

INFORMATIVE NOTE – REAL ESTATE

REAL RIGHT TO DURABLE HOUSING

Created last January, by Decree-Law no. 1/2020, the Real Right to Durable Housing (hereinafter DHD), is a figure that provides to one or more persons, who acquire the quality of residents, the enjoyment of someone else's home as their permanent residence for a lifetime, by paying the owner an initial deposit and periodic counterparts.

- **Constitution and Operation**

The DHD is constituted by the owner of a house in favour of one or more persons, who acquire the status of residents.

On the other hand, the resident pays the owner:

- a) a monthly instalment, for the DHD duration, amount which is established in the contract;
- b) an annual cash benefit, for each year elapsed from the 11th year to the end of the 30th year, corresponding to 5% of the initial deposit and paid through deduction in the deposit.

The value of the deposit is established by an agreement between the resident and the owner and must be between 10% and 20% of the median value of sales per m2 of family housing, by parish, applicable depending on the location of the dwelling and the area contained in the respective property book, according to the latest update released by the National Statistics Institute, IP, (INE, IP) and is provided for a period of 30 years.

The housing is delivered by the owner to the residents with a conservation level at least medium and free of people, encumbrances and charges, including other rights or guarantees, and the conservation level must be confirmed through a previous evaluation.

The parties enter into a contract by public deed or by private document, subject to registration in the land registry, at the request of the resident.

The DHD constitution contract must contain the amount of the security deposit provided, the amounts of the monthly instalments, the declaration by the residents accepting the property's state of conservation and the postal address and email address of the parties.

- **Owner obligations**

Are obligations of the owner namely:

- a) to ensure that the dwelling is delivered to the resident at least in a median conservation level;
- b) to pay in the part related to housing, the costs of works and other charges related to the common parts of the building and, in the case of constituted condominium, to pay the contributions and fulfil the other obligations as a joint owner;
- c) to ensure that building and housing insurances are always legally mandatory;

d) to make and support the costs of works Carry out and bear the cost of the extraordinary maintenance works in the dwelling, unless the existing anomalies result from unlawful acts and or from the non-fulfilment of obligations by the resident;

e) manage the amount received as a bond and, with the extinction of DHD, ensure its return to the resident.

- **Resident obligations**

Are obligations of the resident namely:

a) to use the dwelling exclusively for permanent home;

b) to pay municipal taxes and deliver to the property owner the amounts corresponding to the Municipal Property Taxes;

c) to promote or allow the evaluation of the state of conservation of housing and pay the respective cost;

d) to make and support the costs of ordinary conservation works;

e) to allow the owner to carry out the works to which he is obliged and to inform him as soon as he becomes aware of the existence of anomalies in the dwelling whose repair is his obligation.

- **Cessation of the DHD**

The DHD ceases for the following reasons:

i) expiration with the death of the resident or, if constituted in favour of more than one person, with the death of the last one of them, not existing *mortis causa* transmission;

ii) Resignation of the resident, determining the return of the amount corresponding to the initial deposit;

iii) resolution by definitive default. It should also be noted that the owner cannot stop the DHD on its own initiative.

- **Lease distinction**

The DHD distinguishes the figure of the lease, as:

i) the resident is responsible for the payment of the municipal taxes and municipal property taxes;

ii) the resident is responsible for the payment of ordinary conservation works of the dwelling;

iii) the resident can mortgage the DHD for initial deposit payment purposes ;

iv) the DHD is not transmitted with the death of the holder;

v) there is no possibility of terminating DHD at the initiative of the owner.

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