

PRE-EMPTION RIGHTS IN THE PROPERTY MARKET



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“THE PROPERTY MARKET IN PORTUGAL CONTINUES TO GROW, ATTRACTING MORE AND MORE BUYERS. WITH SUCH HIGH DEMAND, THE LAW PROVIDES MECHANISMS TO ENSURE GREATER SECURITY AND BALANCE IN TRANSACTIONS. ONE OF THE MOST IMPORTANT IS THE PRE-EMPTION RIGHT.”

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The property market in Portugal continues to grow, attracting more and more buyers. With such high demand, the law provides mechanisms to ensure greater security and balance in transactions. One of the most important is the pre-emption right.

The pre-emption right is an advantage given by law or by agreement, which allows someone to buy a property before other interested parties, if the conditions proposed by third parties are equalized. In other words, when there is a preemption right, the owner of the property is obliged to offer the preferential bidder the chance to buy the property on the same terms as those agreed with another buyer.

There are two types of pre-emption rights, according to Article 422 of the Civil Code, contractual pre-emption rights, which result from an agreement between the buyer and the seller, and legal pre-emption rights, which result directly from the law.

Contractual Preemption Rights

In the case of contractual pre-emption rights, the pre-emption pacts defined in Article 414 of the Civil Code, it is established, for example, that if the seller intends to sell a certain property, he will give preference in that sale to the person with whom he has agreed the pre-emption right. If, however, the buyer and seller wish to give greater legal certainty to the deal concluded with the right of pre-emption, they can agree on its real effectiveness, as stated in Article 421 of the Civil Code.

This constitutes a real right of acquisition over the property, meaning that those who have pre-emption can assert their right in court, thus guaranteeing the acquisition of a certain asset in their favor.

Legal Pre-emption Rights

However, there are also legal pre-emption rights, imposed by law. These include the tenant's legal right of first refusal, stipulated in article 1091 of the Civil Code, and the co-owner's legal right of first refusal, according to articles 1409 and 1410 of the Civil Code.

As for the **tenant's** pre-emption right, it should be noted that in order to exercise this right, the tenant must have lived in the house for at least two years at the time of the sale. If this is the case, the owner will have to notify the tenant of his intention to sell, so that the tenant can exercise his right, i.e. take preference over any other buyer.

“FOR SELLERS, BUYERS AND TENANTS, KNOWING THE APPLICABLE LEGAL RULES AND MECHANISMS IS ESSENTIAL TO ENSURE SAFE AND LEGALLY VALID TRANSACTIONS, AVOIDING FUTURE DISPUTES.”



Regarding the **co-owners'** pre-emption right, it is also required that the remaining co-owners be notified in case they wish to purchase the property.

An important note to consider is that, in the property market, public bodies can also exercise pre-emption rights. Whenever the property you want to sell is in an area subject to urban pressure, such as Lisbon, the City Councils, the Autonomous Regions and the State, in that order, can exercise pre-emption rights. This ensures that in these areas, where access to housing is significantly more complicated, there is a match between supply and demand.

As in the other cases discussed here, these entities must be notified via the Casa Pronta portal and have a period of 10 working days to exercise their rights.

In summary, the pre-emption right plays a fundamental role in regulating the property market, acting as protection for those who, for example, already live on the property, share it or have a public interest. For sellers, buyers and tenants, knowing the applicable legal rules and mechanisms is essential to ensure safe and legally valid transactions, avoiding future disputes.