

# MARTÍNEZ-ECHEVARRÍA

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On the right to  
housing

# WHAT DOES IT REGULATE AND HOW DOES IT WORK?

The new law develops the right to decent housing enshrined in the Constitution. It aims to help those groups with the greatest difficulties in accessing housing with measures such as rent-capping or the promotion of public housing.

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## 1. NEW DEFINITION OF LARGE HOLDERS AND UNOCCUPIED DWELLING

In Article 3, the law establishes that a <<Large holder: for the purposes of the provisions of this law, is a natural or legal person who owns more than ten urban properties for residential use or a built surface area of more than 1,500 m<sup>2</sup> for residential use, excluding in all cases garages and storagerooms. This definition may be particularised in the declaration of "stressed residential market areas", for those owners of five or more urban properties for residential use located in said area, when so motivated by the autonomous region in the corresponding justification report>>> na

- A distinction is made between large and small holders in "stressed areas"
- Large holders: natural or legal persons owning 5 or more dwellings in "stressed areas" or up to 10 dwellings (or 1,500 m<sup>2</sup>) in "unstressed areas".
- Small holders: natural or legal persons who own less than 5 dwellings.
- Definition of "unoccupied dwelling" so that local councils can apply the Property Tax (IBI) surcharge to those dwellings that have been empty for more than 2 years, and provided that the owner has a minimum of 4 dwellings in this situation.
- Modulation of the IBI surcharge (currently at 50% of the net IBI quota), which may reach 150%.

## 2. "STRESSED AREAS" IN THE RENTAL MARKET

Article 18 "The competent housing authorities may declare, in accordance with the criteria and procedures established in their regulations and within the scope of their respective competences, stressed residential market areas for the purpose of directing public housing actions in those territories areas where there is a particular risk of insufficient housing supply for the population".

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The declaration of a neighbourhood or municipality as a "stressed area" will depend on each Autonomous Region, including in their review the Town Council of the municipality where these areas are being studied. In order to declare a "stressed area", at least one of these two conditions must be met:

- the average cost of the mortgage or rent, plus basic expenses and supplies, must exceed 30% of the average household income.
- the purchase or rental price of the dwelling must have increased by at least 3 points above the CPI in the five years preceding the declaration of the "stressed area".

### 3. . RENTAL PRICE CAP

Maximum annual rent increase of 3% for contracts in force during 2024 and elimination of the Consumer Price Index (CPI) as an index for updating the rent.

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- The new law establishes that during 2023, the update of the rental price will be a maximum of 2%.
- By 2024, rent updates for residential leases may not exceed 3% in the case of large holder.
- In cases where the lessor is not a large holder, the increase shall be as agreed between the parties and, in the absence of an agreement, may never be more than 3%.
- From 2025 onwards, a new reference index will be created for the annual update of rental contracts to replace the CPI in order to avoid disproportionate rent increases.

In areas declared as stressed areas:

- possibility of an extraordinary annual extension for the tenant after the end of the contract.
- in new contracts to new tenants, limitation of the rent to the rent of the previous contract.
- possibility to apply the limits of the reference price index systems also to dwellings that have not been rented within the last 5 years.

#### 4. THE MANAGEMENT FEES OF ESTATE AGENTS

Article 20 of the new law states that <<The costs of property management and the formalisation of the contract shall be paid by the lessor>>.

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The tenant will continue to pay the security deposit and the additional guarantee when signing a new rental contract.  
The costs of formalising the contract shall also be borne by the lessor.

#### 5. PROHIBITION OF PRICE INCREASE FOR EXTRA COSTS AND "AGREEMENT BETWEEN THE PARTIES".

- Prohibition of an increase in the rental price "without the possibility of setting new conditions that establish the passing on to the lessee of fees or expenses that were not included in the previous contract".
- Prohibition of "agreement between the parties" contrary to the Housing Law.

## 6. TAX BENEFITS FOR HOMEOWNERS. "IRPF" (INCOME TAX)

Small holders who own a property in a declared stressed area will be given personal income tax incentives for renting out their property in declared stressed areas as follows:

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- 50% reduction for all owners who rent out their property.
  - 60% reduction when the property has been renovated.
  - 70% reduction:
    - If it is rented for the first time to young people between 18 and 35 years old.
    - If the housing is destined "for social renting with a monthly rent lower than that established in the rental aid programme of the state housing plan, or for the accommodation of people in a situation of economic vulnerability".
  - 90% reduction when the initial rent has been reduced by more than 5% in relation to the last rent of the previous rental contract for the same dwelling, once the annual updating clause of the previous contract has been applied, if applicable.

## 7. IBI SURCHARGES FOR UNOCCUPIED DWELLINGS

*Third final provision of the law:*

*A surcharge will be applied to residential properties that are permanently unoccupied*

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An unoccupied dwelling is defined as a dwelling that remains continuously unoccupied for a period of more than 2 years, without justified cause, where the holder must own at least four dwellings.

The situation of vacancy must be declared by means of an administrative procedure with a hearing for the taxpayer.

In this way, the new law aims to encourage rental housing.

Local councils will be able to increase the IBI rate for unoccupied dwellings with a surcharge of up to 150%:

- Increase of up to 100% when the dwellings have been unoccupied for a period of more than 3 years.
- Increase of 150% when the owner has 2 or more unoccupied dwellings in the same municipality.

## 8. IMPOSSIBILITY TO CHANGE THE PUBLIC HOUSING QUALIFICATION

### *Article 16. 2 (d)*

*Subsidised housing that is developed on land intended for housing that is subject to a public protection regime in compliance with the provisions of letter b) of section 1 of article 20 of the revised text of the Law on Land and Urban Rehabilitation, approved by Royal Legislative Decree 7/2015, of 30 October, will be subject to a permanent public protection regime that excludes disqualification, as long as the qualification of said land is maintained.*

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- A new qualification of protected housing is established indefinitely.
- A percentage of the reserve is set aside for subsidies rental housing. Urban or land-use planning legislation must establish the percentage to be set aside for subsidised rental housing, which may not be less than 50%, except in exceptional cases.



## 9.PROTECTION AGAINST EVICTIONS AND FORECLOSURES.

- *Improvements to ensure effective communication between the judiciary and social services to ensure prompt attention to people in vulnerable situations.*

The competent public administrations will be notified, without the need for the consent of the interested parties, of the decision that sets the date of the eviction in order to verify the vulnerability of those occupying the dwelling.

The claimant is obliged to indicate whether or not the property constitutes the habitual residence of the squatter. He/she must prove whether or not he/she is a large holder, together with the land registry certificate listing his/her properties. If the claimant is a large holder, he/she has the burden of proving whether or not the squatter is in a situation of economic vulnerability.

- *Housing solutions for those affected and, until these solutions arrive, extension of the deadlines for the suspension of evictions.*

The suspension periods for eviction proceedings are extended to two months for natural persons and four months for legal persons. Until now, the periods were one and three months.

- *Where the claimant is a "large holder" and the eviction claim concerns vulnerable persons, proof of the application of a conciliation or mediation procedure must be provided.*

This protection of the squatter of the dwelling is also extended in the case of a property auction, when the property is the squatter's habitual residence and the owner is a large holder or a rental property business.