

RocaJunyent Informs

Real Estate Law Department
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This past week we have been awaiting the publication of **two important resolutions** that will affect the housing rental market in Catalonia and whose application was pending after the approval of the State Housing Law, in force since 26 May 2023, which modifies the Urban Leases Law to limit rents:

- The Resolution of the Department of Territory of the Generalitat de Catalunya, by which several municipalities are declared stressed residential market areas ("**ZMRT**"), in accordance with the State Housing Law.
- The Resolution of the Ministry of Housing and Urban Agenda ("**MIVAU**"), which was to approve the Rental Reference Price Index.

On 14 March 2024, the Resolution of the Department of Territory came into force, declaring 140 Catalan municipalities as stressed residential market areas. In view of this, it should be taken into account:

1. The **duration of** the declaration of a territorial area as a tensioned residential market area: 3 years, which can be extended annually following the same regulated procedure.
2. The **finality of** the declaration: the declaration is not final, as it does not exhaust administrative channels. In this respect, various professionals and agents in the sector have already announced their intention to appeal against this decision.

The following day, Friday 15 March, the MIVAU Resolution was published, which came into force on Saturday 16 March, establishing a new legal framework for **rent containment at state and autonomous community level**. This resolution validates and **declares as ZMRT the 140 Catalan municipalities** declared by the Resolution of the Department of Territory of the Generalitat, to which the provisions of the Law on Urban Leases modified by the Housing Law applicable in areas with a stressed residential market will be applicable.

In an attempt to contextualise the importance of the publication of both resolutions, the well-known Housing Law, which came into force on 26 May 2023, introduced new precepts in the Urban Leases Law, with the intention of limiting the rents applicable to lease contracts entered into after its entry into force, as well as the assumption of property management costs by the lessor.

However, the entry into force of its **effects was conditional on the resolution of the Ministry of Housing and the Urban Agenda**. On the other hand, and in accordance with article 18.2 of the Housing Law, the competent housing administrations - the regional administration - are competent to declare "stressed residential market areas", for the purposes of applying all the measures provided for in this law.

Thus, the publication and entry into force of both resolutions makes it possible to specify such fundamental aspects as the containment of rents in new contracts, or the possibility of modifying the concept of large holder.

As a starting point, we must take into account the different regulation of the concept of "large holder" allowed by the State Housing Act.

1. State Housing Act:

Large tenant: natural or legal person, **owner of ten or more urban properties** for residential use or a built-up area of more than 1,500 m² for residential use, excluding garages and storage rooms.

This definition can be particularised in the declarations of stressed residential market environments, up to the owners of five or more properties, when the Autonomous Community justifies it in the corresponding justification report.

2. Resolution of the Department of Territory of the Generalitat de Catalunya, declaring Stressed Residential Market Zones.

Large tenant: natural or legal person **who** owns **five or more** urban **properties** for residential use or a built-up area of more than 1 500 m² for residential use, excluding garages and storage rooms.

Notwithstanding the above, there are a series of cases not regulated in the Housing Act that are pending specification and which can be used by the Generalitat for interpretative purposes in the event of doubts:

- 3. Dwellings built or undergoing a major renovation process in the last 5 years (without public loans or subsidies): the rent will be FREE.**
- 4. The index (and not the rent of the previous contract) will be applied:**
 - a. When the lease was entered into before 1 January 1995 (old leases).
 - b. When the current lease contract has a **monthly rent 25% lower than that established in the Reference Price Index.**
 - c. When the contract is for **subsidised** housing (the modules and rents for this type of housing apply).
 - d. When the contract had been subject to an **official protection regime, already disqualified.**
 - e. When the contract has been signed for **social purposes** (public network of social housing or social rental mediation, or similar programmes).

Based on the above, and taking into consideration the regulation of rent in new contracts and the definition of "large tenant", the aim is to devise a practical guide to rent regulation in new housing rental contracts, which for the moment is only applicable in Catalonia as it is the only Community that has approved the declarations as ZMRT, which are necessary to be able to apply the rent limitations.

Rent containment rules in housing rental contracts signed after 15 March 2024 in Catalonia.

1. In those towns without a stress zone declaration: **the rent is FREE.**
2. In those towns declared as a stressed area: **RENT CONTENTION** will be applied (at the moment, there are only declared areas in **Catalonia**).

A. Smallholders (No large holders)

OPTION 1: Property that HAS been leased at some time in the previous five years

- The rent fixed in the previous contract, which has been in force (but not subscribed) in the last 5 years, must be taken into account. In these cases, it is permitted:
 - ✓ The updating of the rent on the basis of what is agreed in the Contract.
 - ✓ The repercussions (of IBI, for example) if they were previously agreed.
 - ✓ The extraordinary increase of 10% of the rent, in the cases established by law:
 - Housing renovations.
 - Housing renovation or improvement actions that lead to a non-renewable primary energy saving of 30%.
 - Actions to improve accessibility in housing.
 - Contracts with a term of 10 years or more, or providing for a right of extension of 10 years or more.

OPTION 2: Property that has NOT been rented at any time in the previous five years.

- The income range of the benchmark index shall be taken into account, and the maximum income shall be the one indicated by the index.
- The range from minimum to maximum rent is indicative; it leaves room for negotiation between the tenant and the landlord.

Large holder: in Catalonia is the owner of five or more residential properties or an area of 1 500 m² of residential use.

The rent agreed in the new contract can NEVER be higher than the maximum limit of the benchmark, regardless of whether or not there was a previous contract.

What rent will I have to set?

- If the property has not been rented in the last 5 years:
 - The income may not exceed the ceiling of the benchmark.
- If the property HAS been rented within the last 5 years:
 - The lower of the following rents shall apply:
 - a) the rent agreed in the previous contract or;
 - b) the maximum income set by the benchmark.