

# Tenants' ex-post right of first refusal in a public authority's bloc sale of social housing

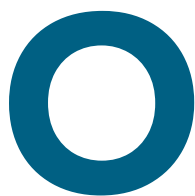
(Supreme Court Judgment no. 1597/2024 of 28 November)

In terms of the (ex-post) right of first refusal, selling thousands of lettings is not the same as selling all lettings in a building.

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On 10 November 2006, A, B and C entered into separate tenancy agreements with Empresa Municipal de Vivienda y Suelo de Madrid S.A. ('EMVS') for properties in a building in Madrid. On 31 October 2013, EMVS sold to the company Fidere Vivienda, S.L.U., a total of 1860 housing units, 1797 parking spaces and 1569 storage rooms belonging to 18 housing developments in Madrid built under different social housing regimes. Among those developments was the building in which the disputed properties were located.

Tenants A, B and C exercised an ex-post right of first refusal in the property they each let. The Court of First Instance judged against the claimants, considering that, as it was a joint sale of the dwellings and premises owned by the landlord, there was no room for such a right of first refusal. The Provincial Court and the Supreme Court, however, both upheld the joined (ex-post) right of first refusal claimed. Article 25(7) of the Urban Tenancies Act ('LAU') excludes the right of first refusal in the sale of all the properties in a building (but not the bloc sale of many properties in different buildings), if it is proven

## *Sales of real estate portfolios are not shielded against the right of first refusal*

that such properties were part of a building in which all the properties had been sold.

More specifically, according to the Supreme Court judgment, “[i]n this case, *the defendant has not proven that the sale included all the building units at ADDRESS000 in Madrid*, since apart from the fact that the deed does not state that all the dwellings were transferred, *it is expressly stated that forty-four parking spaces in the building were not the subject of transfer*. Hence the circumstances of fact for rejection of the right of first refusal do not exist, *because when all the properties of the same building are not transferred, the application of the restrictions or limitations of Article 25(7) of the Urban Tenancies Act cannot be claimed*”.

Article 25(7) LAU stipulates that there will be no right of first refusal when the letting is sold together with the remaining dwellings or premises *owned by the landlord* which form part of the same building, nor when all the dwellings and premises of the building are sold jointly by different owners to the same buyer. It should be noted that it is not necessary that all the registered units of the building are sold, but that all the properties belonging to the landlord in that building are sold.

It can therefore be concluded that, in contrast to bundling a loan portfolio, which excludes the application of the special right of first refusal under Article 1535 of the Civil Code, bundling a real estate portfolio does not exclude the right of first refusal, unless it is proven that this

bundle comprised (inter alia, if applicable) all the dwellings in the same building that belonged to the selling landlord.

However, it is very likely that the facts of our case do align with the factual requirements for exclusion of the right of first refusal. A reading of the Provincial Court’s judgment suggests that the Madrid housing authority *did in fact sell all the dwellings it owned in the building*. They may not be all the dwellings in the building, nor must all the garages be included. And this, despite Article 2(2) LAU: the fact that the provisions for the letting of a dwelling are applied to garages does not mean that garages are dwellings for the purposes of Article 25(7) LAU.

Additionally, as a further reason against the right of first refusal, where a whole building is sold, the bundle price is not formed by the sum of the prices of the isolated units and the quotient from dividing the number of dwellings by the bundle price is obviously not the price that the seller would ask for the sale of a single dwelling; all the more so, in the bundling of thousands of dwellings -whether or not they form complete buildings-, the quotient of this equation is much smaller than what would result if the price per dwelling unit were fixed. A right of first refusal under such terms, applying the broken-down bundle price quotient, is an *outright steal for social housing tenants and a glaring red flag for funds and groups looking to invest in this market*.