

## Perpetual Real Estate Right to Housing

Decree-Law no. 1/2020 of 9 January, entered into force last Friday introducing into our legal system a perpetual right to housing with the aim of creating more flexible legal instruments capable of meeting today's challenges in housing.

The owners of buildings or independent units of buildings, dully authorized for residential use and whose conservation status is at least classified as “medium”, may constitute in favour of one or more individuals (“resident”) a perpetual right to housing (“*direito real de habitação duradoura*” or “DHD”), for permanent residence, against payment of periodic installments and a security bond.

Previously, homeowners must secure the assessment of the state of conservation of the property, recording the existing conditions of the property.

The DHD may be granted by public deed or private document with the parties’ signatures dully witnessed and is subject to registration at the land registry.

The value of the initial bond is established by agreement between the parties and must be mandatorily set between 10% and 20% of the median value of sales per square meter, depending on the location and size of the property, published by the National Institute of Statistics, IP (INE).

From the tenth year of DHD’s term onwards, the amount of the security bond is reduced 5% per year, constituting such amount a payment to the homeowner.

The periodic installments to be paid by the resident is freely set by the parties and may be updated annually according to the average variation of the consumer price index published by INE.

The resident is liable for the municipal taxes and the Municipal Real Estate Tax, the cost of ordinary housing conservation works and the assessment of the state of conservation of the property, to be performed every 8 years. If the conservation level is lower than medium, the resident is obliged to carry out, at his own expense, the necessary works to reinstate such conservation level.

The homeowner is responsible for the costs of any mandatory insurances, extraordinary conservation works (unless they become necessary due to the resident's fault), works and other charges related to the common parts of the property, contributions and other obligations arising from the owner’s quality as member of the condominium, if applicable.

DHD may be terminated freely by resignation of the resident, forfeiture (death of the resident) or for definitive non-compliance by either party.

Once the DHD is terminated, the resident must deliver the property to the homeowner with at least a “medium” conservation level.

DHD can only be mortgaged to secure a credit for the payment of the security bond and, if the DHD is waived by the resident, the mortgage will survive unless its cancellation is duly authorized by the mortgage lender.

DHD is not transferable *mortis causa* and during its term it can only be transferred in the event of foreclosure, and buyer shall be entitled to reside in the property until 30 years from the date of establishment of the DHD.

This new legal instrument has some advantages for homeowners over long-term leases, such as the transfer of some of their costs to the resident or increased security of their revenues given the existence of a significant security bond.

However, we believe that the exogenous factors (such as high demand and low supply in the rental market and the widespread rise in property prices) that currently suffocate the long-term rental market may also drive homeowners away, unless the Government takes measures, namely at tax level, to promote the use of the perpetual right to housing.

#### CONTACTS

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