



CUATRECASAS

**Real estate and
town planning**

**Housing and other relevant
regulations for 2022**

February 2022





Housing and other relevant regulations for 2022

In 2022, several regulations will have a major impact on investors, real estate developers and construction companies.

The future state act on the right to housing will introduce rent ceiling systems, penalize vacant housing and adopt measures on the protected housing scheme.

In terms of town planning and the environment, different regional and local planning regulations will be approved or developed, and the government will enact the future act on waste, introducing new rules on soil pollution.

From January 1, 2022, there have been significant changes affecting the taxation of housing rental companies and the assessed value of real estate with respect to transfer tax and stamp duty.



New state act on the right to housing

On February 18, the Official Gazette of the Congress of the Deputies published the Bill on the right to housing (the "**Future Housing Act**").

The published text does not differ greatly from the Draft Bill the Council of Ministers considered on first reading on October 26, 2021, and, therefore, it does not include all of the proposals put forward in the Report of the General Council of the Spanish Judiciary.

As the Future Housing Act is being processed under urgent procedure, we expect it to be finally approved (although there are several factors at play) during the **second quarter** of the year.

Below we summarize the main measures introduced under the Future Housing Act:

Declaration of Strained Areas

In line with the regulations in force in Catalonia, the competent housing authorities are empowered to declare strained housing market areas ("**Strained Areas**"). The declaration of Strained Areas will require drawing up a report justifying that there is a risk of the housing supply being insufficient in the area due to the following circumstances: (i) the average cost of the mortgage or rent as part of the personal or household budget, plus expenses and basic utilities, 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 declarations of Strained Areas will be applicable for three years, which can be extended yearly.

Extension of lease agreements in Strained Areas

Amendments have been made to the system for extending residential lease agreements in Strained Areas provided under the Urban Leases Act. Once the mandatory extension period or tacit renewal period of the lease agreement expires, the tenant can extend the agreement on an exceptional basis for one-year terms, up to three years, under the same terms and conditions as the agreement in force. Lessors are obliged to renew the agreement, with some specific exceptions, e.g., if they have given notification within the legal deadlines of their need to use the property as a permanent residence for themselves or their relatives, or they have entered into a new agreement applying the rent restrictions described below.



Rent ceiling systems in Strained Areas

In new agreements entered into in Strained Areas, the rent cannot exceed the amount in the previous agreement plus CPI, except in specific cases where the amount may be increased by no more than 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.

If a new agreement is entered into and the lessor is a large property holder, the rent cannot exceed the cap on the price applicable under the system of reference price indexes. For these purposes, large property holders are legal entities owning over 10 urban housing properties or a built surface area of over 1,500 m² of residential property, excluding parking lots and storage spaces. This regulation will apply to agreements entered into from 18 months following the date the Future Housing Act comes into force, as long as the index system has been approved.

Public housing supply

The Future Housing Act regulates the basic legal system applicable to public housing supply, establishing that assets can only be sold to other public administrations or non-profit legal entities.

Property tax surcharges on vacant housing

Property tax (“**IBI**”) surcharges can be imposed on housing properties that have 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 (“**Vacant Housing**”). Compared to the current 50% rate, city councils can increase the surcharges on the property tax by (i) up to 100% in the case of Vacant Housing that has been unoccupied for over three years; and (ii) between 100% and 150% when the properties belong to lessors that own two or more vacant housing properties in the same district.

Although the Future Housing Act is expected to come into force on the day following its publication in the Official Gazette of the Spanish State, surcharges will not apply until each city council has formalized the corresponding vacancy declaration of the affected properties, after hearing the taxpayer concerned.

Measures on the reserve for protected housing

Measures have been adopted to ensure that the classification of land reserves for protected housing cannot be changed, save in exceptional cases and if so justified in the corresponding planning instrument.

Also, it is established that town planning and land-use legislation must establish the percentage to be destined to rented protected housing, which cannot be less than 50% save in exceptional cases.

A provision is made for establishing in town planning legislation a 30% reserve for protected housing on developed land not subject to refurbishment or renovation development works, with the requirement to establish compensation schemes.



Removal of protected housing from that classification

It is guaranteed that housing subject to a public protection scheme cannot be removed from that classification as long as the classification of the land granting this protection remains unchanged. This does not apply to housing developed on land with an town 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 in exceptional cases where it is justified under regional legislation. The classification period cannot be less than 30 years.

Introduction of the new concept of "incentivized affordable housing"

A new concept is introduced for housing properties that are privately owned, including third-sector entities, and their owner is granted town 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.

Significant developments affecting town planning

In 2022, several regional and local planning regulations will be approved or developed affecting companies in the real estate sector.

Andalusia

Developments are expected to be made to the new Act on Driving Sustainable Land Use in Andalusia ("**LISTA Act**"), which entered into force in December 2021, and aims to streamline town planning procedures and implement business activities in Andalusia.

The LISTA Act replaces and revokes, among others, the Land Use Planning Act and the Town Planning Act of Andalusia; it introduces a new framework of town planning instruments and land types, defining two types alone, namely urban and rural land. It also streamlines procedures to begin urban land transformation activities and it relates works and land use subject to a statement of compliance and prior notification.

Madrid

The Land Act of the Autonomous Region of Madrid will be reformed through the future Act on urgent measures to boost economic activity and modernize the region's public administration (known as the "**Omnibus Act**"), the draft bill of which was approved in December 2021.

Among other measures, the regulation seeks to adopt new rules on projects of regional scope and to simplify transfers of urban land use and partial amendments to urban development plans.



Barcelona

A new special urban development plan will be implemented to regulate tourism accommodation establishments, youth hostels, dwellings for tourism use, shared housing, and halls of residence halls for temporary accommodation in Barcelona (the new PEUAT), definitively approved on January 26, 2022, which lays down new rules on opening, refurbishing and transferring tourism accommodation establishments in the city.

The new PEUAT introduces developments of interest for companies in the sector, including a city zoning plan establishing the system for opening new establishments in each zone, the new concept of shared housing, a ban on transferring operating licenses of dwellings for tourism use, as well as specific rules on setting up hotel establishments, tourist apartments and educational residence halls for temporary accommodation.

Impact of the new Act on Waste and Soil Pollution

The future Act on Waste and Soil Pollution, the draft of which is currently under consideration by the Spanish Senate and is expected to be approved in the first half of this year, will introduce developments on contaminated land that may affect land holding companies and land owners, as well as those operating in the area of urban and real estate development.

Among others, the new law will (i) introduce a State Inventory of Voluntary Decontamination of Polluted Soil, which will be linked to the Land Registry; (ii) review the current penalty system, including new related infringements; and (iii) impose stricter soil decontamination and restoration obligations.

Taxation of housing rental companies

In the case of tax periods beginning January 1, 2022, companies subject to the special regime for rental housing will benefit from a reduction in the rebate applicable to income from housing rentals (from 85% to 40%). Therefore, allowances will be taxed at a 15% rate compared to the 3.75% applicable with the rebate previously in effect.



Property valuation: assessed value

With regard to the tax valuation of real estate, Act 11/2021, of July 9, on measures to prevent and combat tax fraud (the "**Tax Fraud Prevention Act**") introduced an important amendment affecting transfer tax and stamp duty.

Under the new wording, applicable from January 1, 2022, the taxable base for transactions involving the purchase of real estate subject to transfer tax and stamp duty (in the form of onerous tax transfer) will be determined taking into account the assessed value provided under the regulations governing the real estate cadastral registry on the date the tax accrues. If the value of the real estate declared by the taxpayers, or the price or consideration agreed upon—or both—is lower than the assessed value, the tax authorities will apply the latter amount. Therefore, it is advisable to compare the assessed value amount to avoid controversy if this amount exceeds the purchase price.



Cuatrecasas: What we offer

Through our highly specialized legal teams with extensive knowledge and experience, we advise on all areas of business law. We help our clients with the most demanding matters wherever they are based.



TALENT

A multidisciplinary and diverse team of over **1,200 professionals across 26 nationalities**. Our people are our strength and we are committed to being inclusive and egalitarian.



EXPERIENCE

We have a **sectoral approach** and focus on all types of business. With extensive knowledge and experience, we offer our clients **the most sophisticated advice**, covering ongoing and transactional matters.



We foment an innovation culture applied to the legal activity, which combines **training, procedures and technological resources** to contribute greater efficiency.



INNOVATION

We offer optimal value thanks to our highly specialized teams who apply a **cross-sectoral approach** to our clients' business to offer efficient solutions.



SPECIALIZATION



Most innovative law firm in continental Europe, 2018 and 2019



Law firm of the year: Iberia, 2020



Fifth most popular international law firm in Latin America, 2020



Recommended in the main areas of law in Europe and Latin America



Specialists and leaders in offering cross-sectoral advice on real estate law

Offering a specialized and multidisciplinary approach to all types of real estate transactions

We have a large team of lawyers specializing in the real estate sector based in several of the firm's offices, enabling us to have expertise and knowledge of the different regulations and local practices. We advise companies, funds, institutions and private clients with interests in real estate on contractual, corporate, urban development, environmental, tax, finance and litigation matters.

We advise our clients on their transactions and assist them during all stages of real estate and urban development (planning, land use, and obtaining permits and licenses for building and implementing activities), including representing them in judicial reviews involving their real estate assets.

We have one of the largest market shares advising on real estate portfolio transactions, including some of the largest transactions, advising international investment funds and financial institutions.

"Always willing to help and ready to give very high-quality real estate legal advice" Chambers, 2021

"Analytical skills, hard-working approach and their rapid responses to our questions." Chambers, 2021

- > **Clients and prominent cases:** We have advised our clients, including leading sector companies, national investors and international funds, on some of the most important real estate transactions in recent years.
- > **Approach and specialization:** We are experts in corporate transactions and joint ventures in the real estate sector. We have also developed an important practice in the hotel, retail, student residences and nursing homes sectors.
- > **Leading practice:** We have a leading practice in the Spanish market, as acknowledged by the main international legal directories.

Chambers
AND PARTNERS



LEADERS LEAGUE

Leading firm in
Real estate and Planning



For additional information, please contact our [Knowledge and Innovation Group](#) lawyers or your regular contact person at Cuatrecasas.

www.cuatrecasas.com



©2022 CUATRECASAS

All rights reserved.

This document is a compilation of legal information prepared by Cuatrecasas. The information and comments in it do not constitute legal advice.

Cuatrecasas owns the intellectual property rights over this document. Any reproduction, distribution, assignment, or any other full or partial use of this document is prohibited, unless with the consent of Cuatrecasas.

