RocaJunyent Informs

Real Estate Law Department
28 April 2023

The Government and its partners have announced that they have reached an agreement to introduce a series of amendments.

The Committee on Transport, Mobility and the Urban Agenda has approved the which includes the Report containing the amendments to the Draft Bill on Housing Rights agreed by the Government and its partners, as well as the text of the agreed Bill, which are summarised below:

1. Declaration of stressed areas in the rental market

The conditions for the declaration of stressed areas are made more flexible, covering more areas to apply the control measures specific to stressed areas (from census districts to entire Autonomous Communities). This declaration will be the responsibility of each Autonomous Community, which will include the local councils in the review of the zones.

One of the following conditions must be met in order to declare a stressed rental area:

- The average cost of the mortgage or rent plus basic expenses and supplies exceeds 30% of the average household income; or

- The purchase or rental price of the dwelling has increased at least 3 points above the CPI in the five years prior to the declaration of the stressed area.

2. Large holder concept

While in the original draft the definition of a large holder was set at 10 properties, following the agreement, the Autonomous Communities will have the power to categorise as a large holder any person who owns 5 or more properties in a stressed area (excluding garages and storage rooms).

3. Limitation of rent updating

The agreement establishes, for all contracts, that for the year 2023 the rent update can be capped at a maximum of 2%, while for the year 2024 this limit is set at 3%.

4. New Benchmark Index

From 2025 onwards, the CPI will no longer be used as a reference for updating the rent, so the government will start to draw up a new index, which, as it has been pointed out, will be lower than the CPI.

5. Additional extension

An extraordinary extension of a maximum duration of one year is established —mandatory in the event that the lessor is a large tenant— applicable to housing contracts in which the mandatory extension period of art. 9.1 or the tacit extension period of 10.1 of the Urban Leases Law (LAU) ends.

This extension, which is optional for the tenant, may be applied on the condition that the tenant proves, by means of a certificate issued by the regional or local social services, his or her situation of social and economic vulnerability. At the same time, it is important to highlight that this measure is not exclusive to stressed areas, so it could be generally applicable.

6. Maximum rent for new contracts

Only in stressed areas will new contracts be subject to a maximum price (limit). A distinction is made here as to whether the landlord is a large or small tenant: for small tenants, the rent of the rental contract for the usual dwelling that has been in force for the last five years will be taken as a reference, after applying the annual updating clause of the rent of the previous contract.

In the case of large tenants, the new rent will be set on the basis of the new price containment index pending approval. The same method will also apply to limit the rent for small tenants whose dwelling has not been under a lease in the last five years.

7. Real estate commission

Until now, it was customary for the real estate agency fees to be paid by the tenant, which increased the initial outlay that tenants had to make when they entered the property and could represent a certain barrier to entry. Since the entry into force of the law, these agency fees and expenses must be borne by the landlord.

8. Additional costs

The agreement establishes, in the first final provision, that in stressed areas landlords will not be able to increase the rent by adding expenses such as community fees or property tax to the rent.

9. Measures on evictions

Among other measures, the agreement reinforces anti-eviction measures, establishing (i) the prohibition of setting evictions without a specific date, so that in any case evicted persons must know in advance the day and time when the eviction will take place and (ii) the obligation for the owner to file certain documents accrediting the personal and economic situation of the occupants and their submission to the conciliation or mediation procedure established by the competent administration.

10. Regulation of leases for use other than as a dwelling

The Bill announces the constitution —within a period of 6 months from the approval of the Law— of a working group to prepare a new regulatory framework for rental contracts for use other than as a dwelling provided for in art. 3 of the LAU and, in particular, for seasonal rental contracts for dwellings.

It is important to point out that the power to declare the zones under stress lies with the Autonomous Communities, so it is foreseeable that those less sympathetic to the government will decide not to apply the measures that fall within their sphere of competence, or even appeal against the Law for encroachment on autonomous competences, as the Community of Madrid has already done.

Finally, it will be necessary to keep an eye on legislative activity in the coming days, as the Bill approved by the Plenary Session of the Congress of Deputies must be sent to the Senate, which in turn can introduce amendments or veto the Bill.