
Entry into force of the Housing Act

Today, the Spanish Housing Act has come into force, introducing important measures that will affect large property holders, developers and funds operating in the real estate sector.

Legal flash

May 26, 2023



Key aspects

- > New concept of large property holder
- > Restrictions on housing rental prices
- > Amendments to the system for extending residential lease agreements
- > Property tax surcharges imposed on vacant housing
- > Increased percentages of land reserves for social housing
- > Ban on removing housing definitively subject to a public protection scheme from that classification, with some exceptions
- > Restrictions on the sale of the public housing supply
- > Amendments to the regulation on eviction processes, mortgage foreclosure and real estate auctions in situations of vulnerability



Below are the main measures implemented under Act 12/2023, of May 24, on the right to housing (the “**Housing Act**”) published in the Official Gazette of the Spanish State on May 25.

New concept of large property holder

In line with the regulations in force to date, the Housing Act defines large property holders as individuals or legal entities owning over 10 residential properties or a built surface area of over 1,500 m² of residential property, excluding parking lots and storage spaces. However, the new provisions of the Housing Act allow autonomous regions to reduce the threshold to five or more properties in areas declared “strained housing market areas” in the terms described in the following section.

Restrictions on housing rental prices

To hold down housing rental prices, the Housing Act includes the following measures:

The consumer price index (“CPI”) can no longer be used as a reference for annual rent increases

In 2024, residential lease agreements undergoing an annual adjustment cannot apply increases exceeding 3%.

Likewise, “*to avoid disproportionate increases,*” a new reference index will be defined by December 31, 2024, to replace the CPI.

Cap on rental prices

Under the Housing Act, the competent housing authorities are empowered to declare strained housing market areas for three years (extendable yearly) if either of the following conditions are fulfilled: (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; or (ii) the purchase or rent price of the home must have risen in that area by at least three points above the CPI in the autonomous region in the previous five years. In strained housing market areas when the lessor is a large property holder, the rent agreed at the start of the lease will be restricted by the updated previous agreement or by the cap on the price applicable under the system of reference price indexes published in the future.

System for extending lease agreements

The Housing Act modifies the system for extending lease agreements provided under the [Urban Leases Act](#), establishing that once the mandatory period or tacit renewal period of the



lease agreement expires, if the lessor is a large property holder and the tenant is in a situation of social and economic vulnerability, the agreement may be extended on an exceptional basis for up to one year under the same terms and conditions as the agreement in force.

If the property is located in a strained housing market area and the tenant is not undergoing a situation of economic vulnerability, the agreement may be extended for one-year terms, up to three years.

Surcharges on property tax

Current legislation allows city councils to impose a 50% surcharge on property tax (“IBI”) for vacant housing. The Housing Act 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, a “vacant housing property” is one that has been vacant on an ongoing basis for over two years (and belongs to the owner of four or more residential properties), unless for justified reasons (e.g., properties requiring building or refurbishment works). The vacancy situation must be declared through an administrative procedure in the presence of the taxpayer.

Although these 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 to increase the public housing supply

- **Classification of land reserves for protected housing:** It is guaranteed that the classification of land reserves for protected 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.
- **Reserve for protected housing on rural land and developed land:** The percentages of land reserves for social housing have been increased under national law, establishing a 40% reserve of the residential development provided under urban planning rules on rural land subject to new urban development, and a 20% reserve on developed land subject to refurbishment or renovation development works. Exceptionally, the percentage of this reserve may be lower and some districts will be exempt.



- **Percentage of the land reserve destined to rented social housing:** It is established that urban planning and land-use legislation must specify 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:** Without prejudice to the conditions and requirements set out under regional or municipal regulations, which will prevail, it is guaranteed that housing developed on land destined to housing will be subject to a public protection scheme on a permanent basis and cannot be removed from the protected 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 it 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”:** 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.
- **Restrictions on the sale of the public housing supply:** 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. Special attention must be paid to the characteristics of each surrounding environment.

Amendments to eviction processes, mortgage foreclosures and real estate auctions in situations of vulnerability

The Housing Act introduces significant amendments to the provisions set out in the Spanish Code of Civil Procedure on eviction processes, mortgage foreclosures and real estate auctions in situations of vulnerability. These amendments extend the existing social protection measures to address situations of social or economic vulnerability (known as the “social shield”).

The main measures are explained below:

- In eviction processes and mortgage foreclosures, the claimant is obliged to specify whether the property is the occupant’s primary residence and whether it belongs to a large property holder (evidenced by a certificate from the land registry regarding the owned properties).



- > In eviction processes, mortgage foreclosures and real estate auctions, claimants that are large property holders are obliged to prove whether the occupant of the property is in a situation of economic vulnerability.

If the occupant of the property is in this situation and the property is the occupant's primary residence, the parties must carry out conciliation or mediation proceedings, which will be established by the competent authorities. This formality is necessary for the claim to be admitted in these proceedings or, as applicable, to take action for the recovery of debt.

- > The scope of protection is extended when situations of vulnerability are identified: as well as evictions due to rental arrears, it protects vulnerable occupants undergoing other situations, such as occupants without legal title.

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.

- > Court rulings may order the suspension of the eviction process after a weighted and proportional assessment of the specific case (replacing the current provision enabling automatic suspension).
- > 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).
- > Any court decision ordering the eviction of the occupant must specify the exact time and date on which the eviction will occur.

Entry into force and pending actions

In general, the Housing Act has come into force today. However, some of the measures introduced under it will not be applied immediately. We highlight the following:

- (i) Lease agreements entered into before the Housing Act came into force will continue to be governed by the provisions of the legal system applicable at that time. This excludes measures relating to annual rent increases in 2023 and 2024, which will apply to all agreements.
- (ii) By December 31, 2024, the National Institute of Statistics must define the new index replacing the consumer price index for annual rent increases.
- (iii) The housing authorities must establish, if applicable, the corresponding "strained housing market areas" and set the reference price indexes for those areas.



- (iv) Urban planning legislation must establish the percentages of land reserve for protected housing on rural land and developed land, as well as the percentage of land reserve destined to rented social housing.
- (v) The application of property tax surcharges imposed on vacant housing will require a declaration of vacancy of the property.
- (vi) The competent authorities are obliged to establish the conciliation or mediation proceedings, which have been established as a procedural requirement in eviction processes, in mortgage foreclosures and real estate auctions in situations of vulnerability.

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

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