JANUARY 6TH, 2022

REGULATION OF THE BASE LAW ON HOUSING

Last November 4th, Law-Decree no. 89/2021 entered into force, regulating the Base Law on Housing (BLH) regarding the guarantee of alternative housing, the legal pre-emption right and the monitoring of conditions of habitability in housing rental.

Among the novelties introduced by the Law-Decree we highlight the following:

1. DEFINITION OF THE CONCEPTS OF SITUATION OF SEVERE NEED FOR HOUSING AND HOUSING ALTERNATIVE

The Law-Decree defines the concept of "*situation of severe need for housing*" for the purposes of the New Supported Housing Lease Regime[1]. This situation thus includes people who do not have, or are at risk of losing, adequate housing - capable of satisfying with dignity the housing needs of a person or a given residential unit, taking into account, namely, the composition of the latter, the type of housing and its habitability and safety conditions - and who do not have any alternative housing.

The Law-Decree also establishes that a housing alternative is not that which imposes an alteration to the pre-existing housing aggregate in situation of need, unless this alteration results from a request or obtains the written agreement of all the parties involved.

On the other hand, there is a duty of articulation between the various entities, of the State and of the Municipalities, so that they can proactively resolve the situations of people in situations of severe housing need.

[1] Approved by Law nr. 81/2014, of December 19th.

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2. MATERIALISATION OF THE PRINCIPLE OF EFFECTIVE USE OF HOUSING THROUGH RENTING AND SUBSEQUENT SUB-LETTING BY THE MUNICIPALITY

Regarding the social function of housing, its effective use is promoted giving Municipalities the possibility, within the scope of the procedure for classifying a property for residential use as vacant[2], when it is located in an area of urban pressure[3], to present a proposal for leasing the property to its owner, for subsequent sub-letting. Cases in which, after the inspection, it is concluded that the property is in a poor state of conservation, the municipality may also use the procedure for classification of the property as vacant to order the execution of works necessary for the correction of poor safety, health and habitability conditions

3. EXERCISE OF PRE-EMPTION RIGHT BELONGING TO MUNICIPALITIES, AUTONOMOUS REGIONS AND THE STATE

As set forth in the BLH, the Municipalities, the Autonomous Regions and the State have a pre-emption right in the onerous alienation of real estate for residential use, without prejudice to the prevalence of the pre-emption right of the tenants (article 37, nr. 4 of the BLH) and of the housing and construction cooperatives (article 28 of Law-Decree 502/99, of December 19th).

The present Law-Decree clarifies the cases in which this pre-emption right exists, forming the following hierarchy of the various public entities:

1st Municipalities

2nd Autonomous Regions

3rd State

[2] Law-Decree nr. 159/2006, of August 8th, regulates the classification of urban buildings or autonomous fractions as vacant, for the purposes of the application of the municipal property tax (IMI) rate, as well as for the other purposes provided by law, related with housing, urban planning and urban rehabilitation policies. In application of this law, a building or autonomous fraction is considered vacant if it is unoccupied for a year, regardless of its state of conservation.

[3] According to article 2-A of Law-Decree nr. 159/2006, of August 8th, "(...) an 'urban pressure zone' is one in which there is significant difficulty in access to housing, due to scarcity or inadequacy of housing supply in relation to existing needs or because this supply is at higher values than those bearable by the majority of family households without them being overloaded with housing expenses in relation to their income". The geographic delimitation of the urban pressure zone is the responsibility of the respective municipal assembly, under proposal of the municipal council.

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The public entities' pre-emption right in the onerous alienation of real estate for residential use applies to such cases:

i) In an area of urban pressure, delimited based on the lack or inadequacy of the offer, under the terms of article 2-A of Law-Decree no. 159/2006, of August 8th, in its current wording;

ii) In territories identified in the National Housing Programme on the grounds of lack or inadequacy of supply.

While exercising its pre-emption right, the State is represented by the Institute of Housing and Urban Rehabilitation (IHRU, I.P.). The time limit for exercising the pre-emption right is of 10 days.

4. IHRU, I.P.'S MONITORING DUTY

The present Law-Decree provides the terms according to which the IHRU, I.P. will have to conduct the monitoring of housing rental hereinafter.

IHRU, I. P. will be given the possibility to when it becomes aware, through a complaint or through documents submitted to it, of facts that may substantiate the existence of deficiencies in the habitability conditions of rented or sub-rented dwellings, to request the municipal council of the site of the property to determine the level of conservation of the respective leased premises, thus contributing towards solving the problems detected in the habitability conditions of the rented dwellings, in articulation with the local authorities, by determining the execution of conservation works or administrative eviction, under the terms of the RJUE.

5. PROVISIONS REGARDING THE ADVERTISEMENT OF HOUSING PROPERTY

Provision is made for the mandatory requirement that the advertising of real estate property for rental purposes must be accompanied by mandatory elements that allow the prospective tenant to have prior knowledge of the building or apartment to be rented, in order to avoid the advertising of property that does not have an authorised residential use or that does not meet the conditions for that purpose.

Within this context, it is the obligation of real estate mediation companies to indicate

the number of the license or the authorisation for use of the property, the typology, as well as its useful area, in all advertisements published with the scope of celebrating housing leases. As for the advertisers, they are obliged not to publish, or withdraw when published, any advertisement published without the indication of the referred elements.

Failure to comply with these obligations constitutes an administrative offence punishable by a fine of between Eur 250 and Eur 3,740 for natural persons, and between Eur 2,500 and Eur 44,890 for legal persons.

The Institute of Public Markets, Real Estate and Construction (IMPIC, I. P.) is responsible for initiating and examining administrative offence proceedings and for determining and applying any fines.

A **PARES | Lawyers** is available to provide information on the Regulation of the Base Law on Housing in a more concrete and appropriate way to the reality of each client, being able to assist its customers in any issues on Real Estate and Lease Law.

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