

Royal Decree-Act 5/2017 of 17 March, which amends Royal Decree-Act 6/2012 of 9 March

On 19 March, Royal Decree-Act 5/2017 of 17 March entered into force, amending Royal Decree-Act 6/2012 of 9 March, concerning urgent measures for the protection of mortgage debtors without resources, and Act 1/2013 of 14 May, concerning measures to strengthen the protection of mortgage debtors, debt restructuring and low-income rent (hereinafter, the “Royal Decree”).

It deals with the mortgage restructuring of those who suffer from major difficulties to make payments, and it attempts to facilitate and provide more flexibility in foreclosure procedures, such as expanding the suspension period of eviction or making it possible to execute more flexible mortgage policies after having expanded the number of possible beneficiaries and facilitating preferential leases.

Among the main modifications introduced by this Royal Decree, the following are of particular importance:

- **Expansion of the number of beneficiaries.** The Royal Decree endeavours to apply urgent measures for the protection of mortgage debtors without resources, therefore expanding the number of family units that can benefit from such measures in accordance with the Code of Good Practices – a guarantee of applying fair mortgage measures to those debtors on the threshold of exclusion. These measures apply to large families; single-parent families; mortgage debtors in a situation of disability, dependency or serious illness that prevents employment; and persons over the age of 60 years. It also incorporates, as protected subjects, families with minors and families in which there is a victim of gender-based violence.
- **Possibility of preferential lease.** It provides for the possibility that those beneficiaries of the suspension of evictions referenced in Act 1/2013 of 14 May (described in the preceding section, including the recent expansion), who are also customers of banking institutions adhered to the Code of Good Practices, can request, from their bank, the lease of their home under preferential conditions for a period of up to five years, and an additional five years in the event that there is an agreement or pact with the institution.
- This request must occur within the maximum period of six months as from either the entry into force of this Royal Decree (19 March 2017) or as from when the suspension becomes applicable to them.

- **Suspension of evictions on certain homes.** The events of suspension of evictions on certain homes that are the usual residences of especially vulnerable groups recognised in the preceding regulation are expanded. The expansion will be implemented for an additional period of three years as from the entry into force of this Royal Decree, therefore adding up to the seven years stipulated in Act 1/2013.
- **Adhesion to the Code of Good Practices for the viable restructuring of debts with a mortgage guarantee on the usual residence.** All institutions that, upon the entry into force of this Royal Decree, are adhered to the Code of Good Practices for the viable restructuring of debts with a mortgage guarantee on the usual residence will be considered to be adhered to said code in the drafting given in this Royal Decree, unless, within the period of one month as from the entry into force thereof, they expressly notify a resolution of their administrative body to the Secretary General of the Treasury and Financial Policy of the Public Treasury.
- Within 10 days following the lapse of the period of one month, the State Secretary of Economy and Support for Business, of the Ministry of Economy, Industry and Competition, will issue a resolution ordering the publication of the list of adhered institutions at the electronic office of said Office of the Secretary, as well as in the Official Journal of the State.
- **Complementary measures.** Finally, the Royal Decree urges the government to propose, within the period of eight months as from the entry into force of this Royal Decree, policies targeted at facilitating, for the mortgage debtors included within its scope of application, the recovery of the property that represented their usual residence when it had been the object of a foreclosure proceeding.

To execute these policies, the following will be taken into account: the auction price of the usual residence; the possibility of discounting from the same a part of the amounts paid by the debtor for amortising the loan or credit, origin of the foreclosure; and the improvements made on the abode during the period when the eviction was suspended, in addition to other factors that guarantee an equitable price for recovering the home.

In conclusion, the Royal Decree attempts to facilitate and provide measures in addition to those provided for in the preceding regulations by granting greater flexibility for and protection to mortgage debtors. This additional flexibility expands the number of possible receivers of beneficial mortgage measures, adds the possibility of a preferential lease and an increase in the eviction period on homes to three additional years. It also offers a series of guarantees, urging the government to apply protective mortgage policies for debtors and regulating the adhesion of a large number of banks to the Code of Good Practices.