

SPECIAL EVICTION PROCEEDING

Law 31/2012, 14 August, that reforms the urban lease regime approved by Law 6/2006, 27 February, enters into force on 12 November 2012, and introduces into the Portuguese legal system a special eviction proceeding with the aim of expediting the eviction of a lessee of leased property and his relocation into the rental market.

With this reform the existing eviction proceeding is in effect until the termination of a rental agreement whenever the law imposes the implementation of the judicial process for that end. Additionally, the law creates the referred special eviction proceeding that consists of a procedural means meant to make effective the termination of the rental agreement, regardless of the rental's purpose, whenever the tenant does not vacate the leased property on the date set by law or determined by the parties for that effect.

Through this procedure, in addition to requiring the vacation of the leased property, the lessor may also request the payment of cumulative rents, costs and expenses which are deemed the responsibility of the tenant .

In order to assure the execution of this special proceeding, the law creates the Balcão Nacional de Arrendamento (BNA), which is competent for proceedings throughout the entire national territory.

* Special eviction proceeding

In order to initiate a special eviction proceeding, the claimant must file an application with the BNA, using the standard form provided for that effect. In the application the claimant must under penalty of refusal of the application:

- i) Identify the parties;
- ii) Indicate the claimant's e-mail address in case he intends to receive communications by electronic means;
- iii) Indicate the competent court to hear the proceeding in case it is contested;
- iv) Indicate the place where notice is to be given;
- v) Indicate the cause of the eviction and attach:
 - a. In the case of revocation, the lease agreement and the revocation agreement entered into between the parties;
 - b. In the case of expiration due to the course of time, provided that the lease agreement is not renewable, the written lease agreement which establishes the term;



REAL ESTATE

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- c. In the case of cessation caused by opposition to the renovation, the lease agreement and the document that provides that the opposition to the renovation was communicated;
- d. In the case of termination of a long-term contract by the landlord, the lease agreement and the document that shows that the termination notice was given to the tenant.
- e. In the case of termination with justified cause, the lease agreement and the document that shows that the termination notice was given to the lessee, as well as, when applicable, the document issued by the competent authority that evidences the opposition to perform the due works on the property;
- f. In the case of termination of the contract due to the tenant's opposition to the renovation or opposition to the transition to the new urban lease regime, the document that evidences the landlord's attempt to reach that end, and the tenant's response;
- vi) Indicate the rental value;
- vii) Formulate the request and, in case of request for the payment of rents, costs and expenses, distinguish the amount of capital, accrued interest and other amounts due;
- viii) Attach the document that shows the payment of stamp duty;
- ix) Indicate the intention to pay legal costs or indicate the kind of legal aid granted, as well as attach documents that show the granting of legal aid;
- x) Designate the implementing agent or notary with competence to enforce the vacation of the leased property;
- xi) If a notary is designated or becomes competent to enforce the vacation of the leased property, designate an implementing agent to enforce the execution of the payment of due rents, costs and expenses.
- xii) Sign the application form.

The proceeding is considered to have been initiated on the date of payment of the legal costs or on the date when the document that proves the request for or the granting of legal aid is attached to the proceeding.

The rents that become overdue during the pendency of the special eviction proceeding must be paid or deposited.

The special eviction proceeding is terminated by the vacation of the leased property or by the withdrawal of the application prior to the date an opposition is presented; if none is presented prior to the deadline to present it or by death of the claimant or the defendant.

After receiving the application, BNA dispatches a notice to the defendant, who has 15 days to i) vacate the leased property, and, if not the case, pay the amount requested by the claimant along with the legal costs incurred by him, or, ii) oppose to the claim or request the postponement of the vacating of the property.

*** Non-opposition to the claim or failure to pay or deposit the accrued rents**

If after receiving notice from BNA, the defendant does not oppose the claim or if the opposition is considered as not presented or if during the pendency of the special eviction proceeding, the defendant fails to pay or deposit the accrued rents, BNA shall convert the application into an order to vacate the property, which is made available to

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The hearing will take place within a 20 day period counting from the distribution of the case filed. the judge may suspend the hearing for further evidence to be produced. Notwithstanding, the trial shall be concluded within a period of 10 days. The judgment shall be immediately dictated to the transcript

the claimant and to the assigned implementing agent, notary or court clerk, depending on the case, in order for him to take possession of the property.

*** Opposition to the claim**

If the defendant opposes the claim within 15 days after receiving the notice, BNA will provide for the distribution of the case file and send a copy of the opposition to the claimant. The case file will also be distributed whenever a question subject to a judicial decision arises.

After receiving the case file, the judge may ask the parties to complete their pleadings or to present a further pleading whenever it is necessary to ensure the contradictory position. If no dilatory objection or breach of procedure is immediately upheld or if the substance of the matter is not immediately decided, the judge will order the notification to the parties of a hearing date.

The hearing will take place within a 20 day period counting from the distribution of the case filed.

During the hearing, if a reconciliation of the parties is not possible, the necessary evidence must be produced including a maximum of three witnesses per party. If deemed indispensable, the judge may suspend the hearing for further evidence to be produced. Notwithstanding, the trial shall be concluded within a period of 10 days. The judgment shall be immediately dictated to the transcript.

*** Request for the postponement of the property's vacation**

If the property is rented for housing purposes, within the term for presentation of opposition the tenant may present a request to the court of the property's location, asking for the postponement of the vacation due to pertinent social reasons.

After the request is made the landlord is notified and may contest the request within in a 10 day term.

The request shall be decided within a maximum period of 20 days according to the judge's findings. The law lists a series of circumstances that should be taken into account in the judge's decision. A postponement shall not exceed a term of 5 months after the decision to grant it becomes final.

*** Subsequent terms**

Provided that the application is converted into an order to vacate the property or if the court issues a decision ordering the property's vacation, the implementing agent, notary or court clerk will take possession of the leased property. The landlord and the tenant may agree on a term for the property's vacation.

Whenever the claimant has also requested the payment of due rents, costs and expenses, the above mentioned order or judicial decision to vacate the property is enforceable.

When taking possession of the property, the implementing agent, notary or court clerk shall list all goods found on the property. The tenant has a term of 30 days after

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The judicial decision to vacate the property can be appealed within 30 days after the decision has been issued. The appeal has no suspensive effects

the possession is taken to remove all the goods from the property under penalty of considering the goods as abandoned.

The implementing agent, notary or court clerk shall suspend the vacation procedure:

- i) Whenever the property's holder who was not given the opportunity to intervene in the special eviction proceeding, exhibits a) a lease agreement or agreement that legitimates another use of the property, issued by the landlord, or b) a sublease agreement or assignment of contractual position issued by the tenant and a document that proves the landlord's notification or other document with equivalent effect;
- ii) In case the property is leased for housing purposes, when the tenant shows a medical certificate that certifies the term during which that procedure should be suspended and that the procedure endangers the tenant's life due to acute illness.

Subsequently, after hearing the landlord, the court of the property's location decides whether the procedures are to remain suspended or the suspension is to be lifted and the procedures are to be immediately resumed.

Within 10 days after the implementing agent, notary or court clerk went to the property to vacate it, or after the tenant acknowledged the property's vacation, the tenant may challenge the vacation order, invoking only the breach of legal provisions concerning the forms of communication between the parties, and purpose, content and effects of the application's notification to the tenant.

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Contacts

Filipa Arantes Pedroso | fapedroso@mlgts.pt
Helena Soares de Moura | hsmoura@mlgts.pt



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ASSOCIADOS
SOCIEDADE DE
ADVOGADOS

LISBON

Rua Castilho, 165
1070-050 Lisbon
Telephone: (+351) 213 817 400
Fax: (+351) 213 817 499
mlgtslisboa@mlgts.pt

OPORTO

Av. da Boavista, 3265 - 5.2
Edifício Oceanvs – 4100-137 Oporto
Telephone: (+351) 226 166 950
Fax: (+351) 226 163 810
mlgtsporto@mlgts.pt

MADEIRA

Avenida Arriaga, Edifício Marina Club, 73, 2º
Sala 212 – 9000-060 Funchal
Telephone: (+351) 291 200 040
Fax: (+351) 291 200 049
mlgtsmadeira@mlgts.pt

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