

HOW TO GET ORGANISED IF WE ARE DEBTORS OF UNPAYABLE MORTGAGES

In recent decades, the needs of the real estate market and the coverage of the neoliberal propaganda machine have generated the false need to embrace the private ownership of homes. This has led to the fact that millions of people have signed mortgage agreements that, most certainly, not even their heirs will be able to assume. Meanwhile, banks, savings and loans, builders, real estate firms, and scavengers in general watched their businesses flourish as the lives of millions of families withered when the deadlines for making mortgage payments could no longer be met. This is the crude reality in which the weakest strata of the social pyramid are immersed today, now. The question is: What can we do to prevent the forced expropriation of the legitimate right to housing?

The commendable work of PAHs [*Platforms for those Affected by Mortgages*] in the entire territory has demonstrated that we can defend the right to housing in the street and through various forms of social pressure, thereby considerably reducing the number of people who are evicted from their homes.

As from there, and based on disobedience, we propose to extend the action lines that will allow us to self-manage the long-term right to housing.

STRATEGIES FOR HINDERING THE JUDICIAL PROCESS

Various PAHs suggest that free legal representation should be claimed at the time when a notice of mortgage default arrives. Whether such representation is granted or not, the very fact that it is claimed will lengthen the period of time between the notice and an auction. If such representation is granted, it will be important to have trusted lawyers who support free legal representation to ensure that the rights of the debtor are correctly defended.

Moreover, if we realise that we cannot assume our mortgage payment in the short term, we can rent our home at a low price to someone trusted, who can make use of it, therefore joining the network of "rental exchanges". By renting, we can block evictions from a residence for at least 5 years.

ATTENTION: many messages have been sent out, which state that a merely symbolic rent would be sufficient to keep a home. But it is advisable to be prudent, given that there is the legal figure of "contracts in fraudulent circumvention of the law", which could, in the opinion of a judge, generate an eviction order. The following is therefore important:

1. The new renters must inhabit the house.
2. The price must be believable, even though it is low in comparison with others.
3. The financial transactions of the rental actually take place and can be demonstrated.

4. The direct debit mandates for utilities, etc. are changed.

In other words, it is necessary to accurately prepare for the rule of law, given that it will be necessary to demonstrate to a judge that the contract is real.

See Article 14 of the Urban Leasing Act, on the "Conveyance of leased housing".

No matter how much jurists, positioned in favour of banks, may argue that the Mortgage Act or even the actual mortgage deed may limit the right to rent mortgaged homes, there is considerable case law to demonstrate that the Urban Leasing Act must prevail for the first 5 years of a contract, given that it forms a part of the guaranty of the basic right of a renter.

What the Civil Procedure Act states regarding the rental of seized property should also be kept in mind: "In the mortgage proceeding, there is a preliminary issue about possession, and it is then when a judge assesses all the details of the contract in order to issue a judgement about whether or not it must be respected". Article 661 of the Civil Procedure Act:

1. "When, due to the statement of assets of the judgement debtor, due to indications of the judgement creditor, or in any other way, the proceeding records the existence and identity of persons other than the judgement debtor who occupy the seized property, they will be notified of the existence of enforcement so that, within the period of ten days, they can submit to the court any title that justifies their situation.

The announcement of the auction will, in all possible detail, state the possession status of the property or will, conversely, state that it is unoccupied, if this circumstance is proved to the court clerk who is responsible for enforcement.

2. The judgement creditor may request that, before announcing an auction, the court declare that the occupant or occupants do not have the right to remain in the property, once it has been conveyed in the enforcement. The request will be processed in accordance with the provisions set forth in section 3 of Article 675, and the court will grant it and will, through an unappealable court order, make the requested declaration when the occupant or occupants may be considered as occupants in point of fact or without sufficient title. Otherwise, the court will declare, also without subsequent appeal, that the occupant or occupants have the right to remain on the property, barring the actions of eviction to which a future acquirer may have a right".

Thus, it may so happen that the judge of a mortgage proceeding may state that the title is good and that it must be respected or that it is not "sufficient" (he basically says that the contract is not valid). If the judge states the latter, there is the possibility of recourse through a separate legal proceeding where it can be disputed, which will cause eviction to be delayed. The best thing to do is to rent the property before any notice is served.

The longer the period of time in advance that a rental contract is agreed upon, with respect to the moment when a notice of unpaid debt is served, the more advantageous the contract can be for the purpose of generating social housing.

Thus, if a rental contract can be signed at a time when payments are still being made or when only 1 month has elapsed since leaving a mortgage unpaid (it could be pushed to 3 months, but this is not advisable), it could be possible to sign 10-year rental agreement without risk. This rental agreement must be drafted in a public instrument before a notary public so that it can be recorded in the property registry, and thus, at the time when a bank wants to take over possession of the property, the

agreement can be demonstrated to exist in the property registry, unavoidably notarised by a notary public.

If a rental agreement is made when a notice of default has already been served, or is about to be served, then it is preferable to be content with a 5-year agreement and implement a real rent, proved by a security deposit at the chamber of property, the receipts of each monthly payment, name changes on bills, and affidavits of neighbours, if necessary.

More info: foroantiusura.org, integrarevolucio.net, desobediencia.es, cridadesobediencia.cat, afectadosporlahipoteca.com, <http://atornallom.net/>

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