

AMENDMENTS TO URBAN LEASE REGIME

1. INTRODUCTION

The 2012 urban lease regime reform reflects a commitment to enhance the lease market in order to increase supply of lease arrangements at affordable prices and was part of a set of policy measures to speed up urban real estate rehabilitation in a streamline manner.

However, monitoring the compliance with rules imposed by the legislative reform revealed that there were some aspects of the lease regime which could and should be improved, in particular, regarding *(i)* the transition from older lease agreements to the new regime and *(ii)* the regime of lease agreements for social purposes.

Accordingly, on 19 December 2014, three legal instruments were published that changed the Law applicable to the lease agreement: *(i)* Law no. 79/2014 amending the Law of urban leases, *(ii)* Law no. 80/2014 establishing the system of conditional rent of the leases for housing purpose and, finally, *(iii)* Law no. 81/2014 contemplating the new supported lease regime for housing.

2. NEW URBAN LEASE REGIME – LAW NO. 79/2014

In general, the changes made by this legal instrument intend to respond to a set of essentially procedural constraints, which have proven to be particularly burdensome for tenants, and also correcting some aspects in the non-housing leases that deserved some further consideration from the legislator.

To begin with, the new regime requires that a landlord must inform a tenant, upon the start of the process to update the rent, regarding the consequences of not responding or responding belatedly, avoiding situations where the tenant does not respond to the landlord's communication without knowing that the Law establishes that the lack of response is equivalent to acceptance of the landlord's rent proposal.

In what concerns the tenant's protection, the legislator reinforced the mechanisms already provided for in the original regime, either by *(i)* establishing the tenant's right to appeal any tax valuation of real estate, on the grounds that the such an assessment may be used to calculate the chargeable rent amount, or by *(ii)* increasing the protection conferred to tenants in the special regime for disabled tenants, since it establishes more situations triggering the application of such regime.



REAL ESTATE

To allow tenants to broaden the scope of situations that may justify the application of a protective regime during the transitional period provided by Law

Furthermore, the specificities of non-housing lease agreements which were executed before the date of entry into force of Decree-Law no. 257/95, 30 September, therefore are carried over into the new regime. Hence, the legislation aims at strengthening the support for economic activities and employment, in order to allow tenants to broaden the scope of situations that may justify the application of a protective regime during the transitional period provided by Law. For example, the concept of micro-entities (“*microentidades*”) is substantially expanded to include companies with up to 10 employees and with a turnover up to 2 million euros per year.

Thus, when non-housing tenants benefit from the protection regime and in the absence of an agreement between the parties, after the transitional period of 5 years, the agreement is deemed as entered into for 3 years.

Finally, the termination regime has also suffered some amendments that should be noted. The termination of the lease agreement for the purposes of demolition or executing remodelling works or restoration is hereinafter only possible in cases that involve works that are subject to prior urban control by a municipality. Therefore, conservation works no longer constitute grounds for termination of the lease agreement. If the agreement is terminated by the landlord in order to demolish the leased premises, the tenant will be entitled to be reimbursed, unless the landlord provides evidence that the degradation of the property is not his responsibility. Consequently, the burden of proof as to a landlord’s care in avoiding any degradation to the building does not lie with the tenant.

3. CONDITIONAL RENT – LAW NO. 80/2014

This legal act intends to replace the conditional rent regime and, according to the explanatory memorandum of Law no. 80/2014, and aims to encourage new public policies of financing the rehabilitation of old buildings for lease.

Conditional rent applies to entities that have received public funding for housing construction or have acquired houses from the State or other public entities. This regime sets a maximum amount of rent for lease agreements.

That being said, Law no. 80/2014 provides that the initial monthly rent results from the free negotiation of the parties but cannot exceed one twelfth of the product resulting from the application of the conditional rent rate to the taxable value of the leased premises in the year which the agreement was entered into.

Encourage new public policies of financing the rehabilitation of old buildings for lease

Solutions intended to respond to special situations of housing necessity, such as, single parent families, families with minors, disabled or aged (65+) and victims of domestic violence

The social housing lease agreements are from now on bounded to a legal maximum period of 10 years

4. SUPPORTED HOUSING LEASE – LAW NO. 81/2014

This legislation fills the gap arising from the absence of a statutory regime that regulates the specificities arising from the lease agreements for social purposes. The regime applies to houses held by any title by public entities, leased to those who have no other way to ensure the effective exercise of the right of access to decent housing – suitable to their needs.

Therefore, besides the regulation of housing assignment procedures which hereinafter take place through three types of contests (by rating, by lot, and by registration), this decree foresees solutions intended to respond to special situations of housing necessity, such as, single parent families, families with minors, disabled or aged (65+) and victims of domestic violence.

Finally, the social housing lease agreements are from now on bounded to a legal maximum period of 10 years, which will be considered if the parties do not agree to a term for the lease agreement or if they agree on one for a longer period. The aim is to improve the mobility concerning the leases for social purposes in order to provide social housing to those who are actually in need of such aid.

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