

LEGAL ALERT

AMENDMENTS TO THE URBAN LEASE LEGAL REGIME

On 13 February 2019 both (i) [Law no. 12/2019, of 12 February](#), which introduces the fifth amendment to the [New Urban Lease Regime](#) (NRAU), and (ii) [Law no. 13/2019, of 12 February](#), which revises the legal regime applicable to urban leases, introducing significant amendments to the Portuguese [Civil Code](#), to the NRAU and to the [Legal Regime of Works in Leased Properties](#) (RJOPA), entered into force.

I. Amendments to the Portuguese Civil Code

Concerning amendments to the lease legal regime established in the Portuguese Civil Code, we would highlight the following:

1. Late payment of rents: the lessor has the right to receive a penalty equivalent to 20% of the owed rent amounts (and no longer a penalty of 50% as previously legally foreseen).
2. Personal guarantee: in lease agreements with personal guarantee, the lessor can only request payment from the personal guarantor if the lessee fails to pay such due amount and if the personal guarantor is notified within the period of 90 days counted from the default of the lessee.
3. Written form: in case of the lack of a written lease agreement not caused by the lessee, the latter can prove its existence by any form admitted by law provided that (i) the use of the leased property by the lessee has no opposition of the lessor, and (ii) the rent is monthly paid by the lessee during a minimum period of six months.
4. Lease agreements for housing purposes with fixed term
 - 4.1. Term: the new law establishes a minimum term of one year for lease agreements with a fixed term (except in case of lease agreements for non-permanent housing or for a

temporary special purpose particularly for professional, educational and training or tourism) and keep the maximum term of 30 years.

- 4.2. Renewal and opposition to the first renewal: in case of automatic renewal of the lease, the law now determines a minimum renewal period of three years and, if the lessor decides to exercise its right of opposition to the first renewal, such opposition will be only effective three years after the execution of the lease agreement (except in case the lessor requires the leased property for its own residence or for the residence of his first degree descendants).

5. Lease agreements for non-housing purposes with fixed term

- 5.1. Renewal and opposition to renewal: the law establishes a minimum renewal period of five years, in which case the opposition to renewal made by the landlord will only be effective five years after the execution of the lease agreement, except in case of lease agreements for non-permanent housing or for a temporary special purpose.

6. Termination of the lease agreement for housing purposes without a fixed term: the lessor may only terminate the lease agreement by means of a five years prior written notice, previously the law required a two year written prior notice.

- 6.1. Confirmation of the exercise of termination: in order for the termination to be effective, the lessor must confirm the termination notice, upon giving another written notice to the lessee within one year to 15 months counted from the date of the termination notice.

7. Termination of the lease agreement for non-housing purposes: the termination by the lessor is only valid in case (i) of demolition, renovation, or major restoration works that require the vacancy of the leased premises provided that after the works no similar premises subsist in the relevant building allowing the lease to be kept in force, or (ii) by means of five year written prior notice to the lessee instead of the previously required two year written prior notice.

- 7.1. Indemnity: the lessor is required to compensate, separately, both the lessee and the employees of the lessee establishment existing in the leased premises except if the lease

was assigned to any third party under any business assignment (*trespasse*) during the previous three years period.

II. Amendments to NRAU

We would highlight the following amendments to NRAU:

1. Prohibition of harassment in the lease or sublease (Law no. 12/2019, of 12 February): establishes the prohibition of unlawful behaviour of the lessor, its representative or interested third party in the acquisition or the development of the leased premises, which, with the aim to have the leased premises vacant, disturbs, constrains or affects the dignity of the lessee, sublessee or people that legally live with the latter in the leased premises.
2. Injunction in matter of lease agreements: the creation of a new judicial processual mean, the so called lease injunction (*injunção em matérias de arrendamento*), which allows the lessee to request from the lessor any amounts incurred with works on the leased premises.
3. Transition to NRAU
 - 3.1. Lease agreements for housing purposes signed before the entry into force of the Urban Lease Regime (RAU), i.e., before 14 November 1990: in the lease agreements where the lessee has lived for more than 15 years in the leased premises and, at the time of the transition of the agreement to the NRAU (i) is 65 years or older, (ii) or has a disability with a degree of incapacity equal or in excess of 60%, the lessor may only oppose to the renewal of the lease agreement on the ground of demolition or renovation or major restoration works that require the vacancy of the leased premises.
 - 3.2. Lease agreements for housing purposes without a fixed term signed under RAU: in the lease agreements where the lessee, on 13 February 2019 (i) has lived for at least 20 years, and (ii) is 65 years or older or has a disability with a degree of incapacity equal to or in excess of 60%, the lessor may only oppose to the renewal or terminate the lease agreement on the grounds of demolition, or renovations works or major restoration works that require the vacancy of the leased premises.

III. Amendments to RJOPA

Regarding RJOPA, we would highlight the following amendments:

1. Scope: the scope of this legal regime now encompasses the possibility of suspension of the effects of the lease agreement for the execution of renovation or major restoration works.
2. Renovation or major restoration works: for a construction work to qualify as a renovation or major restoration work, its cost, including VAT, must correspond to at least 25% of the value of the leased premises, determined pursuant to the following criteria: its location and gross construction area, average value of sales per square meter of private households, per municipality, disclosed by the Portuguese National Statistics Institute (while previously this minimum amount corresponded to 25% of the property tax value).
3. Suspension of the effects of the lease agreement (general rule): the renovation or major restoration works executed by the lessor determines as a general rule the suspension of the effects of the lease agreement, and termination of the lease agreement may now only occur in the following situations:
 - 3.1. Notice of suspension by the lessor: the notice by the lessor must include (i) the intention to proceed with construction works that require the vacancy of the leased premises, (ii) the new temporary leased premises (re-housing) location and conditions, as well as, (iii) the date and expected duration of such works.
 - 3.2. Termination by the lessee (option): within 30 days from the notice of the lessor, the lessee may choose to terminate the lease agreement.
 - 3.3. Relocation of the lessee: the temporary relocation of the lessee, during the construction works, must be (i) in the same municipality, (ii) with equivalent or better conditions as the leased premises, and (iii) suitable to the needs of the lessee (the rent and the expenses inherent to the lease agreement to remain unchanged). Upon completion of the renovation or major restoration works the lessee must reoccupy the leased premises

within three months, in case this reoccupation does not occur within this three months period the lease will be deemed as expired, except in the case of justified ground (*justo impedimento*).

4. Termination of the lease agreement: the lessor may only terminate the lease agreement in case of demolition, renovation or major restoration works, if after the works no similar premises subsist in the relevant building allowing the lease to be kept in force.
 - 4.1. Lessee relocation: in the absence of an agreement between parties, the termination of a lease agreement without a fixed term for the execution of renovation or major restoration works requires the relocation of the lessee for a period of at least three years, except if (i) the lessee does not accept the relocation offer or, (ii) in case of a lease agreement for non-housing purposes, if the relocation is not possible in such case, the lessor must pay a compensation to the lessee determined as defined in the following paragraph 4.2.
 - 4.2. Compensation (termination of a lease agreement): in case of termination as per paragraph 4.1., the lessor must pay a compensation equivalent to two years rent, but not less than the double of the amount of 1/15 of the property tax value.
5. Termination of the lease agreement with a lessee that is 65 years or older or who has a certified disability with a degree of incapacity equivalent or in excess of 60%: in case of termination on the grounds of demolition, renovation or major restoration works, the temporary relocation requires a new lease agreement without fixed term (with no possibility for termination by the lessor).
6. Compensation of the lessee for the execution of works (in substitution to the lessor): the lessee has the right to be compensated for the costs incurred with the works executed and budgeted plus interests incurred and an amount equivalent to 5% for administration expenses and costs with the relocation.

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