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IBERIAN LAWYER Legal Updates

New rules for landlord-tenant lease agreements - F. Castelo Branco & Associados



A new law has been introduced to aid the implementation of new legislation relating to lease agreements between landlords and tenants. By way of background, one of the measures introduced as part of Portugal's economic assistance programme – negotiated with the so-called 'Troika' – was an amendment to the Urban Lease Law (Law 6/2006 of 27 February). The main purpose of the New Urban Lease Law (Law 31/2012 of 14 August), was to broaden conditions under which renegotiation of lease agreements is possible and to "ensure balanced rights and obligations of landlords and tenants".

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Other objectives of the reform included limiting the possibility of legally assigning a lease agreement to first degree living relatives and gradually reducing lease agreements still affected by rent control schemes.

In addition, the reform sought to reduce the prior notice period for termination of lease agreements by landlords and provide a swift eviction procedure in the event of a breach of lease agreements. Given these objectives, the original Urban Lease Law was significantly amended, altered and in many respects improved. Nonetheless, some aspects were difficult to address and others caught tenants off guard (principally older tenants).

Therefore, soon after the introduction of the New Urban Lease Law, the Portuguese Government thought it best to appoint a Monitoring Commission for the Implementation of the Urban Lease Reform. The commission's main tasks include: (a) collecting data relating to the execution of the reform; (b) verifying if the objectives of the reform were being achieved; and (c) identifying difficulties, if any, or other aspects in which the execution of the reform was lacking. The final report (the last of three) of the commission was presented on 8 May, 2014 and identified several issues and concerns.

Consequently, Law 79/2014 of 19 December was approved to address a number of issues identified by the commission and resulted in some small, but important, changes to the Portuguese Civil Code, as well as important amendments to the New Urban Lease Law. A summary of the most important changes includes the following:

- a tighter and clearer method of unilateral termination of leases if the landlord needs or intends to undertake extreme building maintenance or repair works or to demolish the leased building;

- a tighter framework: the notice to initiate the Rent Review Process and Transition to the New Urban Lease Law, must contemplate new elements. Absence of any of the mandatory elements makes the notice ineffective;

- The possibility of tenants requesting the reassessment of the tax value of the leased building, if they consider that the evaluation should, for some reason, be different or simply lower (for example, on the basis of incorrect identification of the building area).

Note that this possibility is particularly relevant, as the Rent Review scheme foresees that the rent paid by any tenant may, in some cases, be increased, up to the annual amount of 1/15 of the leased building's tax value, if the tenant and landlord are unable to agree on the amount of the new rent.

- Finally, another important amendment is related to the extension of access to the swift eviction procedure ("*Procedimento Especial de Despejo*"). Prior to the amendment this procedure could only be used by landlords that had paid the Stamp Duty owed to the Tax Authorities (when entering into a lease). With the entry into force of this amendment, the procedure can also be used if the landlords prove that they have declared to the Tax Authorities the amount of rent paid by tenants. Consequently, this amendment will also enable a reduction in tax evasion.

All the aforementioned amendments will enter into force on 19 January, 2015 and will change the manner in which landlords must initiate the Rent Review Process and Transition to the New Urban Lease Law.

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