Introduction

On March 1, 2019, the Council of Ministers of Spain, approved the Royal Decree-Law 7/2019 of 1 March, on urgent measures on dwelling and leases (Real Decreto-ley 7/2019 de 1 de marzo, de medidas urgentes en materia de vivienda y alquiler (“RD 7/2019”), which was published in the BOE on March 5, being enforceable the following day.

Due to the dissolution of the Parliament produced on March 5, 2019 as a result of the call for government elections, without prejudice of the initially enforceability of the RD/2019, the same was to be validated by the Permanent Deputation of the Parliament within thirty days. The validation took place on April 3, 2019.

The impression is that the enactment of the RD 7/2019 has been made carelessly fast due to several reasons, as (i) the increasing social tension caused by an increase of the dwelling’s rent prices attributed to real estate funds or “p2p” touristic platforms, (ii) the pressure to the Government by other political groups and, essentially, (iii) the proximity of the government elections in Spain. In this sense, it should be noted that the RD 7/2019 is the second royal decree-law approved in less than three months, after the derogation of its predecessor, the Royal Decree-law 21/2018, which aim was pretty similar to RD 7/2019.

The foregoing entails that, henceforth, we must be aware of three different applicable regimes for leases formalized from December 15, 2018 to April 5, 2019.
I. Amendment of Urban Leases Act (Ley 29/1994, de 24 de noviembre de arrendamientos urbanos) (“ULA”)

► Luxury dwelling (Article 4.2 ULA)

The RD 7/2019 recovers the luxury dwelling concept (“vivienda suntuaria”), which applies to dwellings with surface over 300 square meters and which lease rent exceeds in 5.5 times the minimum inter-professional salary, but it wrongfully excludes the leases that have luxury dwelling as subject matter from the scope of application of the legal regime for residential purposes foreseen in the ULA. The error consisting in the fact that, from a literal lecture of the first two paragraphs of article 4.2 of the ULA, it can be understood that the applicable regime is identical for each type of dwelling, luxury or not.

This is due to the fact that the legislators have not taken into account that according to the ULA, in its writing previous to 2013 (when the distinction between luxury and normal dwellings was applied), the covenants agreed by parties only applied to those issues not expressly regulated by Title II of the ULA, which was mandatory, except for the leases over luxury dwellings which were regulated by the covenants freely agreed by the parties and subsidiary by the provisions of Title II of the ULA. However, ULA’s 2013 previous reform enhanced the freedom of contracts, also prioritizing the covenants agreed by the parties in leases for residential purposes, hence being the reference to luxury dwellings inoperative as they were included in the general regime.

► Extension of touristic leases cases excluded from the scope of the ULA (article 5.e ULA)

RD 7/2019 extends the cases of touristic leases excluded from the scope of application of the LAU to those that are promoted or commercialized by any means of commercialization or promotion and not only through the touristic offer channels, as indicated in the previous regulation of the ULA.

► Extension of the minimum period and tacit renewal (Articles 9 and 10 ULA)

The minimum mandatory term for the lessor is extended from the 3 years established in the previous regulation to 5 or 7 years (the latter, if the lessor is a legal entity) established in the new RD 7/2019, unless the lessee serves notice to the lessor stating otherwise with at least 30 days prior to the expiry date of each annuity. This without prejudice to the lessee’s right, foreseen in article 11 of the ULA, to unilaterally withdraw from the agreement at any time, once the first six months of the lease have elapsed, without having to pay any compensation, which remains unchanged unless otherwise agreed.

The agreement will be extended for an additional period of 3 years, instead of 1 year, unless either party notifies the other party its will not to extend it (with at least 4 months in advance for the lessor and 2 months for the lessee).

► Necessity of the lessor (article 9.3 ULA)

The RD 7/2019 requires again the express inclusion of the landlord’s right to terminate the agreement in order to be able to occupy the dwelling before the expiry of the five-year period for the its own use as permanent housing or by a relative in first degree of consanguinity or adoption or his spouse in the event of a final judgement of separation, divorce or marriage annulment (prior to the reform said right may be enacted by operation of law). In case of absence of express provision, the natural person lessors who were in any of the situations listed before, should not be able to terminate the agreement once the first year of duration of the agreement has elapsed, so it is advisable for lessors to include this clause as a style clause, in anticipation of possible eventualities.

► Termination of the lessor’s right (article 13 ULA)

During the first 5 or 7 years of duration of the agreement, the lessee shall have the right to continue the lease until lapse of said term, even if the lessor’s right has been terminated pursuant the execution of a pre-emptive right, trustee substitution, by mortgage not make such precision, in order to avoid unnecessary repetitions.
foreclosure or court judgment or exercise of a call option. In agreements with a term over 5 or 7 years, once this term has elapsed, the resolution of the lessor's right shall terminate the lease, unless the lease had accessed the Land Registry prior to the rights determining the resolution of the lessor's right.

► **Registration of the agreement in the Land Registry** (articles 7.2, 13 and 14 (ULA)).

The second paragraph of article 7 ULA regarding the requirement of registration in the Land Registry for leases formalized over urban properties for residential purposes to take effect against third parties who have registered their right, is deleted.

The acquirer of a leased dwelling will be subrogated on the rights and obligations of the lessor during the first 5 or 7 years of the lease's term, even if the requirements of Article 34 of the Spanish Mortgage Act ("MA") are fulfilled.

If the agreed term is over 5 or 7 years, the purchaser will be subrogated for the whole of the agreed duration unless the requirements of article 34 of the MA are fulfilled, in which case it will only be obliged to maintain the agreement for the minimum mandatory term. Bear in mind that, under the previous regulation, if the lease was not registered, the acquirer of the dwelling was able to exercise the termination faculties set forth in article 1571 of the Civil Code, therefore the new regulation is an attempt to eliminate, at least partially, the "sale takes away rent" (venta quita renta) principle that had been operating until now.

► **Limit to the rent update** (article 18 ULA)

The rent update cannot be freely agreed by the parties and, with the implementation of RD 7/2019, may not exceed the annual percentage variation experienced by the CPI, except in the case of improvement works previously agreed between lessor and lessee (article 19). In such case, the rent may be increased in an amount equal to the one resulting from applying the legal interest rate of money at the time of completion of the works increased by three points to the capital invested in the improvement, which shall not result in an increase exceeding 20% of the rent in force at that time.

► **Allocation of lease formalization's expenses to lessor and limitation of the common expenses update** (article 20 ULA)

The management’s costs of the real estate agency, if any, and the formalization cost of the agreement (which were customarily charged by the real estate agents to the lessees) are now at the lessor’s expense, who is obliged to bear them.

In addition, RD 7/2019 establishes a limit to the update of the annual amount corresponding to the lessee for common expenses, which may not be increased annually in more than twice the percentage established for the rent’s update (except in the case of taxes, in which case the amount payable by the lessee will be updated in accordance with the corresponding annual increase of said taxes).

► **Administration's pre-emptive right.** (article 25.7 ULA).

The competent administration, may set forth, in the legislation applicable on dwelling, a pre-emptive right in favor of a concrete organism, in the event of sale of a whole building that is leased, or in the event of block sale of all the dwellings or commercial premises owned by a seller to a single buyer.

It is odd that the Explanatory Memorandum of the RD 7/2019 does not even mention the introduction of this important right in favor of the Administration. It seems to have been specifically designed to prevent the transfer of buildings in favor of international funds or opportunistic funds. In any case, will have to be await for the implementation of this measure by the competent administration to be able to analyze the effects that will produce in real estate transactions subject to the relevant pre-emptive rights, both with regard to the periods for exercising the right and the effective disposal of funds or the possibility of applying those to the exercise of said pre-emptive by the Administration.

► **Limits to additional guarantees to the legal deposit** (article 36 ULA)

Until now, the additional guarantees to the legal deposit in leases for dwelling had no limit and were freely determined by agreement of the parties. However, according to the RD 7/2019, in agreements with a term
equal or under 5 or 7 years, the additional guarantees in leases for dwelling are limited to an amount equal to two monthly rent installments.

► **Update of the legal deposit (article 36 ULA).**

The term during which the legal deposit cannot be updated, increases in accordance with the extension of the minimum mandatory term for dwelling leases, that is, from 3 to 5 or 7 years.

► **Deposit of the legal deposits (Third additional provision ULA).**

Applications for the deposit of a legal deposit within the relevant organism, shall specify the following: (i) data identifying the parties and addresses for notification purposes; (ii) data identifying the property, including postcode, year of construction, if applicable, year and type of reform, constructed area for private use, cadastral reference and energy performance; and (iii) the characteristics of the agreement, including annual rent, term, updating system, amount of the legal deposit and, if applicable, additional guarantees, details of supplies' payment and whether the leased dwelling is furnished or not.

II. **Amendment of Horizontal Property Act (Ley 49/1960 de 21 de julio de 1960 de propiedad horizontal) horizontal property ("HPA")**

► **Increase of the minimum amount of the reserve fund for conservation works (article 9.1.f HPA)**

The reserve fund of the community of owners for eventual conservation, repair or rehabilitation works must be equivalent to a 10% of the last ordinary budget of the community, instead of the obligatory 5% set out before the reform. It is also included among the purposes for which the fund is constituted, the works for universal accessibility defined in article 101.b) of the HPA. In addition, said article now includes the obligation to undertake the works to which it refers, when the public aid to which the community would have had access reaches the 75% of the cost of the accessibility works.

► **Flexibilization of the faculties to limit touristic leases by communities of owners (article 17.12 HPA)**

In addition, RD 7/2019 also modifies the HPA, among other issues, in order to make more flexible the possibility of adopting a resolution by the board of owners, limiting or conditioning the celebration of touristic leases on the premises and dwellings that form part of the community. The necessary majority for the adoption of the mentioned resolution is set in 3/5 of the owners who in turn shall represent the 3/5 of the participation quotas. Previously, unanimity was required (which in practice made it unfeasible to reach an agreement in this sense, since the interested owner always had the power to vote against it). Likewise, the modification incorporates the possibility of increasing the quota of participation in common expenses of the dwellings leased for tourist purposes, by means of an agreement of 3/5 of the owners of the community who, in turn, represent 3/5 of the participation quotas. However, as already established in the repealed preceding decree-law, these agreements will not produce retroactive effects.

III. **Amendment of the Civil Procedure Act (Ley 1/2000, de 7 de enero de enjuiciamiento civil) ("CPA")**

► **Obligation to set the concrete date and time of the launch on a dwelling eviction (article 440 CPA)**

After the reform, the judicial organism that is aware of the eviction procedure, must specify in the corresponding resolution the exact day and time of the launch.

► **Suspension of the eviction proceeding by intervention of social services (article 441.5 CPA)**

Paragraph 5 is included in article 441, by which the notice of eviction proceedings to social services is incorporated. In this sense, when the social services determine that the affected home is in a vulnerable
situation, the proceeding shall be suspended for one month (three months if the claimant is a legal person). The judicial organism responsible for the prosecution must inform the defendant of the possibility of resorting to the procedure described above.

IV. Amendment of the Local Tax Authorities Act (Ley Reguladora de las Haciendas Locales, aprobado por Real Decreto Legislativo 2/2004, de 5 de marzo) (“LTAA”)

► Exception to the obligation to bear the Property Tax charged for the use of real estate owned by the public administration.

Paragraph 2 of article 63 of the LTAA is modified, so that Public Administrations may not charge the Property Tax to the lessee in the case of lease of real estate owned by them, when it is a residential use property with rent limited by operation of law.

► Attribution of competences to the Local Tax Authorities relating to the surcharge on the Property Tax in the case of permanently unoccupied residential properties.

By means of the modification of section 4 of article 72 of the LTAA, Town Councils may determine by means of a local regulation, the nature of the surcharges to be applied (respecting the limits established by the LTAA) in the event that the vacancy of a building for residential use is accredited. In this sense, a property shall be deemed to be permanently unoccupied in accordance with the provisions set in the autonomous or state sectoral regulations, and according to the requirements established in the tax local regulation that may be approved.

► Property Tax allowances for real estate assets intended to lease of dwelling with limited rent

Section 6 is introduced in article 74 of the LTAA by which City Councils may, by means of tax local regulation, establish a tax allowance up to a 95% on the Property Tax quota for residential properties destined to lease for residential purposes to which apply a limited rent by operation of law.

V. Amendment of the Property Transfer and Certified Documents Tax Act (Ley del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados, aprobado por Real Decreto Legislativo 1/1993, de 24 de septiembre) (“PTCDTA”)

► Exemption of the Transfer Tax for leases for residential purposes

A section 26 is included in article 26 of PTCDTA, pursuant which the leases for residential purposes shall be exempt from transfer tax, provided that the lease is for a steady and permanent residential use.

VI. Leases Price Index

► Mandate to the Central State Administration

The Second Additional Provision of the RD 7/2019 sets forth a mandate to the Central State Administration to establish a system of lease rent’s benchmark indexes within the 8 months following the enactment of said rule, with the aim of ensure the transparency and knowledge of the evolution of the dwelling market, as well as to apply public politics that increase the offer of affordable dwellings. Said provisions establish the main features that such system may have, as well as the possibility of creating regional indexes.
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