home.

- > A system is established requiring a **court decision on the suspension of the eviction process**, after a weighted and proportional assessment of the specific case, replacing the current provision enabling the automatic suspension by the court clerk.
- > The **suspension periods have been extended** in eviction processes to two months for individuals and four months for legal entities (currently one and three months, respectively).

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