

NEWSLETTER

Manuela António - 安文娜 大律師及公證員 | *Lawyers and Notaries*

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Real Estate and Construction

Leasehold renewals for definitive concessions under the old land law past practices and present time concerns

Under the former land law – Law no. 6/80/M, of 5 July (the “Old Land Law”) as amended in 1991 –, and also today under the new land law – Law no. 13/2013, of 2 September (the “New Land Law”) –, the lease concession of a land plot has a term of a maximum twenty-five years, upon which such concession will then either expire under certain circumstances, or be renewed.

The Old Land Law stipulated that the leaseholder of a definitive concession had to declare his interest in renewing the concession. This declaration – which could not be presented more than six months before the terminus of the leasehold – was understood as a simple formality, one which was summited at the Land, Public Works and Transport Bureau (the “Land Bureau”), and in which the declarer would merely state the interest in renovating the respective land lease agreement. Under the law, the length of the renewal was ten years – a period that remains the same even today, under the New Land Law.

“The Old Land Law stipulated that the leaseholder of a definitive concession had to declare his interest in renewing the concession. (...) Under the law, the length of the renewal was ten years – a period that remains the same even today, under the New Land Law.”

In these circumstances, under the Old Land Law and with regards to the renovation of land plots in case of an indivisible building or a building set up in horizontal property (i.e., under strata title), the declaration to renew a leasehold concession would automatically benefit any and all owners of the building units (or co-owners of the buildings) in question.

In practice, the said declaration was (and still is) often submitted after the leasehold period expires, but this never really attracts legal consequences of any sort for the leaseholders, maxime, the expiration of the concession leasehold.

In fact, it has been the Government's practice and position for many decades to allow for these renovations to take place by sole virtue of the leaseholder's declaration of interest, which was merely filed at the Land Bureau, being such declaration accepted by the Land Registry as title to record the renewals without further ado – whether the expiration date would have already effectively occurred place or not.

Nowadays, under the New Land Law, the declarations for renewal are no longer necessary, as the legislator saw fit to eliminate the said procedure, confirming the trivial nature of the said formality and implementing an innovative mechanism of automatic renewal for definitive leasehold concessions – save for a few exceptions, where authorization from the Chief Executive is required for the said renewal.

In any case, and although the old procedure brought certainty in the past, this was part of an understanding that the Government held under the Old Land Law. Moreover, it should be noted that the legal framework is different now.

In other words, regarding those concessions whose declarations of interest for the renewal of their leasehold concessions were not timely submitted before the New Land Law, the lack of request for the renewal may now bring some inconveniences.

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In the light of the above, and to avoid any undesired repercussions in the future, the owners of buildings or building units whose concessions became definitive prior to the entry into force of the New Land Law should verify whether the respective lease concession term has been reached or not. If they have, owners of those buildings or units should immediately send the abovementioned declaration to the Land Bureau in order to have the situation cleared. This way, it is understood that the Land Bureau will henceforth communicate with the Land Registry and the Financial Services Bureau to complete the renewal recording procedures.

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