

e-bulletin

REAL ESTATE TRANSACTIONS & FINANCING | FRANCE |

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MAIN PROVISIONS OF THE FRENCH LAW ON ACCESS TO HOUSING AND TOWN PLANNING REFORM (ALUR)

The French law on access to housing and town planning reform ("*loi pour l'accès au logement et un urbanisme rénové*" - ALUR) was promulgated on 26 March 2014 further to approval by the French *Conseil constitutionnel* (Constitutional Council) of the vast majority of its provisions on 20 March 2014.

The ALUR law represents a far-reaching reform of a number of aspects of real estate law.

Sylvia Pinel, Minister for Housing and Territorial Equality, will now be responsible for the application of the law.

URBAN DEVELOPMENT REFORM

- **Local planning regulations (PLU) to be aligned with territorial development plans (SCOT)** within one year in the event of minor changes, and three years if the PLU needs to be revised;
- **Automatic transfer of responsibility for PLU** to public establishments for cooperation between local authorities (EPCI) with taxation rights (metropolitan authorities and urban/agglomeration/municipality communities) within three years from promulgation of the law, unless successfully opposed (minority opposition representing one quarter of the community's municipalities and at least 20% of its population)
- **Zoning regulations (POS) void** as from 01/01/2016 unless revision undertaken prior to 31/12/2015 (consequence: application of national urban development regulations – *Règlement National d'Urbanisme*);
- **Site ratios (COS) and rules on minimum lot sizes for building abolished.** The COS is no longer binding on permit applications with immediate effect. Local planning regulations will need to be adapted to take account of this ; stricter rules on defining new areas for development;
- Responsibility for urban pre-emption rights (DPU) aligned with responsibility for PLU;
- Standard DPU automatically applicable **to transfers of the majority of shares in a non-trading real estate investment company (SCI)**;
- Reinstatement of the possibility to withdraw rulings of non-opposition to preliminary declarations of work within three months in the event of any illegality;

- Concession contracts for designated development areas (ZAC) may be awarded prior to the creation of the ZAC;
- Possibility of contracts for "Projects of Major Interest";
- **Drive-thrus** with a floor area exceeding 20 sq. m. require a **retail licence**;
- Car parks attached to businesses requiring a retail licence must not exceed 75% of the total building area, unless the PLU provides for a ratio of between 75% and 100%.

RESIDENTIAL LEASE REFORM

Unfurnished rentals

- In areas of "high housing demand": basic **rents capped** at 120% of a benchmark rent set by the prefectural authorities – however, **rent in excess of the cap** is permitted if the property presents certain characteristics with a bearing on the rent and that are not taken into account in the definition of property categories and geographical locations (the *Conseil Constitutionnel* rejected the notion of "exceptional characteristics"); possibility for the tenant to challenge rent that exceeds the cap within three months;
- **Standard contract** (decree pending), mandatory schedule of condition, new **mandatory indications** (such as the benchmark rent, benchmark rent plus 20% and habitable surface area, as well as the last rent paid if within the last 18 months) and new additions to the **technical dossier**, which must now include an energy performance certificate (DPE), report on risk of exposure to lead, asbestos report, reports on the electrical and gas installations and a report on natural, mining and technological risks (ERNMT) - decrees pending;
- Tenants cannot be required to pay **brokerage commissions** other than for compilation of their dossier and preparation of the lease and schedule of condition (shared 50/50, up to limits set by decree and indicated in the lease);
- Limitative list of the **documentation** that can be demanded of potential tenants (decree pending);
- **Period of limitation** on claims in relation to rents reduced to three years, and one year for rent reviews (which must not be retroactive);
- **Notice period** required of tenants reduced to one month in areas of "high housing demand";
- Period allowed for the **return of security deposits** (equal to one month's rent) reduced to one month from handover of the keys, and penalties increased;
- Creation of a **universal rent guarantee** (optional public scheme guaranteeing lessors against the risk of unpaid rent; lessors that do not wish to benefit from such scheme must specifically indicate this in the lease);
- Lessors may no longer demand both rent insurance (or any other type of guarantee) and a personal guarantor;
- Possibility for the lessor to take out an insurance policy should the tenant fail to do so;
- **Ban on penalties** for breach of the lease's clauses or the building's internal regulations;
- Period indicated in Article 1724 of the French Civil Code (for works carried out by the lessor without any reduction in rent) reduced from 40 to 21 days;
- Specific notification required for works carried out by the lessor;
- Increased protection for elderly tenants;
- Stricter conditions for **unit sales** (number of units to take into account reduced from ten to five), as well as for notice of lease termination with a view to sale or personal occupation.

Furnished rentals

- Introduction of provisions for furnished rentals used as primary residences in section 1 bis of French law no. 89-462 of 6 July 1989 and **alignment with the regime for unfurnished rentals**;
- Definition of a furnished residence and list of furnishings required (decree pending);
- Certain provisions specific to furnished rentals maintained: lease term of one year (and nine months for student rentals), one-month notice period required of tenants (including outside areas of "high demand") and three-month notice period required of lessors, security deposit equal to two months' rent, no restrictive list of charges that can be passed on to tenants, etc.

Short-term rentals

- Recurrent short-term rentals of furnished residential premises to a transient clientele with no election of domicile are deemed to constitute a change in use;
- In large cities, municipal councils may decide to make such change in use subject to authorisation;
- Conversely, the change in use is not subject to approval from the co-owners' general meeting, this proposal having been rejected by the *Conseil constitutionnel*.

CO-OWNERSHIP REFORM

- Implementation of a register of residential co-ownerships;
- **Less stringent majority rules:**
 - Article 26 double majority required for **works to increase building height carried out by the co-owners' association**, as opposed to unanimity as previously;
 - Article 25 majority required, in particular, for **works to improve, add to and/or convert common areas**, as opposed to Article 26 double majority as previously;
 - The following, in particular, are specifically made subject to the Article 24 majority:
 - works necessary (i) to the **preservation of the building**, (ii) to the protection of the health and physical safety of its occupants and (iii) to ensure the units comply with current regulations;
 - **works made necessary** pursuant to legal or regulatory provisions or an order of the administrative police authorities regarding public health and safety;
- Implementation of measures in favour of co-ownerships facing difficulties;
- **Requirement to indicate the habitable surface area** (to be defined by decree) in addition to the surface area as measured pursuant to the "Carrez law" in the event of sale of a co-ownership unit (claims for price reduction must still be based on the "Carrez law" surface area);
- Possibility for co-owners that are members of an ASL (property owners' association for management of common areas) to be collectively represented at the ASL's general meetings by the Chairperson of the co-owners' committee.

REAL ESTATE PROFESSIONALS REFORM

- **Professional licences as required under the "Hoguet law" to be issued by the President of the Chamber of Commerce and Industry** (rather than by the Prefect);
- Requirement to state in advertisements the amount of agent's commission to be borne by buyers/tenants;
- Obligations incumbent upon real estate representatives (*mandataires immobiliers*), such as professional competence, professional liability insurance, etc., extended to include staff employed on a freelance basis;
- Creation of a National Council for Real Estate Management and Transactions (*Conseil national de la transaction et de la gestion immobilière*) responsible for upholding principles of ethics, integrity and competence within the profession.

SCI SHARE TRANSFER DEEDS

- The *Conseil constitutionnel* rejected, on procedural grounds, the proposal to introduce a requirement for transfers of the majority of shares in an SCI to be made by notarised deed or a document countersigned by a lawyer or accountant.

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