

Cabinet Brahin

Société d'avocats au Barreau de Nice
1 rue Louis Gassin - 06300 Nice
Tel : +33 (0)4 93 83 08 76 – Fax : +33 (0)4 93 18 14
37
www.brahin-avocats.com
nicolas.brahin@brahin-avocats.com

Nicolas Brahin

DESS Droit Bancaire et Financier
Université Paris I (Panthéon-Sorbonne)

Céline Zekri

DEA Droit Immobilier Public et Privé, ICH Paris
Université de Nice

Avocats au Barreau de Nice

Correspondant organique de :

Legipass

8, rue Auber - 75009 PARIS
www.legipass.com

Finn Larsen Advokatfirma

Algade 43, 1 - 4000 Roskilde -Danemark
www.advokat-firma.dk

Horizons China Corporate advisory

1801 Lippo Plaza, 222, Huaihai Middle Road
Huangpu, SHANGAI PR China 200021
www.horizons-advisory.com

Cabinet Brahin

ADVOKATFIRMA I FRANKRIG / LAWYERS OFFICE IN FRANCE

By email :
Number of pages: 6

Nice, 2016

The MACRON reform concerning tenancy agreements:

New provisions have been implemented by the law n°2015-990 of the 6th of August 2015 for the growth, activity and equality of economic chances referred to as the Macron law.

The changes are visible in articles 71, 81, 82 and 98 of this law.

Cabinet BRAHIN Société d'Exercice Libérale à Responsabilité Limitée inscrite au Barreau de NICE

E-mail: info@brahin-avocats.com

www.Brahin-avocats.com

BUREAU PRINCIPAL inscrit au Barreau de NICE (CP 427)
1, RUE LOUIS GASSIN - 06300 NICE FRANCE

BUREAU SECONDAIRE inscrit au Barreau de MONTPELLIER
14, Rue Ernest Michel – 34000 MONTPELLIER

I. Termination of the lease:

A. The change of use:

Article 81 of the Macron law adds a new disposition: article L. 631-7-1 B in the French code of construction and habitation ("Code de la construction et de l'habitation") that states:

« une délibération du conseil municipal peut définir un régime de déclaration préalable permettant d'affecter temporairement à l'habitation des locaux destinés à un usage autre que l'habitation, pour une durée n'excédant pas quinze ans.

« Si la commune est membre d'un établissement public de coopération intercommunale compétent en matière de plan local d'urbanisme, la délibération est prise par l'organe délibérant de cet établissement.

« Jusqu'à l'expiration du délai mentionné au premier alinéa, les locaux peuvent, par dérogation à l'article L. 631-7, retrouver leur usage antérieur.

« En cas de location d'un local temporairement affecté à l'habitation en application du présent article, le contrat doit mentionner le caractère temporaire de cette affectation. Sous cette réserve, le retour des locaux à leur usage antérieur est un motif légitime et sérieux, au sens de l'article 15 de la loi n° 89-462 du 6 juillet 1989 tendant à améliorer les rapports locatifs et portant modification de la loi n° 86-1290 du 23 décembre 1986. Il ne constitue pas un événement au sens de l'article 11 de cette même loi ».

The principle of article L.631-7 is that, in certain local districts, changes of use of premises destined to habitation are subject to a preliminary authorization.

The aim is to avoid that living premises are replaced by offices or businesses making it even more difficult, especially in tense areas, to access to housing.

The owner could fear that by transforming for example, offices into housing, he would be forced to keep this new use except by if he obtained the authorization from the local district to come back to a commercial use of offices.

This fear at least disappears in the local districts that have chosen for this specific mechanism of article L. 631-7-1 B because under the condition of a simple preliminary declaration the change of use is not irreversible: at any moment, the owner can decide without having to ask for an authorization to the local district to reallocate his premise to its previous use.

B. Content of the tenancy agreement and the inventory of fixtures:

Article 3 of the 6th of July 1989 law has been rewritten by the ALUR law.

In the new mandatory mentions, there is a mention of the indication of the amount and the date of payment of the last rent paid by the previous tenant: this allows to control the respect of the levelling-off (« plafonnement ») of the increase of the authorized rent between two successive tenants (Decree n°2015-931 of the 29 July 2015).

Cabinet BRAHIN Société d'Exercice Libérale à Responsabilité Limitée inscrite au Barreau de NICE

E-mail: info@brahin-avocats.com

www.Brahin-avocats.com

BUREAU PRINCIPAL inscrit au Barreau de NICE (CP 427)
1, RUE LOUIS GASSIN - 06300 NICE FRANCE

BUREAU SECONDAIRE inscrit au Barreau de MONTPELLIER
14, Rue Ernest Michel - 34000 MONTPELLIER

The possibility offered to the tenant by the ALUR law is to ask the landlord or his representative to complete the inventory of fixtures in a time-limit of 10 days starting from his establishment. This however only applies to the arrival inventory of fixtures.

The legislator has standardized the mandatory mentions in a lease contract for furnished or unfurnished housing. Article 3 of this law provides for the universal guarantee of leases (article 24-2 of the 6 July 1989 law).

A notice of information on the rights and obligations of tenants and landlords must be enclosed with the contract as well as for furnished housing.

Article 3 foresees that the lease contract must respect a type of contract defined by decree. Article 25-7 applies the same condition to furnished housing.

C. Co-tenancy:

Article 8-1 of the 6th of July 1989 law has been created by the ALUR law in order to confer a co-tenancy status: possibility to give a flat rate to the amount of the apportionable service charges and to limit in time the solidarity (article 8-1 VI). The changes operated by the Macron law are both formal and substantial.

- Firstly, article 8-1 VI has rewritten the solidarity distinguishing two possibilities:

The solidarity of one of the co-tenants and one of the person that acts as guarantor for him terminates at the date of the effect of the leave regularly delivered and when there is a new tenant to the lease.

On the other hand, if this does not happen, it was foreseen by the ALUR law that the solidarity of the leaving co-tenant terminated at least 6 months after the date of the effect of the leave.

The solidarity of the deposit is terminated not by the effect of the leave but from the extinction of the co-tenant's solidarity.

- Secondly, from a substantial point of view, the scope of the co-tenant's status is revised. Leases exclusively given to married couples or civil partners at the moment of the initial conclusion of the contract are excluded.

II. Execution of the lease:

A. Determination of the rent:

The formalities concerning the determination of the rent of furnished housing have changed. The ALUR law subjected these leases to the framework of rents according to article 25-9 of the 6th of July 1989. This article has been completed by two provisions.

Cabinet BRAHIN Société d'Exercice Libérale à Responsabilité Limitée inscrite au Barreau de NICE

E-mail: info@brahin-avocats.com

www.Brahin-avocats.com

BUREAU PRINCIPAL inscrit au Barreau de NICE (CP 427)
1, RUE LOUIS GASSIN - 06300 NICE FRANCE

BUREAU SECONDAIRE inscrit au Barreau de MONTPELLIER
14, Rue Ernest Michel - 34000 MONTPELLIER

- Firstly, the increase of the rent agreed between the parties or legally established applies to the rent of renewed lease. However, if the increase is over 10%, it is applied by an annual third to the renewed lease and for future renewals.

Article 17-2 distinguishes two modalities of determination of the renewed lease rent according to if the rent is situated in the rent framework or not.

However, it is foreseen in both cases that the increase is applicable by a third or a sixth according to the duration of the contract and according to if the increase is superior or not to 10%. The Macron law only authorizes a gradation of the rent over three years.

- Secondly, the Macron law now subjects leases to the revision of the rent (article 17-1 I) and the increase if the rent in the event of improvement works (article 25-9-III).

B. Judicial annulment (« résolution judiciaire »):

In the event where the tenant has not paid his rent or charges according to the ALUR law, subject to the inadmissibility of the demand, the landlord must in certain cases seize the commission of coordination of actions preventing the expulsion of tenants ("Commission de coordination des actions de prévention des expulsions locatives CCAPEX"). He must also systematically notify his summons to the representative of the State in the district.

The Macron law also foresees the acquisition of the clause of defeasance ("clause résolutoire") or the decision of the judicial annulment through an additional demand.

C. Smoke detector:

The Macron law has modified article 5 of the 9th of May 2010 law that now foresees that landlords that have signed a smoke detector purchase contract at the latest on the 8th of March 2015 satisfy this obligation as long as the smoke detector is installed by the 1st of January 2016.

III. The leave and duration of the lease in the case of co-ownership:

A. Leave:

The leave given in a lease of furnished housing can be personally handed against receipt or initialing.

If a landlord wishes for a tenant of more than sixty-five years and whose annual resources are inferior to a set-

Cabinet BRAHIN Société d'Exercice Libérale à Responsabilité Limitée inscrite au Barreau de NICE

E-mail: info@brahin-avocats.com

www.Brahin-avocats.com

BUREAU PRINCIPAL inscrit au Barreau de NICE (CP 427)
1, RUE LOUIS GASSIN - 06300 NICE - FRANCE

BUREAU SECONDAIRE inscrit au Barreau de MONTPELLIER
14, Rue Ernest Michel - 34000 MONTPELLIER

limit, he must propose an offer for relocation.

The Macron reform has extended this obligation to the tenant who is in charge of a person over sixty-five years that usually lives with them and whose combined annual resources of all people living in the house is inferior to a set-limit.

Article 15 has modified the consequences of the purchase of housing.

In the event where a purchased accommodation is occupied:

- When the term of the ongoing lease contract intervenes more than three years after the purchase, the landlord can give leave to his tenant to sell the accommodation according to the ongoing lease contract.
- When the term of the ongoing lease contract intervenes less than three years after the date of purchase, the landlord must give leave to his tenant to sell his property at the end of the first tacit renewal or the first renewal of the ongoing lease contract;
- When the end of the ongoing contract intervenes less than two years after the purchase, the leave for renewal given to the tenant at the end of the ongoing lease contract only takes effect at the expiration of two years starting from the date of purchase.

The Macron law continues to distinguish the leave to sell from the leave for renewal.

For a leave to sell, the law distinguishes according to the time-limit left to run between the purchase and the end of the ongoing lease with a duration of three years as reference.

For a leave to renew, only the situation of a short-term maturity contract (less than two years after the purchase) is envisaged.

B. Duration of the lease and co-ownership:

The Macron law also changes article 11-2 of the 6th of July 1989 law concerning sale in cuts.

When a building used for housing or mixed housing and professional purposes of five or more buildings situations in one of the zones mentioned at article 17 and that has been put into co-ownership:

- The ongoing leases whose term intervenes three months after the date of co-ownership is extended by right to three years
- Other ongoing lease are extended for a duration permitting the tenant to occupy the accommodation during six months since the co-ownership.

IV. Advantages of the energetic transition law:

Cabinet BRAHIN Société d'Exercice Libérale à Responsabilité Limitée inscrite au Barreau de NICE

E-mail: info@brahin-avocats.com

www.Brahin-avocats.com

BUREAU PRINCIPAL inscrit au Barreau de NICE (CP 427)
1, RUE LOUIS GASSIN - 06300 NICE FRANCE

BUREAU SECONDAIRE inscrit au Barreau de MONTPELLIER
14, Rue Ernest Michel – 34000 MONTPELLIER

The law n°2015-992 of the 17th of August 2015 concerning the energetic transition for green growth has completed article 6 of the 6th of July 1989 law.

It added a new parameter to the definition of decent housing: it should not have any manifest risk that could jeopardize the physical security or health and should respect a minimal energetic performance criterion as well as have the elements making it conform to a living use.

It is also added that a decree defines the minimal energetic performance criteria to be respected and the graded calendar for implementation.

Nicolas BRAHIN
Avocat au Barreau de Nice
Nicolas.Brahin@brahin-avocats.com

Cabinet BRAHIN Société d'Exercice Libérale à Responsabilité Limitée inscrite au Barreau de NICE
E-mail: info@brahin-avocats.com
www.Brahin-avocats.com

BUREAU PRINCIPAL inscrit au Barreau de NICE (CP 427)
1, RUE LOUIS GASSIN - 06300 NICE FRANCE

BUREAU SECONDAIRE inscrit au Barreau de MONTPELLIER
14, Rue Ernest Michel – 34000 MONTPELLIER