

LEGAL BRIEFING ON THE AMENDMENTS INTRODUCED BY ROYAL DECREE LAW 7/2019, OF 1 MARCH, ON URGENT MEASURES RELATING TO HOUSING AND RENTAL MATTERS

Royal Decree-Law 7/2019, of 1 March, on urgent measures relating to housing and rental matters, introduces amendments to Law 29/1994, of 29 November, on Urban Leases in relation to different aspects of residential leases, including: (i) the extension of the mandatory renewal and tacit renewal periods; (ii) the effects vis-à-vis third parties of lease agreements which are not registered with the Land Registry; (iii) the removal of dwellings being temporarily assigned for tourism use from the LAU's scope of application; (iv) the establishment of a maximum limit on the amount resulting from the rent update; and (v) other amendments.

I. Introduction

On 5 March 2019, Royal Decree-Law 7/2019, of 1 March, on urgent measures relating to housing and rental matters (“RD-L 7/2019”), was published in the Spanish Official State Gazette. The Royal Decree-Law consists of four titles, the first of which is aimed at updating the regulation of residential lease agreements, by making various amendments to Law 29/1994, of 29 November, on Urban Leases (*Ley de Arrendamientos Urbanos*, “LAU”).

The purpose of this briefing is to explain the amendments implemented under Title I of RD-L 7/2019.

II. Amendments introduced by RD-L 7/2019 regarding the regulation of residential lease agreements under the LAU*1. Extension of compulsory renewal and tacit renewal periods*

RD-L 7/2019 amends article 9 of the LAU to restore the periods established prior to the amendment of the LAU under Law 4/2013, of 4 June, on measures to promote and increase the flexibility of the residential lease market (“Law 4/2013”). RD-L 7/2019 establishes a five-year mandatory renewal period, unless the landlord is a legal person, in which case a seven-year period applies.

In addition, article 10 of the LAU has been amended to establish that, upon the expiration date of the agreement or any of its renewals, and once the mandatory renewal period has ended, if neither party notifies the other of their decision to not renew the agreement, at least four months in advance in the landlord's case or two

months in advance in the tenant's case, the agreement will be mandatorily renewed for annual periods up to a maximum of three years, unless the tenant notifies the landlord, one month prior to the date of termination of any of the renewed years, of their intention to not renew the agreement. This is in contrast to the annual renewal which has been in force until now.

The aforementioned amendments of articles 9 and 10 of the LAU has made it necessary to amend other articles of the LAU in order to ensure consistency with regard to the mandatory and tacit renewal periods described above (i.e. articles 16.4, 19.1 and 20.2 of the LAU).

2. Effects vis-à-vis third parties of lease agreements which are not registered with the Land Registry.

In another move that restores the situation that existed prior to Law 4/2013, the second paragraph of article 7 of the LAU has been deleted, meaning that the registration of lease agreements with the Land Registry is no longer a requirement for such agreements to have effects vis-à-vis third parties. Consequently, the second paragraph of article 10 of the LAU has also been deleted.

Furthermore, article 13 of the LAU has been amended and tenants now have the right to continue with the lease for the first five or seven years of the term of the agreement (depending on whether the landlord is a natural or legal person), in cases where the landlord's right is terminated due to the enforcement of a conventional claw-back ("*retracto convencional*"), inheritance substitution ("*sustitución fideicomisaria*"), or if they are forced to sell the property as a result of foreclosure proceedings or the execution of a call option.

For agreements in which the term agreed exceeds five or seven years, as applicable, if any of the circumstances mentioned in the above paragraph take place after the first five or seven years of the lease agreement have passed, said agreements shall be terminated. An exception is made for lease agreements which have been registered with the Land Registry prior to the registration of the aforementioned rights that would cause the landlord to lose ownership of the property, as in these cases the agreement will remain in force for the agreed term.

Similarly, the wording of article 14 of the LAU has also been altered in such a way that the purchaser of a leased dwelling will take over the landlord's rights and obligations during the first five years of the agreement, or seven if the landlord is a legal person, even if the requirements of article 34 of the Mortgage Act have been met. If the agreed term exceeds five years, or seven years if the previous landlord is a legal person, the purchaser will take over these rights and obligations for the entire agreed term, unless they meet the requirements of article 34 of the Mortgage

Act, in which case the purchaser will only assume the lease for the remainder of the term of five or seven years, and the seller must provide the tenant with compensation amounting to the equivalent of one month of the current rent for each remaining year of the agreement which exceeds the aforementioned term of five years, or seven years if the previous landlord was a legal person.

Lastly, if the parties have agreed that the lease agreement will be terminated in the event that the property is sold, the purchaser will only be bound to maintain the lease for the remainder of the five-year period, or seven-year period if the previous landlord is a legal person.

3. Removal of the temporary assignment of use in relation to the activity of dwellings used for tourism from the LAU's scope of application

Title I of RD-L 7/2019 includes a technical clarification that has been introduced in article 5, letter e), which excludes dwellings being temporarily assigned for tourist use from the LAU's scope of application, and removes the restriction that they must be marketed through tourism supply channels and specifically in accordance with the provisions of the applicable tourism sector regulations.

4. Regime applicable to lease agreements of certain dwellings

The exception which existed prior to the amendment introduced by Law 4/2013 is restored in relation to lease agreements for dwellings with a surface area which is greater than 300 sq. m. or which involve an initial annual rent which is greater than 5.5 times the annual national minimum wage and for which the lease refers to the entire property. In such cases, the lease agreement will be governed as agreed by the parties concerned, and in the absence such an agreement, by the provisions of Title II of the LAU and, additionally, by the Civil Code.

5. Maximum limit to the rent review

RD-L 7/2019 maintains the system for reviewing rents established by Law 4/2013, namely, that the parties are free to agree on the mechanism used to review the rent amount.

However, article 18 of the LAU introduces a maximum limit to the possible increase in rent, so that regardless of the rent update mechanism agreed between the parties and the index that said mechanism may refer to, the increase in rent may not exceed that which would result from applying the percentage CPI variation on the date of each rent review.

6. *Other amendments*

Additionally, some other amendments of the LAU that affect lease agreements have been made.

The requirement to have expressly established the need to occupy the leased dwelling before the end of five or seven years in the lease agreement in the event that the landlord intends to use the leased dwelling for permanent housing either for himself or his relatives has been reinstated.

One of the other measures included protects the possibility of the tenant's position under the agreement being transferred, in the event of their death, in favour of people who are especially vulnerable, as well as minors, people with disabilities and those over 65 years of age.

Moreover, the maximum amount of guarantees in addition to the legal deposit that the tenant may be required to produce for agreements with a term of five or seven years, as applicable, has been set at two months of rent.

In addition, the costs related to real estate management/agencies and the formalisation of residential lease agreements are to be borne by the landlord if they are a legal person, even if these costs are the result of a request from the tenant.

Article 25.7 of the LAU also includes the possibility that any housing legislation may establish pre-emption and claw-back rights in favour of the Administration regarding the joint sale by the landlord or several different owners of an entire building, comprised of dwellings and business premises, to the same purchaser.

Lastly, in order to promote transparency and facilitate the exchange of information for the purposes of public policy, the Second Additional Provision authorises the regulations governing the legal deposit to determine the information to be provided by the landlord, including at least (i) the identification data of the parties, including addresses for notification purposes; (ii) the identification data of the property, including the postal address, year of construction and, if applicable, the year and type of refurbishment, the area constructed for private use according to the cadastral reference, the use, and energy qualification; and (iii) the characteristics of the lease agreement, including the annual rent, the term established, the rent update mechanism, the legal deposit amount and, if applicable, additional guarantees, the type of agreement for the payment of basic supplies, and whether it is leased with furniture.

III. Other amendments implemented by RD-L 7/2019

Titles II, III and IV of RD-L 7/2019 introduce amendments to other laws, such as:

1. *Law 49/1960, of 21 July, on horizontal property*

Title II of RD-L 7/2019 selectively amends this law in order to (a) promote works which improve accessibility, by increasing the amount of the reserve fund of the owners' association to 10% of the last ordinary budget, as well as including the obligation to carry out works to improve accessibility in cases in which the owners' association could have access to public aid that covers up to 75% of such works; and (b) regulate a qualified majority of three fifths of the total number of owners and of the participation quotas so that the owners' associations can limit or impose conditions on temporarily assigning the use for touristic purposes or establish special quotas or increases in the share of common expenses within the framework of the applicable sectorial regulations.

2. *Law 1/2000, of 7 January, on Civil Procedure*

This law is amended by Title III of RD-L 7/2019 regarding the eviction procedure for vulnerable households (which also covers the process which follows a mortgage foreclosure ("lanzamientos") in addition to evictions), with the aim of improving coordination with social services to protect the evicted persons who are considered to be vulnerable, in addition to implementing and expediting the procedure.

3. *Royal Legislative Decree 2/2004, of 5 March and Royal Legislative Decree 1/1993, of 24 September.*

Title IV of RD-L 7/2019 includes, on the one hand, economic and tax measures, particularly in relation to Real Estate Tax, and, on the other, an exemption for certain residential leases from Transfer and Stamp Duty Tax (ITP-AJD).

Likewise, in order to meet the urgent need to provide the lease market with the necessary information in relation to public policies on housing, to offer more transparency in the development of the activity, and to serve as a support for the drafting of tax policy measures, the Second Additional Provision of RD-L 7/2019 regulates the reference index systems of the price of residential leases, which must be drafted within a period of eight months as from the entry into force of RD-L 7/2019. In addition, it includes the possibility of creating reference index systems in each autonomous community for the purpose of designing public policies and programmes on residential leases in the different territorial areas.

IV. Transitional regime and entry into force

Similar to the amendments introduced by Law 4/2013, and Royal Decree-Law 21/2018 which was subsequently not validated by the Spanish Parliament, Royal Decree-Law 7/2019 will be applicable to the residential lease agreements signed as from its entry into force, and the parties are able to adapt pre-existing agreements to include the amendments introduced by the aforementioned Royal Decree-Law 7/2019, when so agreed and when it is not contrary to legal provisions.

RD-L 7/2019 will enter into force on the day following its publication in the Spanish Official State Gazette, i.e. 6 March 2019.

This Note has been prepared by Javier Muñoz Méndez and Diego Peral, partner and lawyer of the Real Estate practice.

The information contained in this Legal Note is of general nature and does not constitute legal advice. This document was drafted on 5 March 2019 and Pérez-Llorca undertakes no obligation to update or review its content.

For further information,
please contact:

Javier Muñoz Méndez
Partner, Real Estate
jmunoz@perezllorca.com
Tel: + 34 91 423 20 73

Diego Peral
Lawyer, Real Estate
dperal@perezllorca.com
Tel: + 34 91 423 66 24