

Real estate

The 'large owner' residential landlord

Commentary on this concept of 'large owner' introduced by the Right to Housing Act 13/2023.

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Article 3(k) (housing) of Act 13/2023 defines the *large owner* (of urban property) as “the natural or legal person who owns more than ten urban residential properties or residential gross floor area in excess of 1500 square metres, excluding garages and storage rooms. This term may apply in stressed residential market areas to owners of five or more urban residential properties when so specified in the declaration thereof and justified by the regional government in the relevant report”. Being a large owner represents a contractual and post-contractual burden for the landlord, even if the property is not located in a “stressed market area”, as follows from (amended) Article 10(2) of the Urban Tenancies Act, the new Article 439(6) (eviction) of the Civil Proceedings Act and (amended) Article 46 (rental price updating) of Act 6/2022.

Let us break down the concept to some extent:

1. “More than ten” is eleven, not ten; more than 1500 square metres is 1501, not 1500. The figures are absolute thresholds, no matter how close the properties are above or below these magnitudes.
2. If a natural person (or a marital community) lives with his or her six children in his or her own main residence which, when added to another dwelling that he or she rents out, exceeds 1500 square metres, he or she is a large owner of this rented dwelling.
3. In fact, a person or a marital unit is a large owner simply on account of the family having as its main residence a dwelling of more than 1,500 square metres. Any other rented out will

be rented out already as a large owner. How absurd the rule is.

4. "Holder" is the holder of the right of ownership or any other right that entails a right to assign for rent. The company holding a right of usufruct in more than ten rental dwellings is a large owner.
5. The status of large owner is deemed to exist at the *relevant time of the effect in question*. For the extension of Article 10(2), when it accrues; for the rental price increase of Article 36 of Act 6/2022, when it accrues; for the eviction, when the possession claim is filed.
6. A legal person *that reaches the critical figure* is a large owner, but its partners are not. In principle, this also applies to co-owned business partnerships.
7. The concept is not lost by the fact that the tenant is a co-owner in a joint property partnership which is to be considered a major holder or member of a company which is regarded as a large owner.
8. A company is not a large owner because it is part of a corporate group which together reaches the statutory critical figure. A company is not a large owner because it is subject to horizontal control relationships with other companies with which it shares the same shareholders, even if it is not a corporate group as such.
9. There is no abuse of rights when a large owner disposes of an immovable property, even to an *insider* company, in order to cease to be a large owner at the time when the relevant effect is to take place.
10. A joint property partnership has, *ceteris paribus*, no legal personality, even if it has a tax identification number, so that the matter could be laid to rest by answering that a joint property partnership cannot be an owner of real estate or a landlord of real estate. But the matter is not so simple because, even if it has been set up as an open business partnership with separate personality, the personal difference of a co-owner-member and business partnership is very weak.
11. A distinction must be made between being a large owner for the purposes of the rented common property and being a large owner in respect of other properties that the co-owner holds exclusive title to.
12. A co-owner-member who *rents out his own property on his own account* would not be considered a large owner for the purpose of *this non-co-ownership agreement* on the grounds that the critical figure has been reached by the joint property entity, *unless the sum* of his exclusive properties and the number of metres corresponding to his *stake* in the joint property dwellings exceeds 1,500 square metres. But not if this critical figure is reached by adding up the *total* floor area of all the properties that the person renting out his own exclusive dwelling has in under joint property.
13. When adding up the floor areas corresponding to the joint properties stake of the co-owner in question, the floor areas of all the joint properties are added together, even if the co-owners of the different properties are not the same.
14. A large owner exists in the following situation *vis-à-vis the tenant of the joint property*: three (two, four, etc.) persons are co-owners of a number of properties or a floor area that exceeds the relevant figure. They are contractually related to the tenant as a unit of attachment, either because the active contractual position is in fact several because no single co-owner can provide all the required use on

his own account, which also cannot be provided in parts. The situation is the same as in the previous case if only one of the co-owners enters into the rental contract severally. This is also the case if all co-owners sign all rental agreements jointly and severally, each for their share, if the use of all shares is assigned.

15. The co-owner, who is a co-owner with others to a greater extent than the critical figure, is not a large owner if he or she *rents out his or her ownership share* in one, several or all of the joint properties. But he or she is also not a lessor in terms of the Urban Tenancy Act, because the rental of a share of the ownership
16. If an *undivided inheritance* includes dwellings that exceed the critical figure of a large owner, such shall be if the lease is concluded in the name of the inheritance or severally by the heirs. However, a co-heir who has his own residential properties below the critical figure does not add up the shares he has in each of the inherited properties in order to reach the critical figure, because he does not in fact have any stakes in these properties, but in the inheritance as a whole, which is an intangible universal property and is neither real estate nor a dwelling.