

September 2020

Real Estate and  
Construction

## LAW ON URGENT MEASURES REGARDING RENT CONTROL IN HOUSING LEASE AGREEMENTS

### SUMMARY

On September 9, 2020, the Parliament of Catalonia approved the Law on urgent measures regarding rent control in housing lease agreements (the "Law"), that was then published in the Official Gazette of the Generalitat (DOGC) on September 21, 2020 and thus entered into force on September 22, 2020.

#### 1. Scope of application

The Law aims to regulate rent restraint and moderation in housing lease contracts that constitute the tenant's permanent residence and that are located within an area declared as a tense housing market.

There are certain housing rent agreements that are excluded from the application of the Law, specifically those subject to special rules for income purposes and, in particular, the following contracts:

- a) Those related to housing rented prior to January 1, 1995.
- b) Those related to social housing subject to official protection.
- c) Those related to housing within public networks of social housing for inclusion or mediation purposes and leases related to social and welfare policies.
- d) Those related to housing rented in accordance with the applicable legal provisions regarding compulsory social renting.

#### 2. Areas with a tense housing market

The areas that are considered as having a **tense housing market** are those municipalities or parts thereof where there is a short supply of adequate housing for rent that is affordable for the population. The entity responsible for declaring an area as having a tense housing market is the department of the Generalitat de Catalunya (Catalonia government) authorised in housing matters and also falls to (i) in the city of Barcelona, the city council (Ayuntamiento de Barcelona) and (ii) in the metropolitan area of Barcelona, the Barcelona Metropolitan Area, of its own initiative or at the request of the municipalities that make up the area, through an agreement from the Metropolitan Council. This procedure can be processed ordinarily, as is stipulated in article 3, or via an urgent process, provided that there are reasons of public interest subject to the real estate sector. The declaration of an area as a tense housing market area cannot exceed 5 years from its publication in the DOGC and it must have the minimum content stated in article 4 of the Law. Likewise, the declaration can be revised and extended once or twice, if the situation justifies it, for a maximum time period that is no longer than the original duration.

Notwithstanding the foregoing, the second provisional statement declares as tense housing market areas the municipalities that are indicated in **Annex 1<sup>1</sup>** in which rents have increased by more than twenty percent in the period between 2014 and 2019. This statement has a duration of one year, from the entry into force date of the Law, and will cease to be effective, in each affected municipality, when the authorised entities draw up a new declaration of a housing market area relative to the same municipality, or when the stipulated time period has elapsed without a new declaration of a tense housing market affecting that area.

### 3. **Consequences of the declaration of a tense housing market area**

#### 3.1. Reference Price

3.1.1. The declaration of an area with a tense housing market requires that all territories affected **apply the rental prices reference index** determined by the department responsible for housing, based on the data contained in the Register of urban property rental deposits.

The residences located in said area will be affected by the rent restraint and moderation rules indicated in the Law that have the following unique factors:

- (i) The reference price is established from the housing rental prices reference index<sup>2</sup> that determined and disseminated by the department responsible for housing, based on the data contained in the Register of urban property rental deposits and the additional characteristics of each residence that are taken into account to calculate the index.
- (ii) The rent agreed at the beginning of the contract cannot exceed:
  - a. the reference price for a residence with characteristics akin to one in the same urban area. The reference price is established from the housing rental prices reference index and additional characteristics that are taken into account to calculate the index. In this respect, article 7.2 of the Law establishes that, according to the specific characteristics of the rented residence, the contracting parties will be able to agree to an increase or decrease of 5% with regards to the reference index<sup>3</sup>. Additionally, article 7.3 establishes that the reference price can be increased in certain cases where improvement works are carried out.<sup>4</sup>

<sup>1</sup> [Annex 1. Municipalities included within the transitory declaration of tense housing market areas \(p. 6\).](#)

<sup>2</sup> Check the housing rental prices reference index: <http://agenciahabitatqe.gencat.cat/indexdelloguer/>

<sup>3</sup> The increase or decrease in the value determined by the rental housing prices reference, agreed by the contracting parties in virtue of the specific characteristics of the residence, must be based on the existence of at least three of the following characteristics: a) lift, b) parking, c) furnished residence, d) heating or air conditioning system in residence, e) communal areas of shared use, f) communal swimming pool, g) porter services and h) special views.

<sup>4</sup> Article 7.3 of the Law: "The lessor of a residence that is subject to rent restraint regulated by this law can propose an increase in the reference price, in a similar way to that established in article 11 of the Law for improvement works, in the case that within the last year the residence has undergone refurbishments to improve habitability, security, comfort or energy efficiency. The increase in the reference price must be calculated based on the capital invested in the improvements in the residence, according to the current leased urban properties ruling and in any case respecting the maximum increase that the latter establishes, assuming that: a) The amount of subsidies and public allowances from which the lessor can benefit for improvements for the residence cannot be considered invested capital for the purpose of increased rent from the reference price. b) The application of the reference price increase due to improvements on the residence exclude the application of the increase referred to in part 4."

- b. the rent agreed in the previous contract, increased by the guaranteed competitiveness index, cumulatively applied in the period between the date of conclusion of the previous rental contract and the date of conclusion of the new contract, if the residence effected has been rented within the five years prior to entry into force of the Law.

The foregoing will not apply in the following cases:

- a) Existence of a kinship relationship between the parties that formalised the lease contract prior to the one that is intended to be formalised, before the Law enters into force.
- b) Formalisation of the lease contract related to housing that was initially excluded from the application of the Law, when the applicable special rules for determining rent cease.
- c) The declaration of an area with a tense housing market can decide whether to apply or not to housing with a surface area of more than 150m<sup>2</sup>.

3.1.2 Under article 6.2 of the Law, in the event that the residence of the new contract has been rented for 5 years previous to the entry into force of the Law and the owner is a natural person and the living unit's income is equal to or less than 2.5 times the Sufficient Income Indicator (Indicador de Renta de Suficiencia – IRSC)<sup>5</sup>, including income from leases, only the rent limit recorded in the last contract will apply. In this case, if the rent recorded in the last lease contract is less than the reference price, it can be increased to match the reference price.

The previous paragraph will not be applied when the income of the lessee is equal to or less than 3.5 times the adjusted IRSC.

3.1.3 With reference to the rules of current lease contracts, the first transitional provision establishes that the housing lease contracts concluded before entry into force of the Law will continue to be governed by the provisions of the previous legislation. In case of novation of the contract that involves an extension of the duration or modification of the rent, after the declaration of its location as within a tense housing market area, the rent restraint rule must be applied, as provided for in 3.1. above.

3.1.4 In the case of contracts that involve newly constructed or refurbished housing, for a period of five years after obtaining the construction completion certificate, the agreed rent at the beginning of the contract can reach the upper end of the reference index for the rental of a residence with similar characteristics in the same urban area<sup>6</sup>. Notwithstanding the foregoing, the fourth and final provision of the Law establishes that the application of the rent restraint rule in case of **newly constructed or refurbished residences**<sup>7</sup> will enter into force once three years have past from the entry into force of the Law.

<sup>5</sup> The sum of the incomes of all the members of the household is between 1,500 € and 2,000 € monthly approximately.

<sup>6</sup> Cases where public subsidies have been obtained to carry out the works are excepted, in which rent must be determined in accordance with that established in article 6 of the Law, notwithstanding those agreements which can be adopted with the relevant authorities.

<sup>7</sup> Under Law 18/2007, December 28, of the right to housing: art. 3.h) what is understood by a large refurbishment is a series of construction works that consist of the demolition of a building saving only the façades or constitutes a global action that affects the structure or general use of the building or refurbished house. Similarly, article 119 of Decree 305/2006, Regulation of the Law of Urban Planning establishes that a large refurbishment is understood as: a) A series of

### 3.2. Increase in rent due to improvement works

In those contracts subject to rent restraint regulated by the Law, the lessor who carries out improvement works on the residence can increase the rent, once the obligatory legal minimum period has passed, without being subject to the limit established by the Law relating to the determination of rent.

Improvement works that are necessary for maintenance and conservation of the residence or the building in which it resides will not be considered, as well as those that include reparation or works to improve the functioning or security of elements within the residence.

### 3.3. Content of the offer and contracts

Lastly, in all rented property offers located within a tense housing market area, it will be necessary to inform of the application of the rental housing price reference index that correspond and, in any case, of the rent from the last lease contract of the same residence, updated in accordance with the criteria established in article 6 of the Law.

In the lease contract, it will be necessary to attach the document that the indexation system generates, informing of the value of the index corresponding to a similar residence to the one being leased, expressed as €/m<sup>2</sup>, with its upper and lower areas.

In this respect, the contract must indicate the amount of rent resulting from applying the reference index, without taking into account the upper and lower areas, expressing the usable surface area of the home in €/m<sup>2</sup>.

Similarly, in cases where the initial rent is determined by the rent of a previous contract, the lessor must inform the tenant in writing of the previous rent amount and the date of the previous lease and, thus, justify establishing a new rent.

## 4. Penalty system

The applicable control and penalty systems for breaches of the Law are those provided by Law 18/2007, December 28, of the right to housing, that can go from 3,000€ up to 9,000€ for minor infringements; from 9,001€ to 90,000€ for serious offences; or from 90,001€ to 900,000€ for very serious infringements.

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construction works that constitute a global action in the whole building and that also involves one of the following actions: increase in volume or elevation limit, increase in the number of previously existing apartments or functional units, general space redistribution and change of the main use of the building, b) Replacement of the building, although some structural element or façade is maintained and c) the simultaneous or successive execution of other refurbishment works that have a cost equal to or greater than 50 percent of the value of the construction of a new floor with similar characteristics and the same roof as the existing building.

Notwithstanding the penalty system, article 12 of the Law establishes that, in leased housing subject to rent restraint regulated by the Law, the collection of rent by the lessor that exceeds the limits established by article 6 of the Law, will give the tenant the right to be reimbursed for the amounts paid in excess, with accrual of the legal interest of the money, increased by three percentage points.

## HAVE ANY QUESTIONS?

From the Real Estate Law Area, we work to respond to the doubts that the current situation may raise. If you have any questions, do not hesitate to contact us.

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## ANNEX 1: Municipalities included within the transitory declaration of tense housing market areas

1. Badalona
2. Barberà del Vallès
3. Barcelona
4. Blanes
5. Calafell
6. Castellar del Vallès
7. Castelldefels
8. Cerdanyola del Vallès
9. Cornellà de Llobregat
10. Esplugues de Llobregat
11. Figueres
12. Gavà
13. Girona
14. Granollers
15. L'Hospitalet de Llobregat
16. Igualada
17. Lleida
18. Manlleu
19. Manresa
20. Martorell
21. El Masnou
22. Mataró
23. Molins de Rei
24. Montcada i Reixac
25. Montgat
26. Olesa de Montserrat
27. Olot
28. Palafrugell
29. Pallejà
30. Pineda
31. El Prat de Llobregat
32. Premià de Mar
33. Reus
34. Ripollet
35. Rubí
36. Sabadell
37. Salou
38. Salt
39. Sant Adrià de Besòs
40. Sant Andreu de la Barca
41. Sant Boi de Llobregat
42. Sant Cugat del Vallès
43. Sant Feliu de Guíxols
44. Sant Feliu de Llobregat
45. Sant Joan Despí
46. Sant Just Desvern
47. Sant Pere de Ribes
48. Sant Vicenç dels Horts
49. Santa Coloma de Gramenet
50. Santa Perpètua de Mogoda
51. Sitges
52. Tarragona
53. Terrassa
54. Tortosa
55. El Vendrell
56. Vic
57. Viladecans
58. Vilafranca del Penedès
59. Vilanova i la Geltrú
60. Vilassar de Mar