

Real Estate

Qs & As on the Right to Housing Act

The most relevant aspects of the Right to Housing Act are analysed in a question-and-answer format (following on from the previous commentary on the draft bill).

REAL ESTATE AND PUBLIC & REGULATORY LAW

of Gomez-Acebo & Pombo

On 25 May 2023, the Right to Housing Act 12/2023 of 24 May was published in the Official Journal of Spain, a piece of legislation that has generated enormous expectation and doubts. Now that its final text has been fixed, it is worth our while to highlight its core content, grouped into thematic blocks and in a question-and-answer format with an eminently practical focus¹.

1. Measures in relation to tenancies

Before setting out the measures contained in the law in relation to tenancies, we must

define who are large property owners and when we are faced with a stressed market area.

1.1. *What is meant by a large property owner?*

Large property owners are considered to be natural or legal persons who own ten or more urban properties for residential use or a gross floor area of more than 1,500 square metres, also for residential use, excluding garages and storage rooms. In areas with a stressed residential market, the devolved regions

¹ Gómez-Acebo & Pombo Abogados already published a paper based on the Draft Bill, <https://www.ga-p.com/publicaciones/preguntas-y-respuestas-sobre-el-anteproyecto-de-ley-de-vivienda>. This document is an updated version of the former paper to which some observations have been added in view of the public debate that has arisen around the Draft Bill.

(“autonomous communities”) may extend the concept to the owners of five or more properties in that area declared a stressed market.

1.2. *What are stressed residential market areas?*

These are areas specifically declared as such by the competent housing authorities (normally the autonomous communities) in which there is an imbalance between supply and demand due to the presence of at least one of these circumstances:

- a) the average burden of the cost of the mortgage or rent on the personal or cohabiting unit budget, plus basic expenses and supplies, exceeds more than 30% of the average household income.
- b) The purchase or rental price of the dwelling has risen in that area in the last five years by more than three points above the regional consumer price index.

1.3. *How is a stressed market area declared?*

The autonomous communities can declare a stressed market area after making the proposed declaration publicly available for objection and preparing a report justifying the concurrence of at least one of the circumstances envisaged in the previous point. This declaration must be communicated to the Secretariat General for the Urban Agenda and Housing of the Ministry of Transport, Mobility and the Urban Agenda.

1.4. *What is the duration of the stressed market area declaration?*

The stressed market area declaration has a duration of three years, and may be extended annually following the same procedure provided for the declaration.

1.5. *What are the consequences of declaring a stressed market area?*

The first consequence is the drafting of a specific plan by the autonomous communities in which specific measures will be established to overcome the existing imbalances in the area.

The Ministry responsible for housing may also develop a specific programme that will amend or be annexed to the existing Housing Plan, allowing the State to promote in that territorial area:

- a) formulas for collaboration with the competent public authorities and the private sector;
- b) the design and adoption of specific funding measures;
- c) the establishment of additional specific public measures or aid within the existing State Housing Plan.

In addition, the declaration of a stressed market area has the following consequences:

- *Mandatory extension for the lessor.* At the end of the lease agreement, the lessee may elect an extraordinary extension, of an annual nature and for a maximum period of

three years, on the same terms as the existing agreement.

- *Rent limitation.* The rent of new lease agreements will be limited by the rent of the previous lease agreement (applying the annual updating clause of the rent of the previous agreement), with certain increases (up to 10 %) permitted in the cases provided for by law.

Furthermore, if the landlord is a large property owner, the rent of new agreements may not exceed the maximum limit of the price applicable according to a system of benchmark price indices, which must be set in accordance with the conditions and characteristics of the leased dwelling and the building in which it is located. The specification of this system is left to subsequent regulatory implementation.

- *Obligation to provide information.* Large property owners also have an obligation to collaborate and provide information on the use of the dwellings they own, at the request of the general government.
- *Tax incentives in personal income tax (IRPF).* The following deductions in the net earnings are allowed for home rentals entered into after the entry into force of the law:
 - 90 % if, when entering into a new lease agreement, the lessor reduces the rent by 5 % compared to the rent of the previous lease agreement for the same dwelling.

- 70 % where the lessor rents the dwelling for the first time and the lessee is between the ages of eighteen and thirty-five.
- 60 % where renovation work (within the meaning of the Personal Income Tax Regulation) has been carried out in the two years preceding the date of execution of the lease.
- 50 % in all other cases.

- *Obligations of an urban planning nature.* In municipalities in which one or more areas have been delimited as stressed residential market areas, the land obtained in compliance with the duty to transfer in the urban development process must necessarily be used for the construction and management of social or public housing and may not be replaced by any other public use or social interest or by other forms of compliance with the duty, except in exceptional cases.

2. Measures to avoid permanently unoccupied dwellings

2.1. What is meant by permanently unoccupied dwellings?

Permanently unoccupied dwellings are those that remain vacant without justified reason for a period of more than two years and that belong to owners of four or more residential properties.

2.2. What measures are put in place to bring unoccupied dwellings onto the market?

Local councils may levy a surcharge of up to 50 % of the net property tax liability. This surcharge may be increased as follows:

- up to 100 % of the net tax liability where the dwelling remains unoccupied for more than three years, and
- an additional 50 % (i.e. up to 150 % of the net liability) if the dwelling belongs to owners of two or more unoccupied dwellings in the same municipality.

3. On the public pool of housing

The law incorporates particular types of housing with a social function into state legislation and, in general, introduces measures aimed at extending and giving permanence to the different types of social and protected housing.

3.1. *What is public-purpose housing?*

Such housing occupies land zoned as for public purposes (or that forms part of buildings or premises intended for public facilities) and not residential. In order to encourage their proliferation, the law provides that planning instruments (including land use planning) may: a) establish as a compatible use of land for public purposes the construction of public-purpose housing, and b) establish the acquisition of land for public-purpose (or social) housing as part of urban transformation actions.

3.2. *What about affordable housing?*

Such is privately owned housing to which the general government grants a series of tax and urban planning benefits in

exchange for them being rented at maximum prices to people whose income does not allow them to access housing at market prices.

The limitation of their use and rental price is configured as a temporary measure, proportional to the benefits recognised by the competent authority. These dwellings may be newly developed, but pre-existing dwellings may also be eligible. In general, the law does not envisage specific benefits for this type of housing, but it does provide that urban planning instruments may favour their implementation by allowing increases in buildability or density, or the assignment of new uses to a dwelling or a residential building included in areas delimited for this purpose.

3.3. *What limitations are introduced to the disqualification of land and dwellings?*

- Land reserved for some type of subsidised housing cannot be disqualified, unless the land-use plan provides explanation for the unnecessary nature of this type of housing or the supervening impossibility of this use.
- Subsidised housing developed on land intended for such use may not be disqualified either.
- a) Only subsidised housing built on land with another classification and which has not received public aid and b) housing that is exceptionally authorised by regional regulations may be disqualified. In both cases, the qualification must be at least thirty years old.

3.4. *What measures are envisaged to increase the stock of subsidised housing land and the public pool of housing in general?*

In addition to the aforementioned measures on public-purpose housing or concerning municipalities with one or more areas of stressed residential land, the law:

- amends the Land (Recast) Act increase the stock of land earmarked for subsidised housing, which goes from a minimum of 30 % of the residential buildable area provided for in land-use plans (in the case of rural land included in new development) or 10 % (in the case of developed land to be subject to renovation) to a minimum of 40 % and 20 % respectively;
- lays down the obligation to allocate to rentals at least 50 % of the land for housing subject to a subsidy scheme, except in exceptional cases;
- provides that spatial and urban planning shall promote the application of building typologies and types of housing and accommodation that are adapted to different forms of (co)habitation (the text does not specify which typologies are being referred to);
- provides for the use of lease deposits deposited with the appropriate regional registers (except for the obligatory reservation of a refund guarantee) to finance the creation, extension, rehabilitation or

improvement of the public pool of housing;

- similarly, it provides that the following should be earmarked for the creation, extension, rehabilitation or improvement of the public pool of housing: 1) revenue from penalties imposed for non-compliance with the social function of home ownership, and 2) revenue from the management and disposal of assets forming part of the public pool of housing.

3.5. *What public-private partnership measures are envisaged?*

The law provides for the creation of a social housing fund through joint working mechanisms between public authorities and private housing management entities on the basis of specific agreements between the general government and private associations and operators.

It also provides for a) the granting of surface rights or administrative concessions to third parties so that (while maintaining public ownership of the land) they can build, rehabilitate or manage housing in the public pool of housing; and b) the allocation of public resources or alienation of the assets making up the public pool of housing to non-profit organisations for their management for social purposes.

4. **Information and registration measures**

In addition to the specific obligations for large property owners or in stressed market areas, the law contains other public disclosure and recording measures:

4.1. *What is the Registry of Lease Agreements?*

This is a new public registry linked to the current regional Registries of deposits of the autonomous communities and to the Land Registry. Without prejudice to its general aim of contributing to the implementation of the law, its specific purpose is to increase the information available for the development of the system of benchmark indices for the rental price of housing.

4.2. *What other reporting requirements are set out in the law?*

- A minimum information requirement is regulated for homebuyers and tenants, imposing obligations on professionals (developers, real estate agents, property managers...), but also on homeowners who are not professionals.
- It requires the establishment and maintenance of an inventory of the public pool of housing for which an annual report must be published.

5. **Procedural measures**

5.1. *Does the law affect the rules on eviction?*

Yes, the Civil Procedure Act is amended with regard to the eviction procedure in situations of vulnerability. Specifically:

- Additional informative and documentary requirements are added in claims seeking to recover possession of a property, under penalty of inadmissibility of the claim. In particular, it is required to specify

a) whether the property is the habitual residence of its occupant; b) whether the claimant is considered to be a large property owner, and, in the latter case, c) whether or not the defendant is in a situation of economic vulnerability.

- In the event that the claim is brought by a large property owner in relation to the habitual residence of someone who is in a situation of economic vulnerability, the prior submission to the conciliation or inter-mediation procedure established by the competent public authority is established as a requirement for admissibility.
- The courts must in any case inform the competent public authorities so that they can assess the situation of vulnerability and, if it exists, present an alternative proposal for decent social rental housing to be provided by the general government, an obligation that is more demanding in the case of claims brought by large property owners against occupants in a situation of economic vulnerability.
- The periods for suspending evictions in these situations of vulnerability are extended, and, in view of the information that may be received from the competent public authorities, up to two months when the owner is a natural person and up to four months when the owner is a legal person.
- Conditions are established in the procedure for the auction of real

estate that is the habitual residence of the foreclosed party when the creditor is a housing company or a large property owner.

5.2. *What is public action on housing?*

Inspired by the traditional model of public action in urban planning

matters, the law provides that - in addition to by those entitled to do so in the ordinary way -, acts and regulations in application of some of its provisions may be challenged by non-profit legal persons in the defence of public interest linked to the protection of housing.