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LAW 4/2013, OF JUNE 4, 2013, ON MEASURES TO INCREASE THE FLEXIBILITY OF AND PROMOTE THE HOUSING RENTAL MARKET

June 5, 2013 saw the publication in the Official State Gazette (BOE) of [Law 4/2013, of June 4, 2013, on measures to increase the flexibility of and promote the housing rental market](#) (the “Law”), the **overriding aim of which is to make the rental market more flexible and thus meet the need to make it more dynamic**, by seeking to strike the necessary balance between the need for rented accommodation and the safeguards to be offered to lessors in order to make such accommodation available on the rental market.

In order to meet the above mentioned aim, the following key aspects of **Urban Leasehold Law 29/1994, of November 24, 1994 (the “LAU”)** have been amended: **(i)** the applicable legal regime, strengthening freedom of contract and giving priority to the autonomy of the parties; **(ii)** the term of the lease, reducing the mandatory extension from five to three years and the implied extension from three years to one year; **(iii)** the circumstances in which the property can be recovered by the lessor for use as permanent residence; and **(iv)** the establishment of a break clause in favor of the lessee after the initial six months of the term of the agreement have elapsed and at least thirty days’ advance notice is given to the lessor.

Moreover, the Law sets in place a different legal regime for leases depending on whether or not they have been registered at the Property Registry, meaning that: **(i)** unregistered leases of urban properties cannot be effective against third-party purchasers registering their rights; and **(ii)** any third party buying a residential property that meets the requirements laid down in article 34 of the Mortgage Law cannot be adversely affected by the existence of an unregistered lease.

Furthermore, in order to protect the quality of tourist destinations, in view of the significant increase in the use of private accommodation for tourism, which may be concealing unauthorized lettings or unfair competition, the reform specifically excludes this type of leasehold arrangement, which is governed by industry-specific legislation or, failing that, the regime governing seasonal leases.

Moreover, **so as to tackle more ad hoc issues giving rise to problems in eviction proceedings, an amendment has been made to Civil Procedure Law 1/2000, of January 7, 2000, (the “LEC”)**, making eviction conditional on the absence of opposition by the defendant. Meaning that, should the defendant fail to attend the payment demand or appear to contest or settle, the court clerk will make an order deeming the case to have ended and the eviction will take place.

We now look in more detail at these amendments.

1. AMENDMENTS TO URBAN LEASEHOLD LAW 29/1994, OF NOVEMBER 24, 1994

1.1 Priority of the parties autonomy

In keeping with the spirit of the reform, the first amendment introduced by the Law is aimed at establishing **the general principle in residential leases that the freedom of contract prevails**.

Thus, in contrast to the previous wording of the LAU, whereby the parties' intentions only came into play in the absence of specific provisions in Title II of the LAU; **article 4.2 LAU** now provides that "residential leases shall be governed by the provisions, clauses and conditions determined by the parties autonomy, within the framework laid down in Title II of this Law and, secondarily, by the provisions of the Civil Code".

With the aim of enhancing freedom of contract and expediting this type of legal transaction, as well as the resolution of any resultant disputes, the reform inserts **two new subsections in article 4 LAU**. The first of these (**article 4.5 LAU**) provides for the possibility of submitting to **mediation or arbitration any disputes arising from urban lease agreements** "which, due to their nature, may be resolved by these dispute resolution methods". Moreover, the second subsection added by the reform (**article 4.6 LAU**) entitles the parties to "indicate an **electronic address for the service of notices**", provided that the authenticity of the communication and the integrity of its contents are guaranteed and that there is a duly authenticated record of the transmission and receipt and its date.

With a view to placing the parties autonomy at the heart of the legislation on urban lease agreements, a new **subsection 5 has been added to article 17 LAU**, whereby the parties can agree to **wholly or partly replace** the (essential) obligation to **pay the rent with a commitment from the lessee to reform or refurbish the property** on the agreed terms and conditions, establishing the lessor's right to terminate the agreement if the lessee fails to perform such obligation.

Also introduced is **the parties' right to decide on rent reviews**. Thus, in contrast to the previous rules under **article 18 LAU**, which imposed an obligation to review rent in line with the variation in the general CPI, the new wording of article 18 provides that the rent will be reviewed "on the terms agreed on by the parties," and that a review in line with the variations in the CPI will only be conducted on a secondary basis.

Lastly, another of the amendments introduced in order to widen the scope of what the parties can freely agree on, affects **subsection 8 of article 25 LAU**. Until now a lessee with a lease for an agreed term of less than five years could not waive his/her preemptive acquisition right. The reform expressly provides for the possibility of the parties **agreeing to the lessee waiving such preemptive acquisition right**, with an obligation on the lessor, in such circumstances, to inform the lessee of his intention to sell the residential property at least 30 days before the date of formal execution of the sale agreement.

1.2 Added flexibility in the leasehold term

Article 9.1 LAU has been amended so that **the mandatory extension of the term is reduced from five to three years; article 10** is also amended so that **the implied extension of the term is reduced from three years to one year.**

1.3 Owner's right to recover the residential property

Article 9.3 LAU has been amended so that an owner can **recover his/her leased property without the need for an express agreement** for such purpose (as was required until now), provided that the first year of the term of the agreement has elapsed and the lessor gives the lessee at least two months' advance notice (unless the parties agree a different notice period) that he/she will need the property for use as a permanent residence for him/herself, his/her relatives to the first degree of consanguinity, or his/her spouse in the event of separation, divorce or nullity of their marriage.

1.4 Lessee's right to desist

Unlike the current situation, in which a lessee can only give up a lease agreement of more than five years when the term has elapsed and subject to him/her giving two months' advance notice, the Law introduces a change on the wording of **article 11** LAU so that **the lessee can desist from the lease agreement after at least six months have elapsed and provided that he/she has given at least 30 days' advance notice to the lessor.**

The parties can still agree, in the event of the lessee desisting of the contract, on an indemnification in favor of the lessor equal to one month's current rent for each remaining year of the agreement.

1.5 Other amendments

The reform includes a variety of other amendments such as: an **exclusion from the scope of application of the LAU** of cases where **private accommodation is used for tourism purposes (article 5. e)**, as they will be regulated by the industry-specific legislation; a provision whereby **in the event of separation, divorce or nullity of marriage, the tenant** will be the spouse to whom the use of the leased residential property has been attributed permanently or for a period of time in excess of the outstanding term of the lease agreement (**article 15.1**); a **prohibition against works** by the **lessee impairing the stability or safety of the residential property (article 23)**; **more** situations in which a lessee can carry out **works** to adapt the residential property in the event of **disability or age in excess of seventy years (article 24)**; or an additional ground for the **termination** of a lease agreement *ipso jure* any **damage willfully caused to the property or works without the lessor's consent** where such consent is necessary (**article 35**).

2. REGULATION OF THE EFFECTS OF REGISTRATION OF LEASE AGREEMENTS AT THE PROPERTY REGISTRY

With respect to the effects of registering lease agreements at the Property Registry, a new **subsection 2 has been added to article 7** LAU, establishing that leases **must be registered at the Property Registry in order to be effective against any third parties that may have registered their rights.**

Similarly, a new **subsection 4 has also been added to article 9 LAU**, whereby if a **lease** has been arranged on an **unregistered property**, such leases will also be for a three-year term where the lessee has entered into the agreement in good faith with a person who was ostensibly the owner by virtue of a state of affairs; the creation of which may be attributed to the true owner, without prejudice to the right of non-renewal under article 9.1. A reference has also been added to article 1571 of the Civil Code¹ for the scenario where the lessor, in such circumstances, disposes of the leased residential property, and for the scenario where the lessor is defeated at court by the true owner, in which case it will also be liable for the damage or losses caused.

Elsewhere, a new **subsection 2** has been added to **article 10** so that **once a lease agreement has been registered**, the **right to renew** the agreement under article 9 and article 10.1 will prevail over bona fide third-party purchasers under article 34 of the Mortgage Law.

Article 13 has also undergone significant changes, and now provides that if, during the term of an agreement, **the lessor's right is terminated** as the result of the exercise of a contractual retrospective right of first refusal, the commencement of a fideicommissary substitution, mandatory disposal resulting from mortgage foreclosure or a court judgment, or the exercise of a purchase option, **the lease agreement will be terminated** (unlike the situation under the former regime, in which the lessee was entitled in all cases to continue with the lease until a period of five years was completed). **An exception is made** to the preceding rule on termination in cases where the **lease agreement has been registered at the Property Registry** before the rights giving rise to the termination of the lessor's right, in which case the lease will continue for the duration of the agreed term.

The reform has also brought about a substantial change to **article 14 LAU**. Whereas, until the reform, the purchaser of a leased residential property was obliged to respect the lease until five years had elapsed, regardless of whether or not the lease agreement was registered at the Property Registry, such obligation has now disappeared and the purchaser will only be compelled to maintain the tenant if the lease was registered before the transfer of the property.

A new subsection 2 has been inserted into article 14 LAU, which refers to article 1571 of the Civil Code in the event that a **property has not been registered at the Property Registry**, whereby the purchaser of a leased property is entitled to terminate a lease when the sale is made, unless otherwise agreed and subject to the provisions of the Mortgage Law. If the purchaser terminates the lease, the lessee may require to be allowed to remain in the property for a further three months, during which time he/she must pay the rent and similar amounts, as well as require that the seller indemnifies him/her against any damage or losses caused to him/her.

¹ *“The purchaser of a leased property is entitled to terminate the lease in force when the sale is made, unless otherwise agreed and subject to the provisions of the Mortgage Law.*

If the purchaser exercises this right, the lessee may require that he be allowed to collect the fruits of the harvest relating to the current agricultural year and that the seller indemnifies him against any damage or losses caused to him.”

Lastly, the reform has added a new **subsection 4 to article 27 LAU**, whereby if the **lease agreement** has been **registered** and **provides for its termination in the event of nonpayment** of rent with the immediate return of the property to the lessor, such termination will operate once the lessee has been notified of the demand to do so at the address designated for such purpose in the registration entry and either fails to reply to the demand within the following ten days or replies accepting termination.

It is specified that the instrument submitted in the registration process together with a copy of the certificate of demand, from which notification transpires and which has not been replied to by the lessee or has been replied to accepting termination, will be sufficient to cancel the lease at the Property Registry, and that, in the event of subsequent charges on the lease, evidence must be provided that the holders of such charges have been given duly authenticated notice for the purposes of its cancellation, and that the bond posted by the lessee has been deposited with a notary in favor of such holders.

3. AMENDMENTS TO CIVIL PROCEDURAL LAW 1/2000, OF JANUARY 7, 2000

3.1 Avoidance of eviction by settlement of the outstanding debt

Article 22.4 LEC has been amended **with the removal of any reference to the holding of a hearing, which need only occur where the defendant objects, in proceedings for eviction due to nonpayment** in cases where the lessee pays the plaintiff or pays the amounts claimed into court or deposits them with a notary, together with any amounts owed on the date of such payment avoiding eviction.

Moreover, the **time period for service of the payment demand** by any duly authenticated means **preventing eviction from being avoided** has been changed from one month to **thirty days** prior to filing the claim.

3.2 Notification by edict

Article 164 LEC has been amended to include a reference to “**requirement**” in the event of notification of the lessee by public edicts on the notice board of the court office.

3.3 Future payment orders

Article 220.2 LEC has been amended to include a reference, together with the judgment, to any “**order or decree**” that may be made with an order to pay the rent due and accruing after the filing of the claim and until actual possession of the property has been handed over.

3.4 Eviction proceeding

An amendment has been made to **article 440.3 LEC** so that in the event of eviction proceedings, **eviction will be linked with the absence of objection by the defendant**. In such cases (where the defendant does not contest the proceeding), no hearing will be held.

Moreover, article 440.3 is amended so that in cases where the defendant fulfills the requirement only with regard to the eviction without making any objection or paying the amount claimed, the eviction order will be rendered ineffective, unless the plaintiff applies to maintain it in order to **issue a certificate on the status of the property**.

A final paragraph has been added to subsection 3, indicating that any decree bringing an eviction proceeding to an end will include an award for costs against the defendant and any rent due and accruing after the filing of the claim and until the actual handover of possession of the property, taking the amount of the final month's rent claimed at the time of filing the claim as the basis for calculating such future rents.

An amendment has also been made to **subsection 4 of article 440** so that any **decision deeming the defendant to have contested the proceeding must set the date and time** at which, if appropriate, **eviction** is to take place.

3.5 Notices

An amendment has been made to **article 497.3 LEC** adding that there will be no need to publish edicts in official gazettes in eviction proceedings joined with an action claiming past-due rent and other amounts, **it being sufficient to publish the edict on the notice board of the court office**.

3.6 Enforcement application

Article 549.3 LEC has been amended to specify that an application for enforcement in an eviction plea will also be sufficient for the direct enforcement of any **decrees** bringing the eviction proceeding to an end where there is no objection to the requirement.

3.7 Eviction

A final paragraph has been added to **article 703.1 LEC**, specifying that, in order to avoid delay in carrying out evictions, in cases of eviction due to nonpayment of past-due rent or other amounts, or due to expiration of the deadline, subject to authorization from the court clerk, **it will be sufficient for there to be a single public official with the category of Manager, who may, if appropriate, request the assistance of the forces of law and order**.

4. OTHER AMENDMENTS

4.1 Registration of final judgments on nonpayment of rent

With a view to providing information on the risk posed by leasing real estate to persons with a history of defaulting on their rental payment obligations under lease agreements and who have been found liable under a final judgment, a registry of final judgments (and awards) on nonpayment of rent has been created under article Three of the Law, the organization and operation of which will be regulated by Royal Decree.

It will fall to the court clerk or to the competent arbitration bodies (where an arbitral award has declared the lessee liable for nonpayment of rent) to send the relevant information to the registry.

The information at the registry may be consulted by property owners looking to enter into leases over their properties, for such purpose submitting a draft lease agreement identifying the potential lessee.

Persons included on registry may apply for the cancellation of the registration when they have settled the debt which they were ordered to pay under the relevant proceeding. In any event, registrations will be kept for no more than six years, whereupon they will automatically be cancelled.

Registration will be subject to Personal Data Protection Organic Law 15/1999, of December 13, 1999.

4.2 Disclosure of information on residential lease agreements

In the interest of defining, proposing and implementing government policy on access to residential housing, the First Additional Provision of the law provides for disclosure of information on residential lease agreements, authorizing the Ministry of Public Works to put in place collaboration mechanisms empowering it to obtain information on: (i) the location of the residential properties; (ii) any lease agreements for such properties on record according to property registrars; (iii) administrative records of lease agreements or security deposits held by the autonomous community governments or the General Council of the Notaries Public; (iv) any data of a statistical nature held by the tax authorities as a result of tax relief claims by lessors and lessees.

4.3 Aid for State Housing Plans and Basic Emancipation Allowance

The Law sets out the following regime applicable to aid for State Housing Plans and Basic Emancipation Allowance:

- Present public aids received to subsidize arranged loans is maintained, along with aids subsidizing arranged loans recognized prior to July 15, 2012 and approved by the Ministry of Public Works, provided that such loans are formalized by claimants within not more than two months after the entry into force of the Law.

The remaining loan subsidy aid measures recognized within the framework of the State Housing Plans have been eliminated, and no new loan subsidy aid under the State Housing Plans will be recognized.

- It will only be possible to claim Direct State Nonfinanced Down-Payment Aid subsisting pursuant to the First Transitory Provision of Royal Decree 1713/2010, of December 17, 2010, with the express approval of the Ministry of Public Works on entry into force of the Law, provided that the loans are formalized by claimants within not more than two months after the entry into force of the law.
- Until the new lines of aid under the 2013-2016 State Plan to promote residential lettings, building refurbishments and urban regeneration and renewal become effective, aid under the tenancy program and aid for integrated refurbishment areas and urban renewal, separate refurbishment and the RENOVE program, under the State Housing Plans, will remain in place.

The remaining subsidies under the State Housing Plans have been eliminated and are no longer effective.

- Aid measures under the Basic Emancipation Allowance which were regulated under Royal Decree 1472/2007, of November 2, 2007, and which subsisted despite elimination by Royal Decree-Law 20/2011, of December 30, 2011 and Royal Decree-Law 20/2012, of July 13, 2012, will be maintained until the new lines of aid under the 2013-2016 State Plan to promote residential lettings, building refurbishments and urban regeneration and renewal become effective.

5. ENTRY INTO FORCE

The Law **enters into force the day following the date of its publication** in the Official State Gazette (June 5, 2013), i.e., on June 6, 2013.

Nonetheless, provision is made for the following **transitional regime**:

- All **lease agreements concluded before the entry into force** of the Law **will continue to be governed** by the **legal regime hitherto applicable to them**. However, if the parties agree and it is not contrary to the statutory provisions, preexisting agreements can be adapted to the legal regime established in the Law (First Transitory Provision).
- The **amendments to the LEC will not apply** to any **proceedings** under way upon entry into force of the Law, and such proceedings will therefore be conducted, until a decree or judgment is rendered, pursuant to the previous procedural legislation (Second Transitory Provision).

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