

Real Estate Legal News

FLASHNEWS#2

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Dear Visitante,

On February 13th, 2019, entered into force Law no. 12/2019 - which prohibits and punishes harassment in leases - and Law 13/2019 - which establishes measures aimed at correcting situations of imbalance between tenants and landlords. Here are some of the main changes introduced by this decree:

- **Compensation in the event of delay in rent's payment by the tenant** - The compensation due to the landlord in the event of delay in the payment of rents is reduced from 50% to 20% of the amount in debt. In addition, if there is a guarantor and if the tenant does not pay the rent within eight (8) days counting from its due, the landlord may only demand from the guarantor the satisfaction of the credit provided that the landlord notifies the guarantor of the delay's in rent's payment and amounts due by the tenant within the next 90 days;
- **Minimum term of housing lease agreements** - The lease agreement for housing purposes with fixed term cannot have less than one year. However, in case of agreements for non-permanent housing or special transitional purposes, namely for professional, education and training or tourist reasons, this minimum period of 1 year is not applicable;
- **Opposition to the renewal of lease agreements for housing purposes with fixed term** - Opposition to the first renewal of a lease agreement for housing purposes with fixed term, by the landlord, shall only take effect after three (3) years of its signing, except in case of house needing by the landlord or by Landlord's descendants in first degree;
- **Termination during its term of lease agreements for housing purposes with no term**- The prior notice to terminate these agreements is increased from 2 to 5 years. In such case, it is (again) necessary to confirm such termination, under penalty of inefficiency, by communication with a maximum prior notice of 15 months and a minimum prior notice of one (1) year with reference to the date of its effectiveness;

• **Automatic renewal and opposition to the renewal of lease agreements for non-housing purposes with fixed term** - Unless otherwise stipulated, the lease agreements for non-housing purposes with fixed term are automatically renewed for successive periods of equal duration or 5-year periods if such period is shorter. Regardless of the term stipulated, in the first five (5) years after the commencing date of the agreement the landlord cannot oppose to its renewal;

• **Termination during its term of the lease agreements for non-housing purposes by the landlord** - In lease agreements for non-housing purposes, the landlord may only terminate such agreements (i) for demolition or perform major remodeling or restoration works that require the property to be vacated (provided that from such works does not result a property with features equivalent to those of the property, where it is possible to maintain the lease), or (ii) by notifying the tenant with a minimum prior notice of five (5) years with reference to the date of its effectiveness. In case of termination during its term, the landlord is, as a rule, obliged to compensate the tenant and the employees of the establishment for damages that result from the early termination of the agreement;

• **Opposition to the renewal or termination during its term, by the landlord, of lease agreements for housing purposes entered into under the Urban Lease Regime (the “RAU”) (that is between 14.11.1990 and 27.06.2006)** - in such cases, if the tenant, on the date of entry into force of this law, has (i) resided for more than 20 years in the property and is aged 65 years or more or (ii) a proven degree of disability equal to or greater than 60%, the landlord may only terminate the agreement on the grounds of the need to demolish or perform major remodeling or restoration works, and there is a regular updating of the rent, in the general terms.

• **Termination during its term, by the landlord, of lease agreements for non-housing purposes entered into prior Decree-Law no. 257/95, of September 30th (that is, before 05.10.1995)** - are revoked the rules that allowed the landlord to terminate the agreement during its term with a minimum prior notice of five (5) years with reference to the date of its effectiveness , when after the entry into force of the New Urban Lease Regime (“NRAU”) (that is, after 28.06.2006) there has been a sale of business, lease of establishment or assignment of the lease for the practice of a liberal profession, or, if the tenant is a company, there has been an *inter vivos* transmission of corporate position that determines an ownership change by more than 50%.

• **Injunction on Lease Matters (“IMA”)** - this is a new procedure mean, which is intended to enforce the following rights of the tenant: (i) payment of a certain sum of the amount of compensation due for the execution of works in substitution of the landlord, (ii) cessation of activities causing health hazards to the tenant or correction of defects on the property causing serious risk to the health or to the safety of persons or goods, or (iii) correction of impediment to the use of the property. In this context, the Injunction Service on Lease Matters (“SIMA”) is created, which will ensure that the injunction for lease is processed, and that said injunction proceeding will be the subject to a specific law-decree (to be approved by the Government within 180 days).

• **Opposition to the renewal of agreements entered into prior to the entry into force of the RAU and already transferred to the NRAU** - In such cases, if the tenant has been resident for more than 15 years in the property and if, at the date of transition of the agreement to the NRAU, the tenant is 65 years of age or older, or has a disability equal to or greater than 60%, the landlord may only oppose the renewal of the agreement on the grounds that need to demolish or perform major remodeling or restoration works that require that the property to be vacated. This change shall only take effect on the day following the date that Law no. 30/2018, of July 16 is no longer in force (i.e., April 1st, 2019).

• **Works of alteration or extension qualified as major remodeling or restoration works** - are no longer considered as such any works of alteration or extension in which the cost of the works to be carried out in the property, including VAT, corresponds to at least 25% of the tax value, but those in which the cost of the works, including VAT, corresponds to at least 25% of the value applicable to the property based on its location and gross construction area, according to the median value of sales per square meter of family housing, per municipality, released by National Statistical Institute of Portugal (INE) for the previous quarter;

• **Suspension of the lease agreement to perform major remodeling or restoration works** - As a rule, when the landlord intends to perform major remodeling or restoration works, the execution of the lease agreement is suspended for the period of those works, and the landlord is obliged to ensure the accommodation of the tenant during the said period, in the same municipality (or in the area of the same parish or on a neighboring parish, if the tenant is 65 years of age or older or has a disability equal to or greater than 60%), in an property in a state of conservation equal to or greater than the original leased property and adequate to the needs of the tenant's household, while maintaining the value of the rent and the charges of the lease agreement suspended. Once the works are completed, the tenant must reoccupy the ordinary leased property within three (3) months, unless there is a fair impediment, under penalty of expiration of the lease agreement.

• **Termination of the lease agreement during its term to perform major remodeling or restoration works** - The landlord may only terminate the lease agreement during its term in case of demolition or major remodeling or restoration works that do not result in premises with features equivalent to those of the leased property, where it is possible to maintain the lease. If the parties do not reach an agreement, the landlord undertakes to guarantee the accommodation of the tenant for a period of not less than three (3) years. If the tenant does not accept the proposed accommodation, or if it is a lease for non-housing purposes and the accommodation is not possible, the landlord shall be obliged to pay a compensation on the minimum amount corresponding to two (2) years of rent, which cannot be less than twice the amount of 1/15 of the property tax value.

See the [information note](#) to know in full all the modifications made by Law no. 12/2019 and by Law no. 13/2019.

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