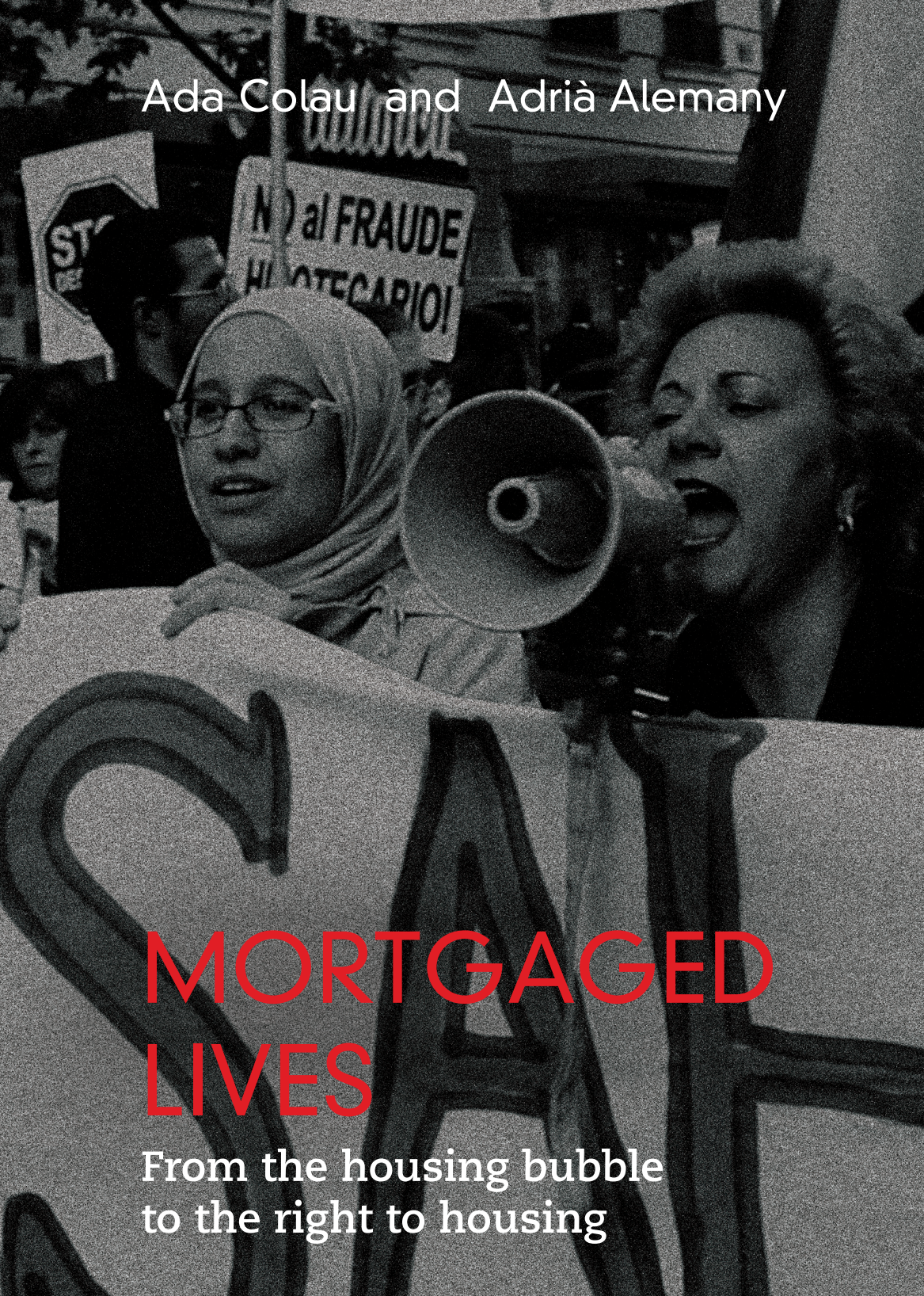


Ada Colau and Adrià Alemany



# MORTGAGED LIVES

From the housing bubble  
to the right to housing





# MORTGAGED LIVES



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Dedicated to our son Luca who, with only eleven months of life, has followed the frenetic rhythm of the assemblies, the demonstrations, evictions and the long heated debates without ever losing his smile. Dedicated to all the fathers and mothers, grandfathers and grandmothers that try to teach their children and grandchildren about the values of social justice. Dedicated to Ernest Marco, Lucía Martín, Lucía Delgado and Guillem Domingo who, since 2009, when the PAH was nothing more than a small idea, have never stopped believing in it nor stopped working until it became a reality. Dedicated to all the PAHs and all the people who selflessly give their time and the very best of themselves in the defense of the right to housing.





## Preface

It's a pleasure presenting the English translation of *Vidas Hipotecas* by Ada Colau and Adriá Alemany, an analysis and accounting of the housing crisis and right to housing movement in Spain. Throughout the book, you will find the term *dación en pago*. I've left it untranslated because it is a term so specific to Spain that it is difficult to translate.

*Dación en pago* means literally “to give” (dar >dación) “as payment” (en pago). *Dación en pago* therefore means a repossession procedure whereby the owner gives back their house keys to the bank and in exchange the bank fully discharges their mortgage debt, allowing the former owner to start again with no debt. In Spain, as described by Ada Colau and Adriá Alemany in this book, when a bank repossesses a home, the former owner not only loses their home but is required to continue paying the outstanding debt. It is very difficult to start over. This idiosyncratic feature of Spanish mortgage law distinguishes it from neighbouring countries within the EU and other parts of the world. The fight for *dación en pago* is one of the key points over which the battle lines for the right to housing are being laid down by the *Plataforma de Afectados por la Hipoteca* (PAH).

As a Canadian artist living in Berlin, I have been following both the 15-M movement and housing crisis in Spain, since 2011. In April 2013, I traveled to Madrid with a quite undefined plan; I would spend a couple of months attending and filming PAH assemblies and conduct a few interviews. On April 2nd, the day after my arrival, I descended the stairs

of Seco (a squatted cultural centre in Puente de Vallecas district) and experienced my first clamorous and chaotic PAH assembly. Inspired by their varied and exquisitely intelligent tactics, I continued attending meetings, and delayed my departure from the city. I formed deeper alliances, finally joining the *Grupo de Impacto Psicosocial de la Comisión de la Verdad, PAH Madrid* (Psychosocial Impact Group of the Truth Commission, PAH Madrid) a multidisciplinary team of professionals and researchers in various fields—social work, psychology and political science— that investigates the psychosocial impacts of eviction. This research analyzes the social rupture of homelessness and its psychological impacts on present and future generations.

I started reading Ada and Adriá's book *Mortgaged Lives* around the same time as my first visit to Seco. Ada and Adriá's words performed a narration to what I was seeing and hearing, it provided context to the questions, conversations and commentaries that occurred during these PAH meetings. After finishing the book, I decided to translate *Mortgaged Lives* into English. What you have in front of you is the results of my work.

I was inspired by the book's approach, a first-person account which situates itself as a manifesto and how-to manual for a citizens' movement in order to develop the necessary tools and strategies to deal with a society in crisis. I felt it could also serve as a useful resource for a non-Spanish speaking audience. The translation was carried out with the assistance of Jessica Fuquay, an art student from the United States who came to Berlin to spend a summer as my intern but ended up traveling with me to Madrid. During the sweltering month of July, we worked through the bulk of the translation.

Approaching this project as an artist and not a professional translator, I have become mindful of the role of translator as being an ethical one and how the translation process is an intimate act. Translation is never an unmediated flow of words from one language to another. Each time a text is translated into another language a new perspective is reached from which the original thought can be viewed. Ideas are therefore developed through repetition. Deeply sensitive to this, I have tried to be as true to the original text as possible while still acknowledging my intermediary role within the translation process.

I would like to thank Marc Herbst, Yaiza María Hernández Velázquez, Fré Sonneveld, Marta Peirano, Alba Jaramillo, Kate Boden and staff at Medialab Prado for their various contributions throughout this process. I thank the members of PAH Madrid for their warmth, courage and strength and for making me feel welcome and even loved. I would also like to thank the *Grupo de Impacto Psicosocial de la Comisión de la Verdad, PAH Madrid*, who are doing important research on the psychosocial impacts of mortgage fraud and resulting eviction crisis in Spain. Lastly I thank Ada and Adriá for writing this wonderful book.

Michelle Teran, artist and PAH activist



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## Denounce power

Bertolt Brecht once wrote that whoever intends to fight lies and ignorance must overcome, at the very least, five difficulties. First, one should have the *courage* to write the truth, despite the measures others take to stifle it. One should possess, moreover, the *intelligence* in order to find the truth in the midst of noise and manipulation. One should, at the same time, master the *art* of making truth a weapon. One must present, in the fourth place, the *ability* to target those who will use that weapon most effectively. Finally, one should possess the *cunning* means to spread this weapon among them. Judging by these words, it's very likely that Brecht would have smiled gratefully, if he had gotten his hands on this book.

*Mortgaged Lives* is, before everything else, a courageous book. It's a book that bursts in without asking permission, just at the moment when the same powers who created the crisis try to establish their own impunity and place blame on the most vulnerable. It is no easy task to denounce power, to catch it *in fraganti* covering its own tracks and trying to diminish its responsibility, much less when done using the first and last names, as they occur throughout these pages. Of all the explanations for the crisis that circulate in the media, there is a recurring one; that attributes everything to the design of the "markets", conceived as a kind of mysterious entity able to operate outside the will of people made of flesh and blood. It is against this kind of magical thinking that these lines revolt against. When the authors of this book speak of power,

of the concentrated block of power, within financial, real estate, and construction sectors, behind the Spanish crisis, they do not do so in the spirit of resigning it to some inexplicable phenomenon that simply happens because things could not be any other way. On the contrary, they point to a mafia-like plot built from decisions and concrete actions and with the explicit support of administrations, courts, and political parties from across the political spectrum.

The existence of this plot is not a recent phenomenon. As the book shows, it has its roots in the Franco regime but has operated in comfort since the restoration of the parliamentary monarchy. It is not simply out of curiosity that the authors concern themselves with this. It is because of the violence that, through voracious speculative greed, has been committed on so many families. This identification with the victims, all those who, in addition to losing their homes and jobs, have seen their lives mortgaged off due to the greed of a few, is another indication of bravery throughout these pages. Today, one has to be brave in order to stand up for the most vulnerable. To defend their interests without taking advantage of them or exempting them from responsibility, yet always distinguishing their situation from those who, from privilege and abuse, traffic the needs of others.

As Brecht notes, the predisposition to tell the truth can result in it becoming sterile if one lacks the intelligence to discover it. This is an intelligent book. Endless official documents and academic reports neither prevented the current debacle, nor are they capable of offering both just and sustainable solutions. In the majority of the pages that follow, the readers will find indignation, but a reasoned indignation, supported by solid empirical data and a deep comprehension of the political economy and legal avenues that brought on the crisis. In defense of the book's point of view, the authors are not alone. They share solidarity and support with some of the most authoritative voices on the crisis: people such as geographer David Harvey, journalist Naomi Klein and, in Spain, economists José Manuel Naredo and Albert Recio. These affinities towards *Mortgaged Lives* adhere to one guiding principle: that of the critical essay, designed to inflame, but never lose sight of the complexity of the issues nor the need to rigorously explain why this reality is the way it is.

This should come as no surprise. Ada Colau and Adrià Alemany are,

after all, two of the most well known activists that the movement for the right to decent housing has produced in Barcelona in the last few years. They are known, among other reasons, firstly for their involvement in *V de Vivienda* and, later on, for being the most visible faces in the *Plataforma de Afectados por la Hipoteca* (PAH), having displayed a great talent for communicating the truth at all levels and using it, as Brecht noted, as a weapon. This book is no exception. It is a work of activists but not of the kind that prioritizes their own vanity or obscures communication with jargon. What is said here is said in a way that is both direct and understandable, with one deliberate pretense: to extend the circle of the already converted and influence through common sense the way in which these issues are often governed.

Of course, this pedagogical zeal is also due to another Brechtian requirement: to know how to evaluate in whose hands the truth will be handled most effectively. In this regard, the work unfolds as an ambitious bet. On one hand, it is a sharp x-ray of the urban and real estate bubble that is in tune with a diagnosis of and proposals for treatment by groups such as *Democracia Real Ya!* (Real Democracy Now), *Juventud Sin Futuro* (Youth Without Future) and the 15-M movement. On the other hand, it aspires to be, in a more specific way, an operational tool in the service of those affected by the mortgage crisis. The chapters with tips and resources for people and families threatened by eviction should be read with this consideration in mind. As a practical resource, by an advisory association, it is designed to foster solidarity among those affected, to free them from fear and paralysis, and to strengthen their ability to organize.

The combination of condemnation and deep analysis, between a call to action and concern for immediate problems, is one of this book's greatest virtues. It would be wrong, however, to attribute it to a simple theoretical intuition. If this book is possible, it is because those who write it are not just external observers of a widespread social phenomenon. On the contrary, what the authors explain in these pages reflects what they, and so many others like them, have been doing for years in social centers, migrant advocacy groups and neighborhood associations, in their streets and neighborhoods. This personal experience does not exempt them from error nor make them infallible, but it does help explain why their message has succeeded in breaking the media's siege

on critical ideas, reaching thousands of people and earning the respect and the trust of those affected by this crisis.

In classical antiquity, the abolition of debt slavery was already one of the crucial flags of the democratic movement that unveiled oligarchy and major creditors. Centuries later, this work by the PAH seeks to revive that old and noble undertaking, tying it to the eradication of large financial, urban and real estate privileges, and to the guarantee of the right to decent housing for all. Because with mortgaged lives, there is neither freedom nor democracy worthy of that name. As the women and men of the PAH remember every day, “Yes we can!”

Gerard Pisarello

Professor of Constitutional Law at the UAB

## Yes we can!

Barcelona, the city that three years ago saw the birth of the movement of those affected by mortgage, is from where Ada and Adrià asked me to write a text as a prologue for this book.

It is April of 2012. More than a hundred activists from different parts of the territory have gathered in the capital of Barcelona to coordinate the campaign of collecting signatures for the Popular Legislative Initiative (ILP). A thread of optimism runs through the assembly. We feel the PAH growing stronger and stronger. From nothing, we are building a movement that has not yet reached its peak and has already become the focus of resistance to the injustice and violence of the banks and the crisis of the system. It's a cautious optimism. We are aware of the economic and political context in which we operate. Among other issues, we are concerned about the readiness that the Spanish government has taken in being prepared to amend the Criminal Code; to punish the peaceful resistance we practice in order to stop evictions and lobby for homeowners' rights, mainly by occupying banks, with the aim of achieving reposessions and social rent for families.

Nevertheless, the support for the movement is consolidating and growing with new (PAH) nodes that continue appearing in cities and municipalities. We even joke about going to prison due to the "reform" that the Ministry of the Interior intends to adopt. At least behind bars, it's more difficult to evict you.

At moments, our optimism turns into euphoria. As I write these lines there exists more than sixty PAH nodes distributed throughout Spain. But beyond the numbers, the care, empathy and participation by people give us the most strength. We verify it every day and in each of our actions.

Upon looking back and examining the journey we have shared, we cannot help but feel proud of our most veteran members, those who have known us for more than two years. Our trajectory has gone from less to more, taking into account that when we started, we were truly taking a trip through the desert. The reason for this is the difficulty that we victims have in speaking publically about the reality we are experiencing as a personal failure, in a society that rewards people for their successes. It is the problem that we victims of the crisis face, when we hit rock bottom and realize that it is not possible to take care of the debts; to overcome the shame, the stigma and fear associated with the process, and to dare to talk about the situation we are facing, even in the immediate environment.

One of the most important achievements of the PAH was to visualize an individual problem, contained within an intimate and private space, and make it a social issue.

The PAH has given us self-esteem, security, and a collective identity that allows us to face the banks and deal with them as equals. The PAH has also been fundamental in the hour of presenting an alternate story of the crisis in response to structural reasons of the current model. It has helped those affected to stop feeling guilty for the situation they find themselves in, thanks to having transformed the feeling of powerlessness and isolation into one of strengthening and collective organization. We are not responsible for the crisis, or for having lost our jobs.

Take for example my own personal story. It took time for me to come to the conclusion that I wasn't at fault for having stayed unemployed and to arrive at this feeling of indignation and rebellion. I led a normal life with a small, well paid, self-sustaining business within the textile sector. Globalization destroyed an activity that had been prominent throughout the Mediterranean region. When banks stopped financing the sector, it was the last straw. I spent three years unable to meet my mortgage payments and was able to stop the auction of my house only after four



days of hunger strike.

The PAH gave me the tools and strength to continue. I can never forget my first telephone conversation with Ada, in which she told me about the operation of the “experiment” that, under the name of *Plataforma de Afectados por la Hipoteca*, had been launched in Catalonia with good results. We quickly understood the concepts that these colleagues worked with. Months earlier we tried to do something similar that didn’t catch on. Thus, we seized the initiative, incorporating the techniques, criteria, work methods and the guidelines used in Barcelona to address the problem.

Looking back, I become excited. It wasn’t easy, nothing has been. Even pronouncing *dación en pago* without tripping up my tongue was a challenge. These days, it’s difficult to find someone in Spain who doesn’t know what it means, and it has turned into a permanent demand in the political and social agenda. I also remember the initial silence in the media, when nobody paid attention to us.

This passionately written prologue speaks of a reality and conflict whose ending is not yet written. At the time I trace out these lines, we find ourselves in a context of growing social unrest in the streets and immersed in the campaign to collect signatures. A campaign that allows us once again to share the warmth of the people and solidarity of the citizens with our demands. As Joaquín, Murcian priest and activist of the PAH, often prays, “The bank doesn’t have a heart; the citizens do.”

The recession we are immersed in and the policy of cuts applied by the government to get out of it—policies that deepen our wounds and slow down economic recovery—drive us into a situation of social deterioration without precedent. The recipe for austerity imposed on us by the market dictatorship makes the PAH a useful and powerful tool for fighting. This becomes a cause for hope for the hundreds of thousands of families condemned to a life of social exclusion and precarity.

But difficult times are upon us. The destruction of jobs does not stop and with it increases the number of families forced to choose between eating and paying the mortgage. Given this scenario, despite the tireless work done to date, we must redouble our efforts to reach the cities and towns where we are not yet. And, in turn, continue to drive the plurality that holds together the movement in terms of backgrounds,

identities, beliefs and cultures, as we have done so far. It is a transversality that enriches and empowers us. Undoubtedly, this is one of the factors that explains the roots of the movement and an element that has allowed us to grow while dodging the difficulties we have encountered along the way.

Despite being relatively young, the PAH has already earned a place in the history of social movements in Southern Europe. We form a bridge between other movements, like the neighborhood movement, the trade union and the 15-M movement, among others. In fact, we are a part of the origin of the *indignados* movement, which amplified our struggle, served to speak for our proposals and delivered a great amount of activists to us.

We went from initial silence within the media to being a news source and object of endless analysis, articles and studies.

As I finish this preface, I read in the newspapers that the government will inject billions of Euros to clean up Bankia accounts. A system that rescues financial institutions that caused the crisis and abandons millions of citizens has numbered days.

It has been one year since the emergence of the 15-M movement, the streets and squares of neighborhoods, towns and cities are once again filling up. I am certain that we will live through historic events (we are already living through them) and will bear witness to powerful social struggles and shifts in consciousness. I am also certain that the PAH will be a key driving force in these changes. I am convinced we will not only witness an era of change, but something deeper. We are on the threshold of a change of an era.

**Yes we can!**

José Coy, Founder of the *Plataforma de Afectados por la Hipoteca*, of Murcia and victim of the mortgage crisis.

# Introduction

Although a vast majority of people who signed a mortgage during the real estate bubble didn't know it, in Spain one cannot simply hand over ownership of a home to get out of mortgage debt. Since 2007, when the crisis began, more than 350,000 foreclosures have left hundreds of thousands of families on the street and in debt for life.

But behind the numbers are people, experiences and ideas that were stopped in their tracks: dreams that have turned into the worst kinds of nightmares. These are *mortgaged lives*: voices and testimonies that give face to the cold numbers and statistics that speak of foreclosures and evictions but fail to speak of the fear of losing everything and being left with nothing, a fear that each family feels when going through this bitter experience.

They tell us nothing of the anguish experienced by people like Jaime, a single father with four children and one grandson, who is burdened by his imminent eviction at the hands of CatalunyaCaixa. They tell us nothing of the uncertainty that Matías feels, when he took out a mortgage to move ahead his small business that eventually went bankrupt during the crisis. Although he will lose his apartment where he has lived his whole life, Caja Madrid will continue to hound him for 200,000 euros. They will not tell us how angry and powerless Lluís felt when going to social services for help and how they threatened to take away custody of his son if he could not provide a home for him after being evicted. The statistics say nothing about the anxiety that Blanca suffered each time

the director at a Caixa Penedés branch told her that they would take everything, that she would be left with nothing, that she could never return to work, be on a payroll or retire. Her voice still breaks when recalling it: “At first I didn’t speak, I couldn’t, I only cried. I ended up going to the bank between midnight and five in the morning to withdraw my payroll. I thought they would take everything from me overnight! I couldn’t sleep, thinking they would take the house away from me, without warning.”

Data does not speak of the harassment Josep was under when the bank tried to locate him and called him at all hours, at home, at work, even through family members, to pressure him and demand that he pay. Nor does it speak of Isabel, with her house auctioned off, waiting to be notified of her eviction date, and worried about her mother who was listed as a guarantor of the mortgage and who, at 75 years of age, may lose her home as well. Nor do they tell us of the feeling of guilt that paralyzed Santiago, who fell into alcoholism when foreclosure took away his house, nor of the worry of his sister who endorsed the mortgage, expecting that any moment the bank might take away her salary to cover Santiago’s mounting debt.

Jamie, Matías, Lluís, Blanca, Josep, Isabel, and Santiago are only some of the faces that hide behind the 212 mortgage foreclosures and the 159 evictions produced each day throughout Spain.

How did we get here? What is the dimension of the problem? Could it have been avoided? To what extent are the people affected by the situation responsible for it? What are the consequences of the foreclosure process? Are politicians responsible? What role do the financial institutions play? These are some of the questions that we pose and respond to in the first part of this book which form the thesis that we can already put forward: *the inhabitants of this country have been victims of a huge scam.*

But more than the common experience of having suffered through a judicial process that denies them a second chance, all of these people share another feature. Far from giving up and complying with the consequences of a mortgage legislature that condemns them for life, they all decided to fight, not only for survival, but also to maintain their dignity. Thus, the transformation of an individual problem into a collective struggle, and the process of organization of those affected and the soli-

arity to win the right to housing are the backbone of the second part of this book. This based on our experience in the *Plataforma de Afectados por la Hipoteca* (PAH).

Finally, in the third part we review the main legal issues and gather some tips and guidelines to act in the different phases of a foreclosure process. We hope that this part is useful not only for those directly affected, but also for local platforms and other collectives who want to give support to victims of real estate fraud.

The specific cases of people affected, which are referenced throughout the book, are all real. However, apart from the names we avoided including personal data because we consider it unnecessary. While we want to explain the importance of the lives that are at play within the mortgage crisis, we do not want to abuse their personal stories. This is what the media usually looks for, what they call *human interest stories*, and almost never give space for the investigation of the structural causes, nor of the collective struggle over the last three years that has made it possible to begin to listen to much of these individual complaints. With this book we want to make our humble contribution to rebalance this partial treatment and often sensationalized reality.

There is a long list of people whose efforts and dedication have made possible the story that this book partially contains. We will not list the names because we would surely leave more than one person unmentioned. But we could not have finished this introduction without showing our immense appreciation for all of those people affected and in solidarity with them who, instead of giving up, collectively organize themselves to confront Goliath. To all of them; to those who advise and accompany when the time comes for reclaiming one's rights in the face of financial and administrative institutions; to those who wake up at six in the morning to stop an eviction, to those who embrace a friend who has had a bad day; to those who have taken the time from their own heavy load to help others; to all of you we want to take this occasion to say that it is an honor and a pleasure to share dreams, actions, and wishes with you. Despite what we are led to believe, we are demonstrating that, if we come together, things can be different.

STOP

DESA HUCIOS





ESTE DESAHUCIO  
LO VAMOS A  
PARAR!!



HOW DID WE GET HERE:  
THE DNA OF THE HOUSING BUBBLE



## The right to housing: a right systematically violated

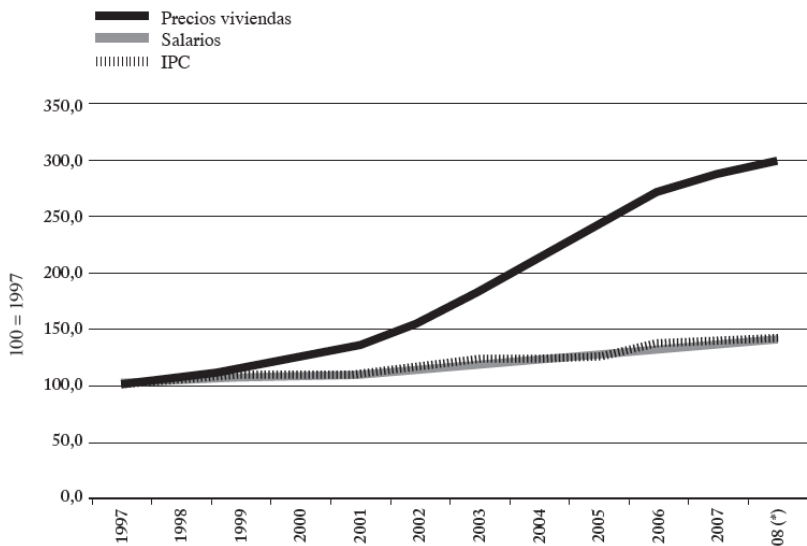
Article 47 of the Spanish Constitution states that, as Spanish citizens, we have the right to both decent and adequate housing. Even more, that the public authorities must ensure the necessary conditions and establish the relevant standards in order to implement this law, regulating that land be used in accordance with the interests of the general public to prevent speculation, and that the community participates in the benefits generated by urban activities of public institutions.

In 2006, Miloon Kothari, the United Nations Special Rapporteur on the Right for Adequate Housing, came to Spain on an official mission in order to evaluate the housing situation in our country. Led by the *Observatorio de Derechos Humanos DESC*, he had the opportunity to meet various members of collectives and social movements in Barcelona, Madrid and Seville. He also interviewed public institutions and various public offices, among them the Ministry of Housing. This Ministry was launched two years prior with the mandate to guarantee everybody the right to housing. Months after the visit, the Rapporteur issued a devastating report which concluded that the right to housing in Spain had been systematically violated, and that the public administrations were totally complicit in this infringement. The report, which had a great impact in the media, denounced the commodification process which housing (and, by extension cities) had been subjected to. At the same time, it urged the State to implement a series of measures in order to deal with the situation before it was too late.

THE REAL-ESTATE PARTY

In a bid towards fast and easy growth, Spain devoted itself to the real estate market over many years, constructing more homes than in Germany, Italy, and France combined. But this overproduction did not translate into greater accessibility. In contrast to the neoliberal dogma, prices continued to rise, making the cost of living in Spain one of the most expensive in the European Union.

**Price of housing, wages and consumer prices. Annual averages. 100 = 1997. From 1997-2007.**



(\*) Forecast. Source: National Statistics Institute (INE) and Ministry of Housing.

Among others, two key elements explain this paradox: on the one hand, low interest rates and deregulation of credit allowed banks to loan as much money and to as many people who wanted it, which they did for a long time; on the other hand, there was the possibility of leaving millions of homes empty for purposes of speculation and without any kind of penalty. Based on this model, the State facilitated the confusion between the right to housing and the guarantee of access to easy credit,



which drove the impulse towards private property beyond reasonable limits and put a better part of the population deep in debt.

For years, people listened to only one message repeated by real estate agencies, promoters, contractors, financial institutions as well as the media: that housing was a secure investment and that housing prices would never go down. These messages were institutionalized by the voices of public administrations. The Ministry of Housing stated that, year after year, now was the time to buy, while the Ministry of Finance cultivated the necessary conditions accompanying these messages by putting forward policies that encouraged people to indebt themselves: a fiscal policy that provided tax reductions on home purchase, a land policy that encouraged speculation, deregulation of the rental market that overruled any real alternative to home ownership and made public housing insignificant. Despite the constitutional mandate, Spain never developed a policy directly aimed at guaranteeing the right to housing. In fact, it focused instead on putting forward an economic policy in which the commodification of housing became a generous source of income for certain private as well as government sectors.

#### THE DRAMA IN NUMBERS

But things can always get worse. If during the real estate bubble, Spain was one of the countries within the European Union where high prices made it difficult to access housing, the bursting of the housing bubble and onset of the crisis added to this dilemma of access through the loss of thousands of homes by people who, according to statistics, had already solved the first problem. With an unemployment level of 22%, more than five million people without work and 1.4 million homes where every family member is unemployed, it is easy to have a sense of the magnitude of the mortgage tragedy.

According to the data provided by the judiciary, between 2007 and the third quarter in 2011, 349,438 foreclosures were initiated throughout Spain. According to data from 2011, 212 processes are initiated each day, that is, 6,360 per month.

Although not all of the foreclosure procedures apply to primary residences, in most cases they do. One also has to take into account that each foreclosure procedure affects not just the individual, but also the

entire family. Furthermore, a single foreclosure usually involves more than one home, as financial institutions (aware of the risks involved in granting subprime mortgages) demanded guarantors, often the homes of close family members, particularly parents. What most of the people signing these mortgages were not aware of was that guarantors must respond to foreclosure with all their present and future assets in exactly the same way as required by the mortgage holders. For this reason, one foreclosure process can result in two or three households losing their homes. Under these circumstances, we start to talk about a problem that, directly or indirectly, affects more than two million people, a number that could double in the coming years, with no forecast predicting the end of the recession.

With this level of involvement, it's not so strange that the PAH emerged in February of 2009. The first valuable contribution made by the PAH was to visualize the number of foreclosures taking place, to put on the table the legal anomaly present within the Spanish foreclosure procedure that often has devastating consequences. In Spain, handing the home back to the bank is not considered enough to pay off the debt. The loan rests on the person and not the mortgaged property, which acts only as a guarantee and that, in the case of default, is considered insufficient to cancel the debt. In a situation of non-payment, the home goes up for auction and if the auction is unsuccessful, which happens in 90% of the cases during these times of crisis, the financial institution can revalue the home at 60% of its original price (until recently it was 50%). After 60% of the initial value of the property is offset from the existing debt and the (normally steep) overdue interest charges and legal costs are added to it, the by now ex-owner of the property becomes liable for whatever outstanding amount remains. Additionally, this is a debt that continues generating interest, making it impossible to overcome.

The result of this anachronistic legislation is a contemporary version of slavery; those who committed the mistake of signing a mortgage are financially condemned for life. It is also not just the bank that may exercise its right to claim the remaining debt, either by appraising the value of possessions by the debtor or seizing a portion of his income. In addition, the debtor becomes a delinquent in publicly accessible files, such as files on nonfulfillment of monetary obligations (Asnef or Badexcug)

and the Record of Unpaid Acceptances (RAI). Thus, an eviction entails financial condemnation, which results in social exclusion. An individual may be repossessed for life (payrolls, bank accounts, inheritances, etc.) and have serious difficulties in leading a dignified life, as appearing on a list of defaulters could become an obstacle for finding work, renting a home, obtaining a telephone contract or even receiving public assistance. Just for wanting to access housing, a primary and necessary good recognized as a fundamental right, one becomes an outlaw with no solution in sight. Of course, this serious violation of the right to housing implies the violation of other fundamental and interdependent rights, such as the right to health. The anxiety felt before an impending eviction and the financial death of families causes severe psychological disorders, which on occasion result in, among others, violent episodes, alcoholism, child neglect, family tensions, increase in domestic violence and suicide attempts.



## From a society of workers to a society of property owners

In 2007, 87% of the Spanish population became homeowners while the European average was 60%.

To explain this anomaly compared to neighboring countries, some have not hesitated to maintain that there is a culture of ownership in our country that does not occur elsewhere. This thesis explains the eagerness of the buyer within Spanish society. One spoke about proprietary culture like it was some lucky genetic code written into our DNA, which distinguished us from other mere mortals and determined our behavior. A form of expression known as the *Spanish way of life*.

Regardless, the propensity for people to purchase a home rather than rent one was not always like this. In 1950, 50% of the population lived in rental units with the figure increasing to 90% in larger cities, such as Madrid or Barcelona. In the span of fifty years, however, these figures reversed. Thus, in 1981 the relation between property owners and renters was 7 to 3, which reached its maximum in 2007 with a ratio of 9 to 1. How can one explain such a radical transformation?

In the last decades of the Franco dictatorship, economic and housing policy experienced a twist that conditioned this evolution. Policies that continued into the current Democratic stage which, as economist José Manuel Naredo demonstrated, was “a continuation that would allow not just a change in the culture of renting in favor of ownership but also transform Spain into a European leader within this field, making the real estate business a national industry”.

## OWNERSHIP, A MECHANISM FOR SOCIAL CONTROL

In 1957, José Luis Arrese, the first Minister of Housing in Spanish history, in a speech to the Parliament where he presented a series of proposals to address the problem of the proliferation of slums emerging from new waves of migration from the countryside to cities, uttered a phrase which over the years has since become famous: “We want a country of property owners not a country of workers”. This sentence marked a turning point and constituted a guiding principle for a new housing policy during the late Francoism years. The *home ownership project* from the dictatorship served a dual purpose. On one hand, it avoided potential sources of conflict between the State, owners of social housing and tenants, workers and other sectors of the population. Conflicts that ran the risk of becoming entrenched and posed a real challenge to the regime. On the other hand, property ownership could act as a mechanism for social control, converting insubordinate spirits into more disciplined, moral individuals.

*“Man, when he doesn’t have a home, takes over the street, pursued by his temper, becomes subversive, bitter, violent....”* José Luis Arrese

This line of action was not, however, a unique commitment made by the Franco regime, nor made only within our country’s borders. Turning a society of workers into a society of property owners also became an objective for Margaret Thatcher within a turbulent, political England in order to diffuse the revolutionary tendencies of a disaffected working class. This was a brilliant strategy to align the interests of a discontented working class with the conservative elite. Whoever owned property also had something to lose, concrete interests to defend and little time left for conspiring.

At the end of the twentieth century, Spain’s incorporation into the global economy facilitated public access to credit. Widespread indebtedness was a new form of social governance. With 40-year mortgages and monthly payments, the public, in order to fulfill his or her mortgage obligations, had no other option but to accept the impositions placed on them by the labor market. In many situations, members of the public were forced to work under precarious conditions and in low-paid jobs.

## THE COMMODIFICATION OF HOUSING

On the other hand, during the developmental stage of the 1960s, the primacy of housing, understood as a primary and necessary good required to fulfill a social function, took a back seat to a new understanding of its purpose. More than an asset, housing became increasingly seen as an investment. More than an end in itself, it became a means for generating jobs and economic growth.

If during late Francoism the construction of public housing was used as a counter-cyclical Keynesian means for fighting unemployment and stimulating domestic demand at a time of economic depression, during the transition towards democracy this tendency was even further enhanced as the residential construction sector emerged as the cornerstone of economic growth. During the height of the bubble, the real estate sector accounted for 18% of the GDP (30% if we take into account all the indirect economic activities that proliferated under construction) and gave jobs to 13 % of the population, much more than 6.7% in Germany or 8 % in the United Kingdom. In this way, the residential construction sector turned into the main resource of the Spanish economy, an engine for creating precarious and temporary work that conditioned the development of a voracious economic model, short-term as well as devastating towards the land. The construction industry, in the same way as a cancerous metastasis, reproduced itself throughout the entire geographical area, sweeping away and replacing other types of industrial activity.

*“If one thing was bound and firmly tied to the dictatorship, it was the housing policy, the inheritance of an urban model and its practice of huge short term profit”.* J. M. Naredo

But maintaining this model was no easy task. The State had to constantly attend to the private sector and facilitate the necessary conditions for the production machinery to never stop running. It is only within this logic that it is possible to explain the *Land Act* approved by an absolute majority by the Popular Party in 1998, baptized as the *Law of everything developable*. This was a law that liberalized sensitive issues such as soil classification and decentralized, without establishing any type of control, competencies in urban planning matters, favoring specula-

tion and corruption. A law that permitted an accelerated rate of growth based on the real estate sector to unexpected limits. The then Minister of Finance, Rodrigo Rato, stated, “The truth is that we are currently set on a long period of growth with few uncertainties. This is indisputable. The most important thing is that this is a sustainable growth model”. Between 1998 and 2007, the housing stock grew to 6,6 million.

At the same time, if one wanted the real estate business to survive under this model, it was essential to sell all the homes constructed annually. Therefore, democratic governments in turn adopted the necessary measures for feeding a demand capable of absorbing the available supply of both land and existing homes. Policies implemented by the State shaped the propensity for citizens to agree to buy a home by taking on massive debts, at the expense of renting or other forms of ownership.

In this context, a new global framework and new twist in language, economic and domestic policy reforms reconfigured the public imagination, reducing it to the minimum horizon of possibilities when it came to housing, setting the stage for a culture of ownership within our country.



## The new global architecture and its local effects

In the time interval marked by the end of the dictatorship and the beginning of democracy, there occurred a series of events in the international sphere that restructured the conditions of access and production of the real estate market. This new global architecture redesigned the economy and policy within each country. In the case of Spain, it reinforced the internal housing policy that had begun under Franco.

On one hand, the collapse of the communist bloc radically transformed the political landscape. Since the late 1960s, we had witnessed a gradual withdrawal of the State as a provider of basic goods and services for the benefit of private enterprise. This progressive withdrawal of public action accelerated during the 1980s and 1990s, in an international context marked by the fall of the Berlin Wall and the hegemony of neoliberal dogma as a guiding principle of policy. And this new paradigm recast the central role in the economy that until then had been the State's, and did so by reducing its presence to a minimum and giving the State but a few distinct functions. This process resulted in a withdrawal of investment from the State, in a mutilation of the existing tools and mechanisms of public intervention and the outsourcing of its functions. Thus, the market displaced the State as a producer of goods and basic services, and the Administration was relegated to the background. From then on, the State began to act as a line of transmission for the interests of private enterprise.

On the other hand, the financial innovations and technological advances that took place during the last quarter of the 20th century made possible the integration of national markets into a single global economy. The gradual insertion of Spain within the circuit of capital in the global economy provoked the transition to an economy increasingly *financialised* and entrenched in the logic and language of the global capital markets. Spain's entrance into the European Union brought business opportunity to international capital eager to find new markets. Europe meant a seal of guarantee, and this "security" made Spain a magnet for foreign investment. Later, the introduction of the Euro resulted in an avalanche of credit that began to flow from Frankfurt to Madrid and reached homes across the country in the form of mortgages.

But if it is true that the arrival of the Euro flooded the credit economy, lowered the cost of borrowing to levels never seen before, and facilitated borrowing by individuals and companies, it is also true that excess liquidity and low interest rates were a common denominator of other eurozone economies, that did not have the same behavior. Thus, access to cheap credit was limited to providing the conditions for the possibility of over-indebtedness. Call it a necessary condition, but not a sufficient one, to explain the peculiarity of the Spanish case.

# The peculiarity of the Spanish case: the formation of the housing bubble

## **Myths and falsehoods: building the popular imagination**

For almost a decade, the Spanish population was subjected to, by land, sea and air, an avalanche of messages that reinforced one idea: if you were not a property owner, you were nobody. In every place and at all times one heard the same song over and over again: that the housing bubble didn't exist, that the prices of houses would never go down, that the purchase of a house was the best option for retirement, that for the price of renting you could be a property owner and that, when comparing prices, it was better to buy. More than opinions, they were indisputable sentences that were dropped into any type of situation or conversation. Phrases that moved from mouth to mouth and managed to integrate themselves in the common sentiment of people.

But where did these legends come from? Who spread these myths?

A simple search in the archive of any newspaper would be enough for us to realize that these legends came out of the mouths of supposed experts, professional consultants, representatives of the real estate sector, politicians of every color, Ministries of Finance, Development, Housing, Industry and Employment, governors of the Bank of Spain and presidents of banks and savings banks. All of those, from the first to the last, figures who defended specific interests and therefore held very subjective points of view.

Messages that were repeated in the mouths of pundits who frequented television satellite dishes and monopolized radio space. Messages that were amplified thanks to the media who entered into the kitchens of every home.

#### FROM THE DENIAL OF THE BUBBLE TO SOFT LANDING

Many will remember how Enrique Lacalle, the former deputy of the Popular Party and president of the most important real estate fair in Spain, or José Manuel Galindo, president of the Promoters and Builders Association of Spain, preached to the point of exhaustion that the housing prices would never go down. Others will recall Enric Reina, president of the Association of Promoters of Catalonia, deny, almost to the point of absurdity, the existence of the housing bubble (even when it had already burst) and to tirelessly defend that to buy a house was a secure investment and that to rent one was throwing away money. These personalities frequently participated in debates and televised interviews under the label of “real-estate experts”. In this way, they presented themselves to the public opinion as real estate experts and not commercial agents that were trying to position their products. More than interviews, their appearances were to a greater extent like publicity cradles and spaces for free advertising.

Definitely, the role of the mainstream media during the years of the housing bubble, of being amplifiers of specific messages, was reprehensible. The critical voices of those economists who warned of the unsustainability of the model were marginalized, drowned out and forgotten. Their presence in the media was anecdotal and thus deprived the population of hearing anything apart from the dominant discourse.

If these kinds of pronouncements seem ethically questionable when they come from representatives of the private sector, they are downright outrageous when they come from elected politicians. For reasons of space, we will focus on the messages that were released from the Ministry of Housing. A ministry that was established during Zapatero’s first term with the mandate to guarantee the right to housing as was outlined in Article 47 of the Spanish Constitution. It soon became evident, however, that the Ministry was only acting as a transmitter of interests within the business sector.

An interview illustrates the mindset of the Ministry, conducted by the BBC with Carme Chacón when she was still Minister of Housing. At one point in the interview, the reporters questioned the excessive weight of the real estate sector in the Spanish economy and hinted at the possibility of a brewing housing bubble. Puzzled, Chacón flatly denied this with a shake of her head as the interview came to a close. Although this interview was not published in any media sources throughout the country, the video clip became a viral phenomenon on the net. And so, during the golden age of the Spanish economy, talking about the housing bubble became taboo.

Another minister who will also not pass into the annals of history for her work within the Ministry nor for her defending of the right to housing was Beatriz Corredor. Property Registrar before the Socialist government's first appointed Minister of Housing and afterwards Secretary of Housing (once the Ministry was annihilated), during the entire legislature she never stopped repeating the same sentence: "Now is the right time to buy". First by claiming that interest rates were at historic lows and therefore it was a unique occasion to buy. Then, when the real estate sector started to collapse, by assuring that the housing prices had already hit bottom and therefore was also good time to buy. And things don't stop there. In February 2009, she vehemently denied that Spanish families were having problems paying their mortgage. Ironically, the PAH was formed in Barcelona that same month. On the other hand, Beatriz Corredor was one of the more fervent advocates of *soft landing* during the early stages of the crisis: a euphemism for not having to recognize that the bubble had burst and that, presumably, property prices would eventually fall. But time has shown otherwise and the harsh reality is just starting to catch on.

*"This is a good time for anybody who wants to buy a house to live in or for a family that wants to change homes."* Beatriz Corredor, September 2008

Regardless of whoever was heading the Housing portfolio, the reality was that this Ministry was more preoccupied with serving the interests of the private real estate sector than guaranteeing its citizens the right to decent housing. They were more interested in sales within the housing

sector than in evictions of families. They were more interested in inaugurating real estate fairs and exhibitions than trying to provide solutions to its citizens for paying rent or mortgage installments. It was so blatant who this Ministry was serving that many called it *the mystery of housing*. Thus, despite the emergency situation at the onset of the crisis in which hundreds of thousands of families found themselves in extreme need, it is no wonder that, with the bursting of the bubble and subsequent collapse of hundreds of companies within the real estate sector, the government decided to remove the Ministry. If the majority of companies within the housing sector had disappeared, their reason for existing had as well. With property assets now in the hands of financial institutions, the Ministry of Finance became responsible, from that time on, of ensuring the real estate interests of banks.

Through all this, the few voices who dared to contradict this hegemonic thesis, which had been erected as a universal truth, were either neglected, ignored or even branded as being unpatriotic. Not even the reports coming from the Organization for Economic Co-operation and Development (OECD) and the International Monetary Fund (IMF), which in 2004 stated that the housing market was being overvalued at between 30 and 40%, nor the numerous articles being published in *The Economist* warning of the Spanish housing bubble risk, were enough to dampen the collective euphoria that we had installed in ourselves. Society seemed alienated, abducted and trapped in a kind of loop. A mortgage had been transformed into a status symbol, a euphemism for professional success which signified the passage into adulthood. Rent, however, was a symptom of failure and inferiority. The message had gotten through: *whoever didn't buy a house was stupid, and whoever was still renting, a poor wretch*.

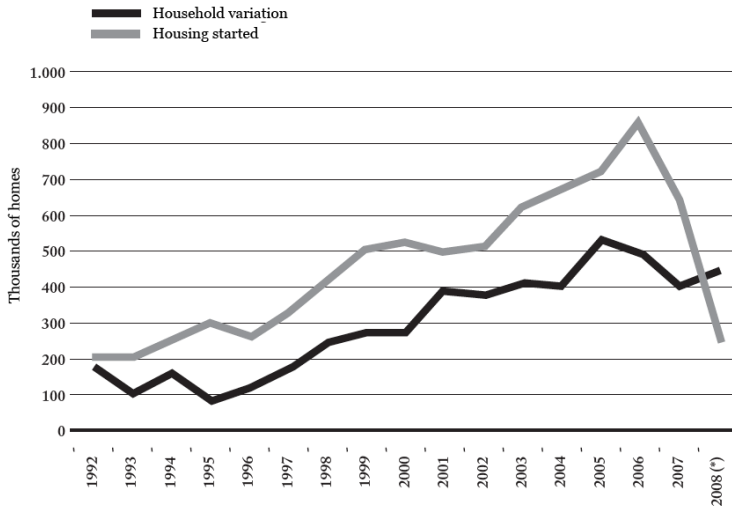
#### THE FORMATION OF PRICES

In explaining the real estate bubble, politicians and experts resorted to all sorts of myths and falsehoods. Half-truths that explained only part of the price formation process while other determining factors were ignored.

Often the exorbitant price growth was attributed to the inexorable law of the market. According to the basic law of economics, when the demand for a good is higher than its availability, the price rises.

Undoubtedly, people’s tendency to acquire housing within a regime of property ownership helped feed the demand within the real estate sector. The continuing rise in housing prices generated expectations among citizens for the revaluation of property values. In a society educated in the culture of ownership, the perception of continuously rising housing prices and that tomorrow’s homes would be more expensive encouraged people to buy. Along the same line, one of the arguments that made the most fortune attributed the rising prices to the pressure of a growing population caused by the surge of new arrivals and demand created by the emergence of new family units, such as single parent households.

Housing started and net change in the number of households.  
1992-1996. Annual totals.



(\*) Estimated using data from January to March for housing and first quarter for homes.  
Source: Association of Surveyors (Ministry of Housing) and INE.

Nonetheless, statistics indicate that during the housing bubble, more houses were being constructed than were necessary in order to accommodate the increase in population. The growth in supply was systematically higher than what was required in order to satisfy the demand for

new homes. Between 1997 to 2007, 390,000 new homes were built each year. In that same period 6,6 million houses were built, which means that new housing projects in this period exceeded almost 60% of the net creation of new homes.

In a country with the highest ratio of housing per capita within the entire European Union and with more than 20% of empty homes, the rising housing costs could not simply be explained by the scarcity of goods. In fact, if there is anything in abundance in our country, it is homes.

For years we had to also hear that it was the elevated land prices that were causing the increased housing costs. But it was actually the reverse. It was the anticipated housing prices that determined the land costs. The price of land affects the distribution of surplus value between the land vendor and the final housing developer.

To be certain, however, the result is that it becomes impossible to understand the continuous rise in housing prices that took place over a decade, from 1997 to 2007, with an increase of almost 200% without taking into account the phenomenon of speculation. In this regard, the 2001 *Dot.com* crash, marked a before and after in property inflation. The stock market crash intensified the flow of capital into real estate. In this way, land and housing became a haven and storage for capital fleeing from technology shares. To give us an idea of the scale and scope of the phenomenon: according to a study by Aguirre & Newman, during the peak years of the boom, speculative demand accounted for 40% of the total demand and revaluation of housing was 800%. Despite this, during the housing bubble, anyone who had pointed out speculation as being a determining factor in escalating housing prices would have been called anti-systemic.

### FEATURES OF THE REAL ESTATE MARKET:

#### THE MYTH OF THE PERFECT MARKET

We had to hear that one could not regulate the real estate market because to intervene in the market would mean to distort it and create inefficiencies. By explaining the behaviors of supply and demand, politicians and experts assumed that the housing market was a perfectly competitive one. But unlike what some would like us to believe, housing



is neither an asset nor does the real estate market function, as it should. Therefore laws governing a *perfect competitive model* do not apply.

Using the jargon of economists, we could say that housing is a good with an unyielding demand. This means that the demand for this good, by the fact that it is also a necessity, is less sensitive to the fluctuating prices and therefore stays relatively stable. The opposite would be if these goods were considered expendable products. These types of goods in which the demand is more elastic would be more sensitive to price fluctuations. In this regard, if the price suddenly rose to a disproportionate amount, then people would stop buying immediately.

On the other hand, markets of perfect competition presuppose the existence of a limited number of buyers and sellers, in such a way that none of them, acting independently, can influence the set price. The reality of the real estate market, however, turns out to be something else. It operates more like an imperfect market with few producers and many consumers, something which economists call an *oligopoly*. Within this kind of market, the producers occupy a strong position, which they then use to fix prices not determined by the mutual interaction of market forces.

Another of the assumptions necessary for the market to function correctly assumes that all individuals interacting within the system have the same information, that the market is transparent and all decision making is rational. However, the real estate market has been characterized by its opacity and non-synchronous information between different economic agents operating within it. This means that it generates negative external factors and that the market does not allocate resources efficiently.

In any case, any first-year economics student knows that the role of the State is to try to correct these mistakes in order to achieve the maximum perfect competition. However the government, rather than correcting these deficiencies, dedicated themselves to feeding myths, such as those who claimed that housing prices would never go down and also to implement policies that only amplified the pathological nature of the market and benefited only specific interests.

A SOCIETY OF SMALL OR BIG PROPERTY OWNERS?

THE OWNERSHIP OF EMPTY HOMES

As already noted, one of the anomalies of the Spanish housing market is the existence of a huge amount of empty homes. Despite the lack of official figures (the INE is expected to make a new census public by late 2012), if we add all the homes left empty for purposes of speculation, new stock left unsold because of the crisis as well as evicted homes resulting from foreclosures, then we find an incredible surplus from different sources of somewhere around 6 million homes.

It is within this context that in September of 2011, in full crisis, the central government approved a measure that streamlined the eviction process for non-payment of rent. A measure that left the most vulnerable people homeless, through no fault of their own, having been unemployed and without income to cover even the most basic needs. One of the arguments used by the Administration, in order to defend a measure of this scale in the middle of a crisis like we were living in, was that this would provide a rapid and guaranteed procedure for property owners, reducing the fear of renting out apartments, which was the reason that they were being left empty. Another one of the myths that were being circulated during those times was that property owners didn't want to rent out their apartments due to the difficulty of evicting tenants who were either not paying their rent or destroying property. It's as if all renters were vandals and potential defaulters. On the contrary, official statistics tell us that, until the onset of the crisis, the default rates for renters were less than 2%, one of the lowest rates in the world.

This streamlining, argued the Administration, would create an increase in the number of apartments available for rent which would translate into a reduction in rental prices and facilitate access to housing. This is nothing new. All measures proposed by regional and state governments to mobilize the stock of empty homes have aimed at motivating property owners and minimizing their risk rather than punishment for the neglect or anti-social use of housing. To this day, all of these measures have proved unsuccessful. Even more, the same logic in the pursuit of reducing prices to create an increase in availability was the basis for the reform of the *Law of Urban Renters*, in 1985, and the *Law of everything developable* by the Popular Party. Since then, and up to the onset of the

crisis, the housing prices as well as rental costs, have continued to rise.

Still, according to polls on the street, this speeding up of evictions received widespread popular support. Why is this?

During the real estate bubble, one of the messages that penetrated the most into the popular imagination was the one which assured that Spanish property holdings were very distributed. While it is true that a majority of people had acquired housing within the regime of property ownership, to say that property holdings were in the hands of many was a falsehood that even the Administration helped perpetuate. Whenever the Administration dealt with the empty homes debate, they always gave the example of the grandmother who didn't want to rent out to anybody for fear of "vandalizing renters" who would destroy everything. Using these examples gave everybody the impression that the owners of these empty apartments could be anyone of us. An uncle, grandmother, parents: normal people and average Joes who had inherited an apartment and didn't know what to do with it. However according to a financial survey of households carried out by the Bank of Spain, less than 20% of the population own real estate assets apart from a primary residence. Given that within the category of active real estate are assets like a parking lot, in reality there is a heavy concentration of property in our country that is in the hands of a few. Therefore, contrary to popular perception, most apartments that are left empty are not owned by grandmothers, uncles or fathers, but by large property owners. Is it not a coincidence that they started streamlining the eviction process now that financial institutions have become the main real estate companies in the country?

Perpetuating the misconception between small and large property owners has been a perverse strategy that has yielded many returns to the Administration. Once society accepted the validity of this premise, the Administration could put forward legislation in favor of large property holders without raising any suspicions, and even sell these measures as being beneficial towards the population.

**The role of the government: *buy, buy, you cursed ones!***

The Spanish transition from Franco to a Democracy, far from marking a breakpoint, gave continuity to the housing policies of the previous era. Gradually, the newly formed democratic government strengthened reforms that transformed renting into an unstable, expensive and even disgraceful option, pushing most of the population into taking on a debt in order to obtain housing.

**THE PRIVATIZATION OF THE BANKS AND THE OUTSOURCING OF ECONOMIC POLICY**

The privatization of the banks not only meant the loss of one of the most important economic policy tools within the hands of the state, such as the creation of money, but also meant the loss of a basic tool for designing a production model on which our economy would be based. Suddenly, the savings of millions of citizens were being managed by private enterprises. With a much higher volume of private deposits than public budgets, the large investments being made within the banking industry were those that were determining the productive fabric of the country. It was the bank, from that moment on, who started to decide which national project to invest in and in which not, which activity to finance and which not. Why strategically bet on a certain sector and why not. Privatization left decisions in the hands of private interests, which until then had been taken up within the public sphere. Accordingly, they told us that the privatization within the financial sector ensured the most efficient use of resources. The market would take care in directing our savings into the most productive activities and everybody would win. But it turned out that boards of directors of banks were more interested in obtaining short-term benefits than ensuring the sustainability of their investments. Thus billions of euros of savings from the accounts of millions of depositors went towards the real estate sector, where the highest yield could be obtained within the shortest time.

If the State wanted to straighten out the economy, it had to make use of fiscal policy to develop a model that would get it back on course. But instead of setting limits, the fiscal policy did nothing but reinforce the tendency towards rewarding speculation.

In this way they were solidifying the foundations for an insufficiently diversified economy. An economy that operated more like a pyramid scheme that needed more and more capital in order to propagate itself. When all resources had finally depleted themselves at home, they went looking for more outside of the country. The Spanish economy became more dependent on international capital and thereby increasingly more exposed to the cyclical swings of the global economy. For years, this model, based on the housing market and cheap labor, seemed to work. The real estate market had been converted into a hen with golden eggs. But everybody knows that it is very risky to put all the eggs into one basket, as all of them would break if the basket were to fall. And the basket did break the moment that Lehman Brothers fell and international capital stopped flowing, a collapsing house of cards that turned the Spanish miracle into a distant mirage.

#### THE DEREGULATION OF THE CREDIT MARKET AND ITS EFFECT ON PRICES

The privatization of the banking sector during the 1980s followed a progressive deregulation of the financial market, which completely did away with any credit control mechanisms that had existed before. This deregulation encouraged a policy based on credit and facilitated debt within families, which went from 55 to 130% of all disposable income from 1997 to 2007. The State defended these reforms saying that a flexible financial market would benefit society and would allow more people to buy a home through mortgage loans. Of every three euros of debt, two are attributed to mortgage debt. Therefore, for years they made us believe that democratizing access to credit was the most efficient way of guaranteeing the right to housing. The reality was, however, that this policy of easy credit contributed in a straightforward manner to the rise in housing prices, multiplying the effort that people had to make in order to access housing. While in 1997 a family needed the equivalent of 3,8 times its average gross annual salary in order to buy a flat, by 2007 this had climbed to 7,6. If we use another measurement, we could say that for the average family the average proportion of its monthly income that had to be destined to pay the mortgage went up in the same period from 37,6% to 51,2%.

Given the capacity that real estate vendors had in fixing housing

prices, this corresponded with the maximum amount that the consumer was willing to pay. The maximum that the consumer was willing to pay for a basic good, of which one cannot do without, was determined by one's debt capacity. Thus, housing prices were set by the capacity for most of the population to indebt themselves and not an exchange between supply and demand. Therefore, the maximum debt capacity translated into higher prices. If, for example, a law passed that limited the length of mortgages to twenty years, then the borrowing capacity of a single family unit would be drastically reduced, therefore influencing the price of housing which would immediately collapse. For this reason, banks and savings banks financed 100% of the sale of houses within their portfolios. If they didn't do this, then people wouldn't be able to buy them and they would be forced to lower their prices.

#### TAX INCENTIVES FOR PURCHASING AND THEIR EFFECTS ON PRICES

In tax matters, in 1978 a tax relief was introduced towards the purchase of a home that, during the years in which the Popular Party was in power, was extended towards second and third homes. This sent out a new message that influenced people to go further into debt. Tax reliefs towards deposits within home savings accounts or reductions in *value added tax* (VAT) towards the sale of property, implemented both by the left and right wing governments, extended tax benefits in favor of home owners and not renters.

But despite enjoying positive public support throughout the country, it was only the large real estate companies that benefited from these tax reliefs, which helped raise prices. We will see how.

Given the capacity for major landowners to set prices within an imperfect real estate market, tax breaks for housing purchases caused the housing prices to rise according to the same amount that had been originally exempted. In this way, it used logic similar to what we have seen before. That is to say, a consumer could claim a tax break for ten units for the purchase of a home that cost ninety units, which the developer would then apply towards the final increased price of one hundred units. The consumer who was ready to pay ninety would also be willing to pay one hundred after the State returned ten to him. The promoter

immediately incorporated and absorbed any state subsidies directed towards the consumer into the final price.

With this type of policy, who won and who lost?

Tax reliefs and other reductions towards the purchase of a home had a neutral effect on the consumer, since the housing price increase was offset by tax subsidies already received from the State. The only one benefiting from this type of policy was the seller, as he could push the housing prices upwards. The State always lost as thousands of euros coming from tax contributions went directly towards the seller, the major landowners.

In a context in which banks and savings banks have become the main estate agents in the country, as soon as it got elected, the Popular Party reinstated property tax relief for the purchase of residential properties and lowered VAT for property sales. This resulted in a covert transfer of revenue to the financial sector. Even international institutions like *The World Bank*, the *IMF* or the *OCDE* publicly denounced the return of the same policies that in the past had precipitated us into the abyss.

#### THE INSECURITY OF RENTING

The *coup de grace* that put an end to the possibility of renting as a viable option to buying came at the hands of the *Law of Urban Renters (LAU)* in 1985. The famous *Boyer Act* completely deregulated the renters market. From that point on, rental prices were no longer protected and tenants limited to five-year contracts. This reform converted renting to an expensive, unstable and temporary option. Why would people risk renting a place that in five years they could be evicted from or asked to pay ten times the rent? What kind of security would this offer to middle-aged people and with retirement just around the corner?

In May 11 2012, the Council of Ministers announced new measures, which further deregulated the renters market. Once again, under the mantra of mobilizing the stock of empty homes and stimulating the rental market, it announced a new reform within the *Law of Urban Renters (LAU)* in order to guarantee the maximum security towards property owners: rental contracts that went from five to three years, more expedient procedures for evicting people because of non-payment and dissociation from rental income statistics provided by

the Spanish Statistical Office, thereby allowing the owner to raise the rent above rising living costs. On top of this, if the landlord wanted to take back the property for either him or other family members, he only had to give two months notice to tenants living there. This reform definitively discouraged the possibility of renting as a viable option for the future or as any real alternative to buying.

If the free market policies implemented by the Administration clearly committed to promoting access and favorable treatment towards owning property, public policy wasn't that far behind.

#### PUBLIC POLICY AND HOUSING:

##### THE ANNIHILATION OF SOCIAL HOUSING

During the last two decades of the dictatorship, public policies on social housing experimented with a change in course into an emerging project based on homeownership, which facilitated the gradual dismantling of allotted social housing, converting old renters into homeowners. A turning point occurred and was consolidated during the transition to democracy, when more than 90% of constructed social housing went up for sale and public rental became a residual option. This took place over the period of a half a century, starting with one scenario during the first stage of the dictatorship when the State constructed public rental housing which was entrenched in the outskirts of major cities, passing into the second scenario in which the State constructed public housing for purchase to the present scenario in which private enterprises substitute the State in the production of housing. As of now, private operators construct housing, including public housing, while the Administration is responsible for supplying land to companies, speeding up certification processes, work permits, endorsing buyers and subsidizing interests on loans to individuals.

Once again, José Manuel Naredo sums it up brilliantly: "There was only one change worth highlighting in the transition to democracy: the abandonment of a public policy towards housing linked to paternalism and Francoist corporatism, substituted for another in which businesses and government administrations dismantled the stock of social housing, selling it at a reduced price to its renters. This reduced the concentration of social housing to the extent that Spain has the lowest percentage



### **The case of Badia del Vallès**

Badia del Vallès is a pathetic example of the terrible consequences of the main drive towards private property and, even more, the access to protected housing. It deals with a municipality within Barcelona created by the dictatorship in the 1960s and consisting of large tenement buildings designated as public housing for the working class. It is known as “bedroom city”. As a result of the large speculative wave, certain financial institutions (basically CatalunyaCaixa) initiated speculation of this public housing, financing illegal purchases. Public housing that by law could not be valued at more than 40,000 euros were turned into mortgages of more than 200,000 euros, signed by notaries who turned a blind eye. When the holders of these mortgages (workers within the construction sector, mostly immigrants having, within some cases, little basic knowledge of Catalán or Castellano) were some of the first to suffer from the crisis and became unemployed, they discovered the massive fraud.

As they didn't pay their mortgages, CatalunyaCaixa started the foreclosure process and widespread evictions for amounts much higher than official prices of their homes. Faced with this scandal, the government, negotiating with CatalunyaCaixa, attempted to cover up this corruption case of such a large scale. Finally CatalunyaCaixa agreed to pay back the mortgage debt “only” if they could also repossess all the homes, and was able to get the Catalan Administration to double by law the value of the apartments, apartments that in a few years would be deregulated. And, evidently, nobody was investigated or convicted of fraud. The bank never loses.

of social housing within the entire European Union.” A stock of public housing that constitutes only 1% of the total constructed and that, within the context of the present crisis, would have allowed thousands of evicted families to rent instead.

### **THE ABSENCE OF ANY ALTERNATIVE AND ITS EFFECT ON PRICES**

Continuing on with the allegory of the perfect market, within the

abstract theoretical model that economists use to represent the ideal market, there is something called *substitute goods*. A good is substituted by another when one of them can be consumed or used in place of another. Examples of this typology could be between margarine and butter. In this way, when the price of margarine goes up, people stop buying it and start to use butter instead. In the case of the real estate market, we can confirm that the bubble could have been avoided if they hadn't strangled the rental market and if a viable alternative was developed. If renting had been a stable option and easy to access, then housing rentals would have been a substitute good, therefore influencing a decrease in housing sale prices. In the same way, a stock of affordable public housing, more than providing a solution to an emergency situation, would have acted as a counterbalance to rampant speculation within the free market.

### **The Administration's hidden agenda: the why of things**

In light of recent developments, there are several questions floating around that we must try to answer. Why did the public authorities encourage us to pursue such a dead end? What kind of benefit would they get out of this?

Surely there is not a single explanation capable of answering our question. What we do find are multifaceted ones, all valid, that help us understand the issues from multiple viewpoints.

### **MAKING VICES VIRTUES**

In the first place, taxes derived from the real estate business became an enormous and significant source of income for public administrators. At the local level, municipalities discovered a formula for amending structural funding deficits that had been dragging on for years. With more and more powers, but with the same resources for meeting the social needs of cities, municipalities fed the speculation monster in order to balance their budgets. For example, in 2004, tax revenue generated from the real estate sector made up 60% of the budget for Valencia and 50% for Madrid, without taking into account the debt issued to finance this sector nor of current transfers.

#### THE POLITICAL COSTS OF PRICKING THE BUBBLE

On the other hand, political powers were aware that to change the model by deflating the housing bubble would imply destroying, at least in the beginning, hundreds of thousands of jobs that had been generated under speculation. Not a single minister of Labor or Finance, president or political party would accept the consequences of stemming the rate of growth during his or her term. On the contrary, they were ready to do whatever was necessary to reproduce and hold onto a model that they knew would eventually sink. The task was to do everything possible to make sure that when the boat capsized, they were not the ones at the helm.

#### THE INFLUENCE BY LOBBYISTS

At the end of November 2012, while EU partners rescued Ireland and international markets denounced the sovereign debt of Spain, the heads of 41 leading companies in the country gathered in a meeting with the now ex-President José Luis Rodríguez Zapatero and encouraged him to further deepen reforms initiated by his government. Those present included Emilio Botín, from Santander; Francisco González, from BBVA; Rodrigo Rato, from Bankia; Florentino Pérez, from Sacyr; and Isidre Fainé, from La Caixa. It hurts even to remember the word *reform* coming from the mouths of such prominent personalities, nothing more than a euphemism to avoid talking about social cuts, loss of rights and precarious labour. This meeting, that was on the front page of every newspaper, exemplifies the influence exerted by financial lobbies and businesses in political decision-making. Some companies spend huge amounts of money to defend their interests in Parliament, who have teams of lawyers at their disposal who pace up and down the halls of Congress, representatives dining with Members of Congress and who have the ability to obstruct any political decision that harms them. Tailoring political decisions to suit concrete interests at the detriment of public ones undermines the very root of democratic foundations.

#### KIDNAPPED DEMOCRACY: POLITICAL PARTIES, GOVERNMENTS AND THE BANKING SECTOR

A power relationship that must be exposed is the one between political

parties and governments with the banking sector.

Within the situation of the actual crisis, different local, regional and state governments rely, more than ever, on the banking sector to finance their spending, payroll payments to officials, transferring allocated grants and subsidies, etc. In a similar manner, political parties, with a still unresolved problem of structural financing, remain strongly indebted to banks and savings banks. Electoral events leave coffers empty and associated costs financed by debt. Even when the State wants to issue treasury bills and bonds, it needs the banking sector to market and distribute these securities. At present, governments are fully subjected to the will of the banking sector. Without this funding, party structures could not sustain themselves and the whole system would collapse. Therefore, if banks hold a monopoly on financing, then political parties and governments respond by being very sensitive towards the interests within the banking sector and very cautious when making decisions that could harm them.

By way of example, in February 2011, when the government passed the *Sustainable Economy Act*, they included a provision, which went unreported by the mainstream press and unnoticed by the general public. This provision eased up the valuation regime, which defined the *Land Act* passed in 2007. Extended from three to six years, until June 2013, the planned extension within the existing *Land Act*, made it possible, under more realistic criteria, to assess value of land. However it became a rule that actually made it possible to assess totally rough land as something developable. This new extension allowed financial institutions to avoid the depreciation of assets within their portfolios and to clean up their balance sheets. According to the *Plataforma por una Vivienda Digna* (Platform for Decent Housing), in major urban centers the difference in value, in accordance with the rules, could reach up to 90%. Dated on December 31, 2011, and with current government not even completed one hundred days in office, this extension passed into decree law.

This decree also authorized the State to provide guarantees to the financial sector worth 100,000 million euros. Undoubtedly, these measures represented a great relief to the sector, and sent a very clear message about the priorities and interests that *La Moncloa* was willing to defend.

Taking these things into account, it is not difficult to understand

the pardon granted to Santander CEO Alfredo Saenz by the Socialist government during that last minute of legislature and prior to general elections, after the Supreme Court had sentenced him to three months in jail as well as giving him a 6,000 euro fine. Santander had forgiven the 12 million euros that the Socialist government owed them. Gestures like this widen the gap between the public and political parties and reinforce discredibility of today's political classes.

#### BEYOND POLITICS: POWER AND PERSONAL INTERESTS

Apart from these structural reasons there are others of a strictly personal nature.

Many times we have had the feeling that some politicians use public office as a springboard for launching their careers. When they leave public life, they need to relocate themselves within the labor market. Therefore, in order to secure a place on the board of directors of some reputable company, one has to cultivate and nurture relations within the business world. This condition, however, often leads to conflicts of interest, and those holding political positions might be tempted to support certain policies that fall outside of public interests. This is what academically is known as *Regulatory capture*. Antoni Comín, professor of Social Science at ESADE Business School, defines it as such: "Specialists within a certain sector capture the public servant responsible for regulating it who will be duly compensated for his or her services when returning to the private sector". According to an article published by the *Público* newspaper on April 17, 2011 under the headline *Ex-politicians gain substantial roles in big corporations*, 10% of board members in companies that trade in the Spanish stock exchange (IBEX) are elected politicians or ex-politicians. This was attributed to the wide network of contacts that those with access to the *res publica* are able to build up. This does not even take into account those holding top management positions in companies nor consultants, CEOs or assistant secretaries, who, if they were to be included, would increase this amount even more.

An example of the revolving door policy between politics and the business world, specifically the financial sector, is that of Luis de Guindos, current Minister of Finance for the Popular Party, former executive of investment bank Lehman Brothers España that went bank-

rupt and former advisor to Banco Mare Nostrum intervened. Or that of Guillermo de la Dehesa, former Secretary of State for the Economy for the Socialist government who today is an adviser to Banco Santander. Or of Rodrigo Rato, the former Minister of Economy during Aznar's second term, who had a basic salary of more than 2 million euros when he was president of Bankia, an entity that received bailout loans from FROB (Fund for Orderly Bank Restructuring) to the sum of 4,435 million euros, before becoming nationalised. Once intercepted, these loans converted into shares and the State became the largest shareholder of a ruinous entity.

Meanwhile, in September 2011, the assets held by parliamentarians of the Spanish courts were made public. Practically all had investments in real estate. In addition, the vast majority of the senators who make up the Upper House, a kind of residence to some politicians who retire after a long career, own more than two houses, although there are some who exceed more than twenty properties, such as apartments, commercial property, plots, parking spaces or farms.

### **Banks and savings banks: a triple responsibility**

If we want to have a complete picture of the situation, we are still missing an important piece of the puzzle in order to understand a mass psychology that drove several generations to put themselves into debt just to access a home. The role of the banks in this puzzle is the example that clearly demonstrates the dynamics of unbridled capitalism, with its unlimited ambition and clearly suicidal tendencies.

This crisis would not have been possible without the negligence of banks. We must, therefore, understand the key components in order to explain the predatory nature of the banking sector that has devoured even its own children and whose behavior still continues because the State has not allowed it to fall.

When Spain joined the European Union and stabilized its currency, interest rates were growing at a progressive rate. With Spain's integration into the European Zone, interest rates reached their historical lows. From 1995 until 2003, interest rates went down from 11 to 3,5%. As the business of financial institutions is based on the lending of money

at a certain rate, if the price of money went down, then financial institutions would need to increase their volume of business in order to maintain the same rate of return. If the banks wanted, therefore, to continue showing millionaire results in their annual returns, then they had to give out increasingly more non-discretionary mortgages. They could do this by extending the repayment terms on loans to thirty, forty, fifty years or more. From 1997 to 2007, the average loan amount went from 50,786 to 149,007 euros and the average mortgage term rose from 19 to 28 years.

With the dogma that the housing prices would never fall now set in stone, financial institutions designed a perverse system of incentives, which rewarded traders who managed to bring to market the greatest number of mortgages. Between 1998 and 2007, the number of formalized mortgages rose annually to 822,000, more than 8 million mortgages in total.

Within an international context of abundant liquidity, financial institutions started to open up new branches in every corner and expand throughout the entire country. They used mortgages as a kind of strategy to attract clients and tap into new markets in zones and regions never entered before. In this way, they entered into a competitive spiral, whereby each bank entity lowered its minimum criteria for granting mortgages, fearful that another entity might easily take its place and corner the market.

Ruinous management of credit portfolios by financial institutions led us to the precipice of disaster. Their (ir)responsibility functions on three levels.

In the first place, they have a direct responsibility towards the families, as financial institutions made a mockery of the few existing credit control mechanisms and rushed them towards a reckless policy of credit.

#### RED CARPET

With all cogs now in place in the financial industry, the machinery went to work to try to sell as many mortgages as possible. All were red carpets when it came to recruiting the star product. Marketing departments inundated the market with every type of mortgage product for every type of profile: the “young mortgage”, the “easy mortgage”, the “free mortgage”, the “open mortgage”, the “tranquil mortgage”, the

“global mortgage”, the “mortgage without fees”, the “wild mortgage”, the “super mortgage”, the “revolutionary mortgage”, are some of the names that the *creatives* came up with to baptize mortgage loans. Banks competed in an endless race to attract customers through increasingly aggressive and deceptive advertising. Viral Internet campaigns, mail-outs, television spots, email spam and street omnipresence thanks to a vast network of bank branches encouraged you to buy. Everywhere with the same stimulus and encouragements: that the monthly fees would always be affordable, the bank would lend a hand should you ever run into any difficulties, if you should ever lose your job you could always sell the home and return the loan, etc. It is not surprising that many people ended up succumbing to temptation.

#### HOW TO CIRCUMVENT CONTROL MECHANISMS:

##### CROSS GUARANTEES AND CO-OWNERS

Bad banking practices proliferated during the height of the housing bubble. Financial institutions abused people’s trust and took advantage of their ignorance prevailing in financial matters by placing them in complex products and involving them in high risk financial transactions.

In this way, banks spread the so-called *cross guarantees*, a prop for disguising Spanish subprime mortgages (high risk mortgages). This operation consisted of grouping together people with few resources to endorse each other. These guarantors acted as collateral and in this way banks formally covered any risk in the event of non-payment. That is to say, that the holder of the loan simultaneously assured the loan of other people who in turn would also guarantee the first holder’s mortgage, so that in the end everybody had endorsed each other. Therefore, people were successful in getting a mortgage loan who, under normal circumstances, would have never been successful in securing one. Guarantors

#### **The cross guarantees scam: the case of the mortgage immigrant centre**

In November 2010, the National Coordinator of Ecuadorians in Spain (CO-NADEE), an association that brings together Ecuadorian immigrants living in Madrid, presented with the support of PAH



Madrid a denouncement of a scam whose aim was getting rich from subprime mortgages, which had cross guarantees. The main accused, Enrique Caño, specialized in offering mortgages to people of Ecuadorian origin and within economically precarious situations, from which he charged a commission for each mortgage that he set up. According to those affected by the scam, Caño demanded that each buyer before signing his or her mortgage had to sign the mortgage, as if they were also co-owners, of another who would then co-sign another's and so on down the line. To avoid any risk control mechanisms set by the Bank of Spain, he demanded that each quickly sign his or her mortgage as well as that of the other client, even though they didn't know each other. Therefore, people with high-risk profiles together formed an acceptable operation, even though each mortgage would never had been granted if they had been considered separately.

But there was even more. According to the argument by prosecution lawyer, Rafael Mayoral, Caño could not have acted alone and these operations were carried out with the full knowledge of the implicated financial institutions: CAM, Caja Madrid (now Bankia) and Caja España, who were fully aware of these mortgages. Therefore, the allegation was also against these institutional branches.

In spite of this, in December 2011, the judge decided that there was insufficient evidence of illegal activity to convict Enrique Caño of any wrongdoing. Meanwhile, the courts continue processing eviction orders for families affected by the scam.

were not just family members or friends but sometimes strangers. This system required that all *cross guarantees* operations were finalized within a short interval in order to elude the risk control system put in place by the Bank of Spain. Opacity, rashness, non-synchronous information and deception were common denominators within these types of operations.

Another equally or even more perverse mechanism, was that of the co-owner. The difference between *cross guarantees* is that in this situation people are not simply endorsing each other's mortgages, but are becoming *co-owners* of the loans and are obliged to answer to the total sum of

the mortgage applied to the homes. Many of those involved were not aware of the conditions when they signed these types of mortgages in front of a notary. Many others only realized this during the foreclosure process.

This interconnected plot involving guarantors and co-owners only works if everybody implicated in the process fulfills their obligations. The problem occurs when one of the links in the chain breaks. Like a falling house of cards, the insolvency of one drags the others down in a domino effect. Within this archetypal pyramid scheme, banks found ways to circumvent rules imposed by the regulator, and did this in a wide scale manner. It was, therefore, a scam in the making or, even better, a scam both regulated and protected by the law.

#### APPRAISALS: ARTIFICIAL INFLATION OF PRICES

Another bad banking practice consisted of inflating property appraisals to comply with a recommendation from the Bank of Spain that loans should not be granted above 80% of the purchase price. In this way, financial institutions granted mortgages which, on paper, did not exceed the limit but which in practice amounted to 100% of the purchase price. They went so far as to offer mortgages at 120% of the appraisal value, with the belief that the property would be revalued above the awarded amount.

Thus, banks issued credit without assessing the risks that people with nominal salaries or temporary and precarious work would assume, knowing full well that they would not be able to pay back these loans. Most serious of all, however, was that they did this with the full blessing of their accomplices, administrative officials, who, far from triggering alarm bells when faced with the gradual indebtedness of much of the population, instead hailed policies by financial institutions which argued for the democratization of credit that would allow poor families access to property.

Recently, the newspaper *Diagonal* mirrored a story that never made it's way into the mainstream press. Bankia, the merger led by Caja Madrid, divested itself of shares of an agency who carried out surveys of real estate assets that acted as guarantees of loans. Aside from the reasons, Bankia might have had for selling the shares, this news clearly

indicates how poorly the mortgage market functions. When banks hired a company to carry out an appraisal prior to granting a mortgage, there is hardly any appraiser who would determine a price that was contrary to the client's, that is to say the bank's interests. To do so would risk losing a client. We find ourselves, therefore, confronted with a vicious relationship and conflict of interest that questions the supposed objectivity of the appraisal process. If banks were also the owners of the same agencies that appraised homes and sat on boards of directors of these companies, then they could also exercise control, directly influencing both the management and design of their operations. They therefore became both judge and jury. It is not that strange that during the housing bubble appraisers set prices in favor of banks nor that, now that these same financial institutions are interested in undervaluing assets to avoid granting *daciónes en pago*, appraise under the market price.

#### TOO BIG TO FAIL: THE SOCIALIZATION OF LOSSES

##### RUINOUS MANAGEMENT THAT OUR CHILDREN WILL BE LEFT TO PAY

Nevertheless, the responsibility of financial institutions operates at an even more structural level. If a good part of the Spanish population were so deep in debt that for each euro saved there was 1,5 euros of debt, then where did the money to continue financing the housing bubble come from? It came from the savings deposited by German and French citizens in their nation's banks. For years, the Spanish banking system received money coming from international capital markets. German and French banks lent money to Spanish banks that in turn financed businesses and individuals. The mana of money throughout the country became an immense lava flow of cement. The banks' revaluation of its own real estate assets accentuated this flow of capital, which in turn fed the housing bubble. However the onset of the crisis and collapse in real estate prices marked a 180-degree change. We went to sleep competing with economic champions of some of the world's most advanced economies and woke up to a doomsday scenario. Billions of euros vanished overnight. The capital flow that had flooded our economy not only ceased but also went in the opposite direction.

With almost two thirds of loans granted concentrated in the residential and construction sectors, how was it possible within our financial system

to pay back the money used to purchase assets no longer worth what they originally cost? The answer is already known: by socializing losses. A good part of public subsidies and contributions from the Fund for Orderly Bank Restructuring (FROB) were used to repay loans and fill up holes in bank balance sheets. This was money that the State did not have and had to borrow outside of Spain. This is a debt that we pay with our taxes: money that our children and grandchildren will continue paying in return for nothing. A real escape that is bleeding public budgets. We have consumed resources from the future in order to buy land and houses now devalued by the crisis. We have an economy leveraged with growing debts and assets worth increasingly less. This is our bet for the future and our future legacy. We have ended up paying dearly for our bet on easy money. The irresponsibility of a few has resulted in austerity for many.

#### WITH A DRY TAP THERE'S NO POSSIBILITY FOR A NEW MODEL

There's still more. The irresponsibility of the banks has also compromised our economic future, squandering the resources of entire generations and shaping economic recovery. The high level of debt within both the private and financial sectors restricts the capacity to react to an economy within a crisis such as this. With external funding sources depleted and a population heavily in debt, we find ourselves constrained in a straitjacket with little room for maneuvering. Without the ability to finance, we cannot invest. Without investment, this blocks the lever of transformation that could catapult us towards another model.

# Destroying the culture of ownership

In conclusion, we could say that the deregulation of the mortgage market, Euribor (Euro Interbank Offered Rate) historic lows and Spain's inclusion into global capital flows made widespread indebtedness possible. Access to cheap credit accompanied a regulatory and legislative framework that rewarded buyers and penalized renters. At the same time, corporate power spheres cultivated a series of myths that discredited renting and emphasized the benefits of owning a home. These were catchphrases repeated by administrations that encouraged people to buy, by denying the existence of the housing bubble or labeling economic downturns as *soft landings*. Mainstream media reproduced and repeated these messages until they became integrated into the common sentiment of the people. At the same time, banks introduced mechanisms for circumventing existing credit risk controls and utilized deceptive advertising that incited people to indebt themselves.

Conveniently mixed together, these ingredients shaped the popular imagination and built a culture of ownership in our country. The public was subjected to a barrage of stimuli that drove thousands of people to borrow beyond their means. This explosive cocktail stigmatized renting as a land tenure system. Renting became a residual option for those who were unable to buy a home. Within an individualistic society that measures people by what they have and recognizes them by what they own and how they consume, entering into an elite club of homeownership became a requirement for becoming a first-class citizen.

When the housing bubble burst, it exposed the fragile foundations on which the *Spanish miracle* was based.

#### THE TRAGIC ATTEMPT TO RESCUE THE “REAL ESTATE TITANIC”

Despite the resounding failure of the ownership project, there are too many interests at play. The accumulation of land and housing by financial institutions, as a result of bankruptcies and foreclosures, places the concentration of property into the hands of the few. With so much brick in their balance sheets, the management of the real estate assets becomes a priority. The restructuring of the banking system responds in turn to this new dimension of business. The banks, now the biggest real estate agents in the country, exert the necessary pressure for the adoption of housing policies that do not go against their interests.

In the meantime, the paralysis of the real estate sector seriously threatens the viability of financial institutions. It is estimated that there is currently a stock of between 0,8 and 1,4 million homes that cannot be sold. Real estate developers owe approximately 400,000 million euros to the banks, while the outstanding balance of mortgage owed by families amounts to around 650,000 million. A study carried out by Price Waterhouse indicates that the refinancing of mortgages to individuals and businesses signed before the onset of the crisis only served to buy more time. We expect yet another wave of real estate bankruptcies that could threaten to drag down financial institutions. The bailouts of Caja Castilla-La Mancha, Mediterranean Savings Bank, Sa Nostra, Bank of Valencia, Unnim, CatalunyaCaixa, Nova Caixa Galicia and the nationalization that has caused the most commotion so far, Bankia, one of the four most important financial institutions in the country for its number of clients, shares, volume of assets, are an omen. Further bailouts of the banks would shoot public debt to new heights and open up a scenario not far from what happened in Greece.

We find ourselves within a no-win situation, in which one gains at the expense of others. It becomes increasingly difficult to consolidate the interests of financial institutions with the needs of the majority of the population. Faced with this dilemma, where does the government swing?

## THE POLITICAL AGENDA: CAUGHT IN A LOOP

The government, with public housing that barely covers 1% of total housing, seems unwilling to respond to the emergency housing situation that many of its citizens find themselves in. Despite the *opting to rent* siren song, measures taken until now are mainly aimed at reviving the real estate sector, put a stop to falling prices and protect the interests of big landowners.

In this regard, the statements made by Beatriz Corredor, ex-secretary of Housing for the Socialist Government, are revealing when she recommended taking advantage of historically low interest rates for buying a home despite forecasts by experts that these rates would begin to rise as France and Germany returned to their growth path. Even the announcement of removing the tax credit on the purchase of a home during the final year of the Zapatero regime only served in stimulating short term demand. From the moment this measure was made public, various media sources insisted on bombarding the public with the now familiar *now or never* song. Following this line, one of that first things that the Conservative Government pushed through after winning the 2011 general elections, was to reinstall the tax rebate on the purchase of a home. Tax benefits (50% reduction in the taxation of income and corporate tax affecting property transfers) will be expanded from a decree law approved in May, 2012 by the Council of Ministers, within a context marked by new reforms in the financial sector burdened by real estate indigestion. On top of this, it announced a new amendment to the *Law of Urban Renters* (LAU) which will definitively do away with renting as a stable housing option.

In this sense, it is completely perverse that as soon as the demand for renting starts to revitalize, more constraints are given to renters while greater guarantees are designated to major landowners (i.e., banks) of empty, unsellable homes. And banks always win; while they accumulate thousands of empty homes that the public cannot buy, not even through a mortgage loan, new reforms benefit major landowners by allowing them to rent without risk by reducing tenant's rights. At the same time, it paves the way for the anticipation of an economic recovery when credit once again begins to flow and people are once again pushed

towards borrowing, given the instability and insecurity that the option of renting entails.

On the other hand, in September 2011, the government passed a law that streamlines evictions for non-payment of rent.

Therefore, in the middle of a crisis and with more than 5 million people unemployed (many receiving not a single form of social assistance), the benefit and security of major landowners took precedence over the social function of property and the guarantee to the right to housing.

Despite the shock therapy applied by the government to revive sales, this systematic exit to this crisis of overproduction is not realistic. The market is saturated, demand exhausted, families indebted and speculative investment disintegrated. It will take years to go through the existing stock that digested so much brick and debt. Desperate efforts by the Administration to revive the economy using the same script as before indicate a tragic attempt to save an inexorably sinking *real estate Titanic*.

#### THE WEAKEST LINK: ACCUMULATION BY DISPOSSESSION

With the depreciation of real estate, many people have seen their assets, largely dependant on primary homes, substantially reduced. For those that bought their homes at the height of the housing boom, the current value of their property is much lower than the debts they took on to acquire them. Taking into account the distribution of wealth in our country, this fact hurts working and middle classes and widens the gap even more between the *haves* and *have nots*. This activates the so-called *poverty effect* of families, reducing consumption and depressing the economy even further.

As we have already seen, this is an emergency situation for those that become unemployed and who can't make their mortgage payments. Without a home, an unpayable debt, morally blasted and without any legal rights, thousands of families plunge into the abyss of social exclusion.

At the same time, rental prices barely moderate. The availability of rentals is still low despite revitalized demands for them in the wake of the crisis. With an unemployment rate approaching 25%, the reduction in the average household income increases the effort needed by families to pay for housing. With more than a million and a half homes in which every member is unemployed, the threat of eviction hangs over thou-



sands of families. Meanwhile, the evicted homes feed into a growing stock of empty homes, the largest in the European Union. This situation exacerbates the contradictions of a system that protects property rights of major landowners to the detriment of the basic needs of its population.

#### CRISIS AS OPPORTUNITY?

But this is not all bad news. The property myth is beginning to crack. The market is not untouchable. The crisis and its ravages have dynamited the *society of homeowners* project, conceived by authorities, that functioned as a mechanism of social control and aligned itself with corporate interests. With thousands of evicted families, millions of empty homes and increasing social demand for renting, it opens up a new political scenario. A large-scale bailout could trigger social unrest and open up the context of opportunity to condition this rescue.

Until now, the injection of public funds into the banking sector did not result in the banks assuming responsibility for their actions. According to calculations made by the PAH, with the 100,000 million euros given out by the Orderly Bank Restructuring Fund (FROB), the State could have acquired almost one million homes at the price which the banks were being rewarded through the foreclosure process. This would not necessarily be a bad thing, the PAH and other critical voices demand the reconversion of real estate currently hoarded by banks and saving banks into affordable social housing. It seems like common sense, however we live in a time when the concentration of power makes sure that proposals which, although essential for a major part of society, are being blocked in Parliament and not reflected in mainstream press.

Only a strong social movement could change the power relations and turn things around on an inert ownership model that has had devastating consequences within economic, environmental and cultural fields. As it has been throughout history, fundamental rights systematically violated, such as the right to housing of today, have been overturned by civil society who decided to put limits on the privileges of a few.



# The Bankia bailout and financial reform

In March 2012, the government, faced with the unfeasibility of the financial institution and of its inability to repay on time public loans given out by FROB, announced the nationalization of Bankia. During that same week, on the 11th of March, the Council of Ministers approved new financial reforms, the second in less than three months, that tried to dispel any lack of trust in the Spanish financial system and to provide greater transparency towards balance sheets containing overvalued assets. In this regard, several considerations:

In the first place, financial reform shows that the Achilles heel within the system is not the foreclosed homes of bankrupt families, as some politicians and experts would lead us believe, but the risk of loans awarded to developers and builders. Therefore, reform focuses on forcing banks to increase provisions (a mattress that acts as a type of security to protect against losses in the event that credit becomes an uncollectible debt) to deal with problematic credit but even for healthy ones (currently being paid) granted to real estate companies to finance the purchase of land, premises and residential developments as well as covering the depreciation of real estate assets within existing portfolios, which acts as a guarantee of outstanding claims. These provisions amount to 137,000 million euros, or 45% of the 310,000 million attributed to the construction sector (excluding sector-related credit granted to public administrations).

Secondly, the reform provides for the creation of *bad banks*. This forces financial institutions to transfer all property accumulating on balance sheets to management firms who then administer and sell these real estate assets. This property is transferred at book value, less provisions carried out on the assets (estimated depreciation on the asset). In this way, banks do a little tidying up by removing toxic assets and losses from their balance sheets. The government has already assured that it will inject the necessary capital into these financial institutions that, once the reform is applied, will require further recapitalisation in order to be viable: public aid which will be channeled in the form of loans by Orderly Bank Restructuring Fund (FROB). In the case that institutions are unable to pay back these loans on time (within five years), such as what happened with Bankia, these borrowed funds (known as *Cocos*) turn into State shares. This would imply nationalizing the institution.

#### FROB FUNDS: PUBLIC ASSISTANCE OR NOT?

The government assures us that these injections of capital should not be considered public aid, but loans that will be paid back at 10% interest, more than the 6% that the State is required to pay in order to be financed through the issuance of public debt. This is a smart move, however misleading. Firstly because getting funding and allocating resources to plug the hole of the banks, even in the form of loans, prevents channeling resources to other sectors of the economy. This is what economists refer to as *opportunity cost*. If we allocate scarce resources for certain things, then we can't use them for others.

Secondly, as was already shown with Bankia, the probability that a bank would not be able to pay back the borrowed money on time is relatively high. In this case, funds would be converted to shares, but at what price? How is it that most of the 4,465 million euros injected into Bankia have only served to control 47% of a company that is leaking like a sieve? It is, therefore a covert transfer and another scam in the making. There is no doubt that the value of these shares will depreciate over time. And if they have not gone down until now, it is, paradoxically, because the market anticipates that the institution will be bailed out by public funds taken from taxpayers. They still continue calling it a *free market* when it's just a game of poker played with marked cards. To the

extent that if shares were to drop in value and materialize as losses, the consequences of these reductions would come in the form of more cuts within public budgets. In addition, the State would continue shouldering the 6% interest corresponding to the issuance of public debt that they were obliged to come up with to finance much of the 4,000 million euros lent out to Bankia. This is exactly the same type of logic that they would apply to the rest of the other institutions and aids.

Thirdly, as in the case where banks must put aside provisions to cover potential defaults on problematic credits, institutions that borrow funds by the State are also potential defaulters. Therefore, the State should also have a mattress and provisions in the event of a non-payment of credit. If the government continues to be obsessed with a zero deficit policy yet at the same time refuses to increase revenue by making those that have more pay more, then it will have no choice but to continue with social cuts in order to balance the budget.

#### BAD BANKS VERSUS GOOD BANKS

As has been already mentioned, financial reform obliges the financial institution to dispose itself of its real estate assets. For this reason, management companies were created who then bought these assets, which they would then sell after. The minister De Guindos has assured that these assets were bought at a reasonable price.

What the Minister of Economy and Finance has not clarified was who would be financing these bad banks nor where the money would come from to purchase these assets. Once again, the taxpayers are the chosen ones. Who can ensure us that all the plots of land, incomplete promotions and ghost housing developments that the banks get rid of are then purchased at a reasonable price? Is it enough to discount the provision allocated on the book price of the assets to adjust to the current market value? How much is an unbuilt potato field bought at exorbitant prices really worth?

De Guindos has also made reference to the intention that these management companies are run with the participation of private equity. This would create a kind of *public-private* consortium. In this case, who would end up with the good assets and who would keep the bad ones? Who would end up with the homes in good condition and who the bad?

Wouldn't this just open new door to another scenario in which losses are socialized and profits privatized?

There is, however, another way to manage the current situation. The serious lack of public housing accounts for much of the housing and even the financial crisis that we currently find ourselves in. Why don't we demand that the bad banks become good ones and at the same time convert the homes currently held by these institutions into social rental housing? Why not take the opportunity to recover and protect public land? Obviously land and housing prices would have to be adjusted to a more realistic price and to the current property value. This is not an easy task, but it is a necessary and exciting challenge. It is without doubt that we are at a critical moment in time. But it is certain that we are facing a historic opportunity that will not present itself again any time soon. We cannot let it pass us by.

#### **And if we exit the Euro?**

Lately there has been speculation that Spain could leave the single currency. Even though this is an unlikely scenario, it's worth taking a look at it.

Let's start with the following premise: Spain announces its exit from the single currency and conversion of its balances at a set rate into the new currency *peseta*.

#### **What would happen with all the mortgages in this case?**

There are at least two possible hypotheses:

The first scenario is the following: Citizens would perceive their income in the new national currency but maintain their mortgages in the euro. This would be a situation similar to citizens in other countries who also have mortgages in other currencies, such as the yen. From that moment the exchange rate of the new national currency *peseta* would fluctuate with the euro. In this case it is more than likely that on the day after switching to the new currency, the national currency would devalue against the euro. This would imply that our debt would increase by an amount inversely proportional to the devaluation of our currency. This situation, although technically

possible, is unlikely from a political standpoint since people would not be in support of and would revolt against it.

In a more probable situation, mortgage balances would be converted into the national currency at a determined exchange rate. In this case, citizens would switch to owing *pesetas* and would therefore not be affected by fluctuating exchange rates. In this situation, the main problem would be that of the financial institutions in paying back the euros they borrowed from their international creditors. Under this hypothesis, financial institutions would go bankrupt and the State would be forced to bail them out and then nationalize them. Private debt would be converted to public debt overnight. This would result in many scenarios with unpredictable outcomes. International markets would exert extreme pressure and we would be immediately subjected to a new wave of brutal cuts. However, with strong opposition and social protest on the streets, it would be possible to put enough pressure on the government for them to declare the debt illegitimate. We could refuse to pay it and renegotiate the debt, just like Argentina or, more recently, Iceland, with more interesting results.

SCHOOL OF ECONOMY

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THE PAH:  
A COLLECTIVE SOCIAL  
RESPONSE TO THE CRISIS



## **From *V de Vivienda* to the *Plataforma de Afectados por la Hipoteca* (PAH)**

The PAH was established in Barcelona on February 22nd, 2009 in the face of the growing difficulties of a citizenry deeply in debt who, first with rising interest rates and later unemployment, were unable to make their mortgage payments. The PAH was created in response to the drama lived by hundreds of thousands of families upon finding that the prescribed legal framework was designed to overprotect the interests of financial institutions to the detriment of the weakest and most defenseless party within the mortgage contract. However, the PAH did not appear out of thin air but was driven by a group of people already dedicated to the struggle for the right to housing, in particular the experience of *V de Vivienda* (H for Housing), a social movement born in May 2006 from an anonymous email that circulated on the web, calling all young people to organize a protest rally in the main cities throughout the country to demand the right to decent housing. This e-mail was the seed for *V de Vivienda*, a movement that for two years articulated the protests for the right to housing and made thousands of citizens go out to the street.

Born of the Internet, this factor marked the way of organizing and determined the heterogeneous composition of the assemblies created throughout the country. From the onset, it became a living process that combined the freshness of a new breed of activists who joined the movement with the experience provided by those with a longer history

in the defense of this right. A movement that, in this sense, has many parallels with *Democracia Real YA!* (Real Democracy Now!) and the 15-M movement.

It's not that *V de Vivienda* said anything new, but that it said it in another way, renewing the language and the codes used by more traditional social movements. Without a doubt, one of the principal merits of the movement was its capacity to connect with public opinion through direct, communicative campaigns (such as the slogan chosen to convene the first demonstration: *You will not have a house in your fucking life*), graphics (for example the yellow balloons in reference to the real estate bubble, which have turned into an icon of the movement), and imaginative figures (such as *Supervivienda*, a superhero who barged into candidates' rallies during 2007 municipal elections with Article 47 of the Spanish Constitution inscribed on the back of his cloak to denounce the commodification of housing and the superhuman efforts that citizens must undertake to survive in cities that are increasingly expensive, inaccessible and exclusive).

For a system that had made the commodification of the home and indebtedness of families its reason for being, *V de Vivienda* emerged as an anti-systemic and contrarian movement. The language used, as well as the practical and political action of the movement, sought to deconstruct the prevailing dogmas of faith. Where the dominant discourse negated the bubble, *V de Vivienda* pointed a finger at it. Where the hegemonic discourse spoke of the *Spanish miracle*, *V de Vivienda* saw only a mirage. Where the political powers saw growth and the creation of jobs, *V de Vivienda* denounced debts and precariousness of labor. Where some saw bread for today, *V de Vivienda* predicted hunger for tomorrow.

Looking back, with the current crisis as a backdrop and in light of recent events, someone might wonder how it is possible that the most reasonable demands of a movement fell on deaf ears. This movement, unlike anybody else, anticipated this crisis scenario and the fragile foundations on which the Spanish economic model was based. Why did it not go anywhere? Because it was a red drop in the ocean, paddling upstream in adverse circumstances. In a society of mostly homeowners who revalued their assets year after year as property values increased, a movement that called for affordable rental housing represented a minority.

## SOME VICTORIES

Even so, we can count some important victories to its credit.

First, we must highlight its ability to anticipate the future, given that it was a movement that looked forward in time and put its finger on the wound, pointing out the Achilles heel of an unsustainable model.

Secondly, it acted as a catalyst and knew how to channel social unrest around the issue of access to housing, unrest that was latent but had not yet found its voice or the appropriate means of expressing itself. A problem until then silenced by the media and excluded from the political agenda.

Thus, *V de Vivienda* became a thorn in the side of an Administration that, given the growing public pressure, was forced to come up with an answer.

### **The limits of private property**

As stated by the famous American geographer David Harvey, the right to private property and the profit margin (both rights that naturally represent the interests of the ruling class) are in the highest part of the hierarchical pyramid of rights, subordinating the rest. This hierarchy is fundamental to the conceptual artifact, which serves to legitimize neoliberal discourse. In this sense *V de Vivienda* rescues and gives meaning to the right to housing recognized in Article 47 of the Spanish Constitution and confronts it with the right to private property in order to reverse, or at the very least balance, a scale that is clearly unbalanced. Private property must have limits and must be restricted by the social function of the property, as required by Article 33 of the Constitution. This theoretical battle found its practical expression in the contentious debate that opened in Catalonia following the adoption of the *Law of Housing Rights* of 2007, in connection with the expropriation of the *usufruct* of empty homes.

At the state level, a basic emancipation income was activated for young people under the age of 30, with an aid of 210 euros towards rent. A new *Land Act* was also approved, that tried to bring order to urban planning and establish limits to the arbitrary zoning that had been a

breeding ground for corruption, speculation and the devastation of the territory.

At the regional level, the Basque Country, Catalonia, and Andalusia passed laws on the right to housing, laws that, among other things, recognized for the first time the anti-social use of empty homes.

It was a reaction that arrived late and was completely inadequate. The gamut of measures launched by the Administration, more gimmicky than effective, had a demobilizing effect and, in a certain sense, stalled the movement, which entered a new stage.

#### NEW SCENARIO, NEW POSSIBILITIES FOR INTERVENTION

The outbreak of an international financial crisis and ensuing economic depression shaped a new global scenario. In our country, the bursting of the real estate bubble marked a turning point in the social, economic and cultural outlook. Myths, introduced in the popular imagination as infallible dogmas of faith, began to fall apart. Urban legends, such as the housing prices could not go down, were collapsing under their own weight, and the myth that the free market could not intervene cracked open with injections of public funds into the banking sector. This created a new context of opportunities with new possibilities for intervention.

Given the weight of the real estate sector in the whole economy, the slump in activity was accompanied by the massive loss of jobs. Families found it increasingly difficult to make it to the end of the month.

Thus, in a context of citizen demobilization and the ebb and flow of the movement for the right to housing, the bursting of the bubble forced us to rethink our strategy and anticipate a scenario in which the problem of the loss of homes for thousands of people had to be added to the problem of access to housing that historically we had been dragging around.

This new paradigm forced the movement to reinvent itself in order to make the most of the gaps that opened up, in a new correlation of forces. On one hand, we had to respond to the avalanche of mortgage evictions; on the other, it offered a unique opportunity to take note of the failure of the model that had brought us here. When the dreams of thousands of people became their worst nightmares, perhaps the social majority



would be more receptive to alternative forms of management and access to housing.

From this reflection, and keeping this new scenario in mind, in October 2008, *V de Vivienda* organized a campaign under the name, *We will not let the banks kick us out of our homes*, which became the seed of the *Plataforma de Afectados por la Hipoteca* (PAH).

Mortgage turned out to be a connecting thread in a political and social context in which the limits of financial markets were being reassessed, a communicative vessel that allowed the credit market to be related with housing. Pulling this thread meant exposing the structural causes that led us here. Before attempts by political leaders, during the early stages of the crisis, to shift blame and to attribute the collapse of the Spanish economy to the international financial situation, the PAH wanted to resituate the debate and introduce the violation of the right to housing as one of the causes that explained the current crisis. Therefore, the mere creation of the PAH illustrated the failure of housing policies in recent years and represented a setback for administrations that had pushed the population into debt.



## The affected people: from Prozac to empowerment

The consolidation of the PAH was no easy task. Despite the common goals previously described between *V de Vivienda* and the PAH, there are important differences. Among them, the most substantial: *V de Vivienda* was a movement composed mainly of young people with precarious jobs and wages who were organized in the face of difficulties to free themselves from the family home. The social base of the PAH, meanwhile, was made up of families affected by foreclosure processes.

In the case of *V de Vivienda*, the transformation of these young people into social activists was nearly a seamless transition. But were older people affected by the mortgage capable of going beyond their individual cases and getting involved in the political process? Could victims become activists?

Combining a personal situation within the dimension of a collective problem is not an easy balance. Translating the unease of families into a springboard of transformation requires an articulate movement with one unique voice, which meant the PAH had to establish itself as a political subject with a clear collective consciousness. From the beginning it worked in this direction and the direct and daily contact with affected families marked the path towards an active and constantly evolving process.

### THE PAH, A SPACE FOR MEETING

Contrary to what one might think, people who come to their first PAH meeting are, more than angry, often morally dejected and resigned.

Disoriented, neglected by the Administration, threatened by banks and depressed, the foreclosure process acts as a shredder that destroys anything you put in front of it. Families feel guilty for the situation in which they find themselves and attribute it to personal failure. Surely, the society in which we live, which values who we are by what we have and tells us that we get what we deserve, has much to do with this. This process of self-blame is made worse if the individuals have children in their care. Anguish, constant tension and insomnia take over their lives in a process that, if not corrected, can result in family breakdown. In order to give an idea of the suffering they endure, one must take into account that a large number of the people going through this experience have thought at one time of taking their own lives. Many others have been forced to emigrate, in order to escape from a nightmare that torments them day and night.

In this situation, many families come to the PAH with an absolute need to speak and to be heard. Thus, after overcoming an initial shyness, they seek ways of expressing the avalanche of emotions that has shaken them. Therefore, the first objective of the PAH is to create a space of trust and community through meetings, which give them the opportunity to express themselves and share their experience with others. Building this space and linking personal experiences is vital in order for those affected to realize the collective dimension of the problem and that there are structural elements that have influenced our decisions. This process of absolving oneself of blame is a necessary step towards empowerment.

In addition, creating this safe meeting place helps disrupt the logic of a fragmented and highly competitive society in which people relate to each other in a zero-sum game, whereby one's gain represents another's loss. To the extent that society around us is torn and fragmented, the PAH wants to establish itself as a space of mutual support and solidarity that places the collective good over individual interests. Not surprisingly, one of the slogans of the PAH is: *Do not ask what the PAH can do for you, ask yourself what you can do for the PAH.* As the PAH goes forward, its members do as well.

#### COMPOSITION OF THE ASSEMBLIES: THE FACES OF THE MOVEMENT

It is a challenge to transform an individual problem, experienced in

**“This bank deceives, scams and forces people out of their homes”**

This was the slogan of the first PAH-driven action. Given the need to empower affected people and to put a spotlight on the real perpetrators of the Spanish housing situation, thousands of stickers were printed with this slogan. It had great success, and those affected quickly used the stickers as a general denunciation of the problem as much as a pressure against specific offices that had neglected to sufficiently address the needs of their clients. In the end, it turned out to be an effective campaign tool, in part because public image is probably the weakest point for financial institutions.



isolation, into a social one that calls for collective solidarity.

To begin with, the turnover of people coming to meetings is very high. This forces a division between those already integrated in the movement for a long time and those who have just landed. The level of involvement by families is often uneven and depends on what other pressing responsibilities each family has. The economic situation in which many people find themselves is critical. Their priority and main concern, therefore, is immediate survival (i.e., to feed their children), and they can only allocate time towards the movement to the extent that these urgent needs are met. The same economic uncertainty makes it difficult for many families who live far away to regularly attend meetings.

There are people that go to the PAH thinking that they will find a kind of citizen or consumer service bureau, a magic wand that will solve their problems. There are others who come once and do not return for a few months, after having knocked on the doors of various administrations without any results or, worse still, having designated the few

resources available to pay the fees of some racketeer.

The movement's composition has changed over time. When the crisis broke out and the real estate business sank, immigrants working in the construction sector were the first to lose their jobs. Thousands of people that came to our country fleeing from poverty, with the healthy ambition of moving forward and providing greater opportunities for their children, were left without work or a family network to help them break their fall. As the crisis progressed, foreclosures did not discriminate on grounds of origin, sex, or religion. Currently, it is estimated that 70% of the affected population are Spanish natives.

Age has also not been a determining factor. The extent to which a bulk of the population was pushed into a mortgage to access housing implicated all generations. One must also not forget all the guarantors. In the cases where a young couples default on a mortgage, it is common that the parents are also affected. In contrast, where we do observe certain differences is in the capacity to manage the struggle. The loss

#### **Empowerment. The case of Blanca**

Blanca came to the PAH Barcelona in 2010. Her brother, married and with a small daughter, was left without a job and could not keep up with his mortgage payments at Caixa Penedes. Blanca also had a mortgage and kept paying her monthly bills, though with difficulty. Blanca had a double problem when Caixa Penedes decided to resort to the path of foreclosure to reclaim her brother's debt. In the first place, she suffered for her brother who, without resources and with the risk of homelessness and a growing depression that prevented him from reacting, eventually attempted suicide. In the second place, Blanca discovered that she could also lose her home because she was a guarantor of her brother's mortgage.

She didn't give up. She began attending PAH meetings where, as her voice broke, she shared her suffering. In addition to seeing how her brother suffered more each day, out of fear of losing everything, she also endured the abuse that the Caixa Penedes office director subjected her to every time she asked for an appointment with him to try and find an alternative solution. The PAH advised and explained to her how the process worked and that no one had the

right to insult or threaten her. They organized actions to accompany her to the bank's office and to the auction as well. In a few months, Blanca went from being a timid woman with frayed nerves to being a strong woman with the will to make others respect her rights. Her case isn't resolved yet, but Blanca found the strength to publically claim what she was suffering, to face up to the office director who had in the past humiliated her and to help her brother climb out of the hole he'd fallen into. She has one thing clear: she can always attend the assemblies to stop evictions and give support to other people affected by their banks. She knows that solidarity and collective action, like family, can save lives.

of economic agency and the consequential blow to social status affects men much more than women. While in many cases the former experience the situation as a personal failure that threatens their identity, the latter define it as a reality that must be confronted in the most practical manner. During assemblies it is common to see women taking the initiative, whether alone or accompanied by quiet men hanging their heads in shame. On the other side of the coin, one of the effects of eviction, under the perspective of gender, is that the increasing anxiety from the process can lead to an exponential increase in tension within the family, which could encourage gender-based violence.

However, despite the difficulties of this process, most established and experienced PAHs have managed to integrate different levels of engagement of families so that the dividing line between activists, supporters and people affected by mortgage debt becomes increasingly tenuous or even non-existent. While at the beginning, the heterogeneous composition of the PAH imposed a slower pace on the whole process, in the long run this heterogeneity has proved to be one of the most valuable aspects of the organisation.

#### MUTUAL AID AND GROUP COUNSELING

Recognizing that solutions to the mortgage crisis had to come from the political sphere, but keeping in mind that they were bound to arrive too

late, the PAH had to construct itself as a useful resource for those affected and give response to the specific and immediate needs of families who could not wait for legislative change. To address this need, without disrupting the collective dynamic of the assemblies, the collective advisory was born.

The treatment of cases in collective assemblies is a defining characteristic of the PAH. It has been demonstrated to work as an indispensable and transformative tool that helps those affected confront and overcome major difficulties, such as losing the sense of fear, shame and failure associated with the process.

Collective advice, at the expense of an individual care approach, is due to different reasons.

Firstly, a collective approach contributes to constructing a space of trust and reinforces the sense of community, building bridges of solidarity between those affected. Experience shows that people care about the situation of others when they perceive that others worry reciprocally for them. Creating a space of trust and community becomes, thus, a prerequisite for empowering those affected, giving them as many technical tools as emotional ones and developing strategies for the time it comes to negotiate with their respective banks.

Secondly, this approach has an amplifying effect. The collective expression and sharing of experiences allows tools and knowledge to be socialized. In this sense, the affected person is no longer a passive subject or victim assisted by an expert, but an active subject and transmitter of knowledge who, over time, will meet the conditions and necessary skills to advise others. Since its creation in February 2009, more than seventy local platforms have been established, a good part of which were initiated and set into motion by people affected who were trained in collective assemblies. This work methodology has a multiplying effect, more than traditional individual counseling, that reaches a larger number of people. Some of the objectives of the PAH are that citizens understand what is happening, take co-responsibility for their decisions, are aware of their rights and learn to defend themselves. This is with the understanding that a well-informed citizenry is a necessary condition for a healthy democracy.



Thirdly, this approach toward personal cases is more effective. Given the current legislation, any form of negotiation established with the bank or savings bank (either agreeing to new terms of payment, negotiating *dación en pago* or that the former owner can remain in the foreclosed home on an affordable rental agreement) depends only on the predisposition and willingness of the financial institution. Given this situation, an advisory is of little use if other forms of pressure do not accompany it. The collective monitoring of cases and accompanying actions carried out by the assembly are some of the most effective mechanisms for leveling out the unequal power relationship that exists between conflicting parties. In the same way, public denouncement in the media and the negative images it projects on the financial institution in question becomes another essential key of negotiation between the bank and the person affected. These elements reconfigure the system of incentives and facilitate a satisfactory solution for those affected. At the very least, they help deter financial institutions from possible abuses of power, bad practices or exercising undeserved, threatening and degrading treatment of people, such as offering harmful solutions to clients (suicidal refinancing, personal loans with exorbitant interest rates, etc.). A substantial number of cases are referred to us from social services and governmental bodies, who are aware of the inadequacy of current provisions of social aid.



## The expansion of the movement: the PAH spreads like wildfire

The PAH was born in Barcelona, but was formed with the clear idea of multiplying itself throughout the country. From the beginning it worked towards the decentralization and expansion of the movement. From the open assemblies, the type of counseling that the PAH practices, the socialization of tools and accumulated knowledge, web resources, presence on social networks to the dynamic of a virtual *agora* that allows people from all over the country to be put in contact with one another, exchange experiences and forge strategic partnerships; all elements have been designed to facilitate easy replication of the PAH throughout the country.

From Barcelona the PAH spread throughout Catalonia. It is the metropolitan areas that account for the greatest density of PAH *locales*. Some examples are Terrassa, Sabadell, Santa Coloma, L'Hospitalet, Cerdanyola, Montcada, Granollers, Badalona, and Mataró and La Llagosta. From Catalonia it spread to the rest of Murcia. Given the weight of the housing sector and the large number of jobs that depended on construction in Murcia, the bursting of the housing bubble left thousands of citizens without jobs and unable to afford their mortgage payments. Later, the PAH entered into Valencia, Madrid, Andalusia, La Rioja, Canarias and the Basque Country and, even more recently, the Balearic Islands, Galicia, Castilla y León and Castilla La Mancha.

### STRATEGIC ALLIANCES

The neighborhood movements turned into one of the more strategic alliances and driving forces behind the expansion of the PAH. With a long history of defending the right to housing and unbeatable proximity to the social reality of the neighborhoods, community action was key to decentralizing the movement and rooting it in the territory. This alliance was welcomed by the neighborhood movement, which saw the PAH as an instrument for revitalizing neighborhood associations in need of regeneration and reconnecting them to new social conflicts.

In 2011, from the first moment, the PAH joined and actively participated in the demonstration organized by *Democracia Real Ya!* that—under the slogan *We are not merchandise in the hands of bankers and politicians*—went through the major cities in the country, and became the seed for the 15-M movement. The explosion of this movement marked a turning point. Many of the local PAHs that were established throughout Spain did so through the mobilizations and assemblies of the *indignados*. The campaign *Stop evictions* received a major boost through the support of all neighborhood assemblies.

### THE PAH: A MACHINE THAT NEVER SLEEPS

Without a doubt, one of the great successes of the movement—from a strategic point of view—has been its vocation and capacity to reproduce itself. The sum of all these PAH locales forms a movement much more powerful than the simple arithmetic sum of its parts. It is a machine that never sleeps and is constantly active. The growth of PAHs produces a steady trickle of news that makes the mortgage problem a permanent matter in the political and social agenda. Whether the PAH moves forward a motion in city council, stops an eviction, seeks a *dación en pago* for a family, interviews a public defender or meets with judicial powers, the constant presence of the PAH in the media maintains communicative tension.

On the other hand, the proliferation of PAHs has forced us to rethink our internal coordination mechanisms. Having overcome the initial growing pains, associated with the rapid spread of the PAH, the movement works to design more horizontal forms of organization that adapt decision-making and development of strategies to the new reality of the

movement. In just six months, from September 2011 to February 2012, the movement held three state meetings to compare experiences, coordinate itself and articulate campaigns.

### **Criteria for forming a PAH**

To form a PAH node, one must follow some basic rules and accept the following criteria: the PAH is a citizen-run organization born from civil society and as such is politically independent and nonpartisan. The PAH is a non-violent movement. All resources and guidance from the PAH must be free. The guidance of the PAH must be collective. All PAHs must accept all demands and claims contained within the memorandum of understanding. Beyond these criteria, the PAH node enjoys full autonomy to develop strategies appropriate to the local context.



## Objectives, proposals and campaigns

In order to establish itself as a player with the capacity for impact and transformation, the movement had to give visibility to the problem, articulate concrete demands and pass them on to society. The PAH was born with three major objectives: to pursue *dación en pago*, stop evictions (putting an end to a violence that leaves thousands of families on the streets) and to turn mortgaged homes into affordable rental properties. It was with these objectives in mind that different campaigns of the PAH were designed, which have earned great notoriety and unquestionable public support.

### **The battle for *dación en pago***

The bursting of the real estate bubble and the outbreak of the crisis led hundreds of thousands of families to lose their jobs and, with them, the capacity to meet their mortgage payments. The mortgage foreclosure process thus became a force of destruction, a black hole that families fell into, which forced them to go into debt in order to access a basic need. It not only put them at risk of losing their home, with all the drama that this entails, but of being condemned to a life of social exclusion and a lifetime of accumulating debt.

The situation of neglect caused by current legislation led thousands of families to claim *dación en pago* as an urgent and exceptional measure. That is to say, forfeiting the home was enough to pay off the mortgage

debt, in cases of primary residence, where it was impossible to keep up with the mortgage payments through no fault of the homeowner. In reality, *dación en pago* already exists in current mortgage legislation; the problem is that it is optional and, until now, financial institutions only applied it when it suited them or when they were forced to through lobbying, such as those led by the PAH.

*Dación en pago* is, therefore, a minimum proposal. It is one that allows families to start from zero; a second chance that, in some way or another, has been implemented in neighboring countries. It is a measure similar to that adopted by companies that declare bankruptcy in order to settle debts with creditors; a measure that, led by the PAH and drafted by *Observatorio DESC*, was debated for the first time in the Congress of Deputies on June 16th of 2010, and has been blocked ever since.

Logically, those affected demand that this regulation be retroactive, meaning that *dación en pago* would be approved not only for mortgages signed after the regulatory change, but for the benefit of all current victims of the crisis. We cannot forget that the reason this debate exists is precisely due to the thousands of people who have already suffered through this perverse process.

#### REAL PUBLIC OUTCRY

The organized voice of those affected sought to transform into a popular outcry what was, in the beginning, only a scream in the desert. According to various surveys, the many sympathizers of the proposal include more than 80% of the population and it has been taken up by the 15-M movement. It has also earned the adherence of many social organizations, trade unions, hundreds of municipalities, the Spanish Federation of Municipalities and Provinces, regional parliaments, associations of judges, bar associations, public defenders, and so on. This is a support which unfortunately was not reflected in the Congress of Deputies, where the PP (Popular Party) and the PSOE (Socialist Party) have shown time and time again to be against its implementation, by blocking several times the approval of *dación en pago*, ignoring the undeniable will of an immense majority, deepening the crisis of representation from which our democracy suffers and amplifying the distance which separates the representatives from the represented.



### WHY IS SOMETHING THAT IS SO FUNDAMENTAL, COMMON SENSE AND SOCIALLY JUST NOT IMPLEMENTED?

To address this question, it is necessary to analyze the evolution of the debate from its very beginning, a debate that has been closely linked to the emergence in the political arena of the *Plataforma de Afectados por la Hipoteca*.

For a long time, the mortgage drama, faced by thousands of families, was not discussed in the media in proportion to the dimension of the problem. Neither did it appear on the agenda of priorities of political groups with parliamentary representation. Thousands of families lived in silence and in complete isolation, a drama that did not extend into public opinion.

To the extent which the collective voice of those affected opened up discussion forums and inundated the media with testimonies, proposals, and actions, it is the gathering of popular support which forced political groups to position themselves publicly. As the walls of silence were demolished, so were the various arguments put forward to refuse *dación en pago* dismantled.

### FALLEN MYTHS

The first to fall was the myth that a mortgage contract was between private institutions, in which the State could not intervene. That is, until it did intervene, injecting massive public funds in order to provide liquidity to the financial system without requiring anything in return.

Then came the little song that it was a contract freely agreed upon by both parties and that the only ones responsible were those with the mortgage that nobody had held anyone at gunpoint to sign. It is an insult to one's intelligence, however, to treat unequals as equals and equate a family's need to acquire a home via a mortgage with the lucrative mortgage credit business of financial institutions with an army of economists, lawyers and analysts at their disposal. Furthermore, nowhere in the mortgage contract did it specify the possibility that the bank would adjust the property to 50% of its appraisal value, leaving the former owner with an unpayable debt for life. Today, even though these contracts have been found to include numerous irregularities and inflated property appraisal values, no administration is demanding accountability from the

financial institutions.

Afterwards, our elected politicians entrenched themselves behind a juridicial subterfuge, arguing that to retrospectively apply this measure to already established mortgage contracts would be undemocratic, as it would generate legal uncertainty by changing the rules mid-game, something that was deemed fitting only of a *banana republic*. But labor reform took on the task of setting aside this excuse, lowering severance pay from forty to twenty days, regardless of whether they had signed labor contracts before, during or after the reform, in other words, changing the rules mid-game. Furthermore, if one uses jobs to speak of insecurity, better talk about the insecurity suffered by hundreds of thousands of victims of the mortgage scam, with contracts signed under pressure, disinformation, full of abusive clauses and regulated by an unjust law which shields the interests of the strongest party of the contract. Retroactivity is perfectly possible provided there is the political will. For the time being, politicians implement reforms and retroactivity only when they benefit the interests of large corporations. In turn, all alarm bells go off when they are proposed in the defense of human rights and jurors and debaters of *the Kingdom* put forth their brilliant argumentation in the service of the powers that be.

One by one, the arguments made by the executive powers to reject the measure were disarmed. Today, no one doubts the injustice of a judicial order that privileges the interests of financial institutions and places most of the blame on the most vulnerable and defenseless holders of the contract. Even so, the government remains suspicious. On repeated occasions, the former Minister of Economy, Elena Salgado, claimed the inability to pass a bill that “would jeopardize the strength of the financial sector, recovery basis and economic growth” in a time when international markets had serious doubts about the solvency of the system. Her reasoning, similar to what is used to explain social cuts and labor reform, can be summarized in the following way: if the measure were approved, it would cause losses to financial institutions undergoing a delicate situation and who currently find themselves in the spotlight of international markets. This would increase the risk of public intervention and would force the state to issue debt to finance the bailout of banks and savings banks, a bill that would end up costing all taxpayers.

Furthermore, although the public debt does not reach 70% of the GDP, the markets would penalize this measure and the risk premium, e.g., the interest on sovereign debt, which would become more expensive with the possibility that Spain could not meet its commitments.

In this way, the defenders of the status quo give themselves up to the blackmail exercised by the speculative markets. It's not that they don't want to approve *dación en pago*, but that the markets force them not to do so and give them little space for maneuvering. They turn the worst defects of the system into virtues, finding their best alibi for transferring the sovereignty of the people into the hands of the markets.

They are not alone. In the last months, the discourse permeated even deeper, as renowned economists joined the thesis put forward by the government. Captives to the hegemonic discourse that permeates the fields of power, which accuses anyone who deviates from the official doctrine of being irresponsible and not serving public interest nor reasons of State, they write articles to warn of the consequences of implementing such a measure as *dación en pago*.

#### BUT WHAT WOULD BE THE REAL ECONOMIC COSTS THAT FINANCIAL INSTITUTIONS WOULD HAVE TO BEAR?

Or better said, is it really the debt of families that keeps Spanish banks in check? Has anyone bothered to quantify the losses to the financial system if *dación en pago* were to be approved?

Let's make some calculations:

The outstanding mortgage debt of families, that is, what the families owe the banks, totals 650,000 million euros. Although the official mortgage delinquency rate, according to data coming from financial institutions, is 2.7%, the actual figure is estimated at around 5%. This means that, of the 650,000 million euros of debt, around 32,500 million cannot be returned. As a result, banks will be awarded, by auction, homes that act as collateral for unpaid debts.

While delinquencies on home equity loans threatens the liquidity of financial institutions, it is the depreciation of real estate assets that, acting as guarantees of these loans and accumulating in the bank balance sheets, risks their solvency. As such, if we want to know what losses that *dación en pago* would bring about, we need to find out what is the depreciation

of assets corresponding to loans that will not be paid back.

The majority of foreclosure processes occurred with mortgages signed during the last years. The undersigned mortgages included up to a five-year grace period, during which only interest was paid and with no depreciation of capital. This means that the principal amount on the foreclosed homes had not gone down since the loan was granted. On the other hand, housing prices, according to TINSA (a multinational company for real estate valuation in Spain), the INE (The National Institute of Statistics), and the Bank of Spain, fell 25% from their historical peak in 2007. Given that, in the majority of the cases, mortgage loans were granted for 100% of the property value, a depreciation of 25% means that of the 32,500 million euros of unpaid mortgages, the houses that acted as collateral are now worth 24,375 (not all foreclosures were carried out on mortgages signed in 2007; many date from before, when the price of property still had not reached its peak; as such we are making an estimation that rounds up the losses). Thus, the difference between the delinquent 32,500 million euros, and the 24,375 million euros that the adjusted assets are worth, would be the loss of 8,125 million euros in the form of asset depreciation that the financial system must deal with.

This means that if *dación en pago* were approved, banks would lose 8,125 million euros. An amount which, while not negligible, represents some 52% of the profits obtained in 2009, almost half of the results obtained in 2010, much less significant when compared with the total aid by way of guarantees, the purchase of toxic assets and liquidity injections at subsidized interest rates, that these same institutions received.

In reality, the fear of the financial institutions is not so much what they will lose, but what they will fail to gain. We cannot ignore the fact that homes awarded to the banks for a small amount of money, enter their balance sheets or are put up directly for sale at prices far higher than the awarded value, a fact that, in the words of David Harvey, is a clear example of *accumulation by dispossession*.

#### THE REAL BLACK HOLE OF THE SPANISH FINANCIAL SYSTEM

The grand total of Spanish debt, including both private and public debt, amounts to 350% of the GDP, one of the highest debts in the

**The lucrative business of mortgage foreclosures: accumulation dispossession. The case of Lluís M.**

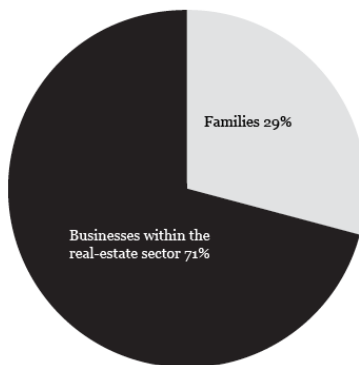
The nightmare for Lluís M.'s family began in 2008, when the crisis broke out and the mechanic workshop where he worked was forced to close. Lluís was left without a salary and unable to pay his mortgage bills. Caixa Tarragona, now renamed CatalunyaCaixa, decided then to file a foreclosure lawsuit. Lluís's debt with the bank, at that moment, amounted to 150,000 euros. The appraised value contained in the mortgage contract was 200,000 euros. The property went to auction, but failed to sell and, as in more than 95% of cases, CatalunyaCaixa was awarded the home at 50% of the appraised value, 100,000 euros. Even so, this savings bank still claimed 50,000 euros corresponding to the difference between the initial debt and the awarded price of the home, plus another 50,000 euros for default interest and court costs. The result: Lluís would be evicted and would still owe 100,000 euros.

At the same time, CatalunyaCaixa put the property for sale through the real-estate portal *Idealista.com* at a value of 175,000 euros. If we add to the 100,000 euros that the bank would continue demanding from Lluís, the savings bank would end up earning 275,000 euros. If we subtract from this amount the 150,000 euros lent out to Lluís at the beginning of the procedure, then we see that CatalunyaCaixa ends up earning a profit of 125,000 euros.

global economy, behind the United Kingdom and Japan. Public debt is relatively low, just below 70%. Private household debt is equivalent to 82% of the GDP and, despite the increase experienced during the last few years, is only 25 points above the European average. The most worrying aspect is also the one which departs most radically from other economies, the proportion of debt accrued by non-financial companies linked to the real estate sector. The bursting of the real estate bubble caught companies with a very high leverage ratio and with a stock of 1.2 million newly built unsold homes, countless developments yet to be completed and thousands of square meters of land for construction purchased at exorbitant prices.

Thus, unlike what some would have us believe, what endangers the solvency of Spanish banks is not so much household mortgage debt, but the oversupply of real estate assets from the bankruptcy of hundreds of real estate companies that are accumulated in their balance sheets. Phantom developments, unfinished promotions, land plots for construction that are impossible to place on the market are all examples of real estate projects that suffered an infinitely higher depreciation than family homes and represent an insurmountable drain on the banks.

### Distribution of mortgage defaults or black hole of financial institutions



In this sense, with more than the 650,000 millions of euros of mortgage debt by families, what threatens the solvency of financial institutions, and is the real Achilles' heel of the system, are the 400,000 million euros owed by the real estate companies, with a default rate close to 20%, a figure close to 80,000 million euros and with a more pronounced depreciation of assets.

This ratio could increase if we take into account the approximately 65,000 million of loans classified as substandard risk, in other words, credits that are still undergoing payment but that have a high risk of

default in the sector to which they are linked. This includes, mainly, real estate loans intended for the purchase of land.

#### THE BANK BEGINS TO WORRY: A GOOD SIGN

In March 2011, the Spanish Banking Association leaked to the media a letter addressed to the former Minister Elena Salgado in which she was warned of the consequences of regulating *dación en pago*. Without a doubt, this letter was born from the financial sector's fear of the possibility that this proposal would thrive in Parliament. No one was aware that banking employers had discrete communication channels when directly transmitting their objections to the Ministry of Economy. Therefore, publicly filtering the correspondence reflected one objective: to create a climate of fear and distrust in order to reverse the established state of opinion in favor of social and regulatory change. Since then, the thesis cited by banking employers has been reproduced through multiple channels.

Financial powers argue that modifying the law would not only damage the financial system, which would be detrimental to all citizens, but would also raise the price of mortgages and restrict credit, making it more difficult for citizens to access housing. There are several objections to this argument.

First were the game rules: an irresponsible and expansive policy of mortgage credit practiced by banks, those responsible for the housing bubble. The volume of credit available had a direct impact on property prices, which were set according to the population's access to credit. The more credit available, the higher the property prices. The less credit available, the lower the property prices. While it is true that implementing *dación en pago* would entail more risk for financial institutions, this would lead them to transfer the risk to the consumer, by raising interest rates and moderating the flow of credit. This increase would reduce the demand for credit by citizens, who would prefer to save more and borrow less later. But it is precisely the containment of credit, from both supply and demand, which would eventually bring down housing prices, thus offsetting the increasing loan amounts. Thus, we would have more expensive mortgages, but cheaper homes. Similarly, if one decreased the average amount of mortgages granted, the amount of household debt

would be lower and the overall interest on this debt would also decrease, which would balance the effect of higher rates.

Secondly, the constriction of mortgage credit does not necessarily mean bad news. In recent statements, Beatriz Corredor, former Secretary of Housing, claimed that approving *dación en pago* would harm citizens and that only those families with the capacity to pay would be able to access a home. What for people with any common sense is nothing more than a triviality, these statements are, however, a faithful portrait of the vector that has guided the housing policy during recent years: to promote the purchase of property through excessive borrowing as the only means of gaining access to a basic need. This confuses the right to proper housing, which is registered in the Spanish Constitution, with a mere safeguarding of access to credit.

Given the current lack of liquidity, it is pure recklessness that the limited credit available is again being channeled into real estate. This reproduces the same vices that provoked the crisis, rather than moving towards economic activities that would form the basis of a new working model.

Thirdly, mortgage repayment terms were often set at forty or even fifty years, increasing the probability that families would find themselves without an income at some point during the lifespan of the mortgage contract. When we take this fact into account, what are the chances that families would risk asking for a mortgage in the full knowledge that failing to make just one of their payments would condemn them to poverty, social exclusion, and life-long debt? What really hurts the family is this legal mistreatment, unparalleled in neighboring countries.

Lastly, current legislation turns mortgage foreclosures into a lucrative business for the banks. Implementing *dación en pago* would reconfigure a perverse system of incentives that actually rewards foreclosure and re-adjusts the balance of power between lender and client. Banks would be forced to sit down, listen, analyze the situation and negotiate a reasonable and agreed upon solution. Those affected do not necessarily want to stop paying; they only do so to the extent that they have to choose between making their payments and feeding their children. Therefore, those who argue that if *dación en pago* is approved, that there would be a flood of families running to the bank to return their keys, show a great ignorance



about social reality. First, because people with jobs are not inclined to lose them, even more so in the current context. Moreover, because people want to stay in the homes and neighborhoods where they live.

#### WHAT IS THE ECONOMIC AND SOCIAL COST OF NOT IMPLEMENTING DACIÓN EN PAGO?

The government and media appear sensitive to the fear by the banks of approving *dación en pago*. Has anyone bothered to evaluate the economic and social cost of not approving this measure?

*Dación en pago* is not only possible, it's necessary from a social, economic and political point of view. On one hand, the cost of not approving the measure means not only condemning millions of people to poverty and social exclusion but mortgaging off an entire generation's public resources and social policies of the present and future. It is a drain on local, regional, and state public finances, who are forced to subsidize children's school cafeteria, textbooks, rental assistance, and so on. On the other hand, it implies excluding millions of people from the system, who will then turn to an underground economy when faced with the risk of having their payroll repossessed. This will lead to increased tax evasion and subsequent reduction in government revenue within a context that these are more necessary than ever before. Economically condemned and given no possibility for rebuilding their lives, thousands of families will be forced to leave the country in search of new opportunities that would allow them to start from zero. Immigrants who came here fleeing poverty return to their countries where, paradoxically, they may be able to survive. Hence, what we are witnessing is a drain of those who were called to balance and sustain the pension system, given their youth and high birth rates. If these families could be liberated from their asphyxiating debts, valuable resources would be unblocked, provoking a radical reactivation of internal demand and the economy as a whole. What is the real cost of leaving hundreds of thousands of families without a sliver of hope within a system whose economy runs on confidence?

We are not talking only in economic and social terms. Politically speaking, the State will have a real governance problem if the millions of people affected by the mortgage crisis hear, as the only message, that this country has ignored their fate. If, regardless of what they do, this

generation indebted for life is forced outside of the system, if they are never again considered *trust-worthy*, if no one offers them an escape route or a horizon of hope, then they will have nothing left to lose. If you have nothing to lose, there is very little that you fear. There are also few reasons to respect the rules of a system that excludes you and therefore refuses to represent you.

### **La Rioja. Banco Popular: Leave Pedro in Peace**

Pedro has lived for eighty-five springs. He lived through the civil war and post-war era. He lived with three different regimes: a republic, a dictatorship and a parliamentary monarchy, as each regime made its way to his hometown.

He bought his house back in the 1970's and in the early 1990's sold it to a family member under the condition that they let him live there. In order to buy the home, his family used Pedro's home as collateral. The financial problems they suffered and the loss of their jobs did the rest, foreclosure arrived unannounced in 2011.

Pedro's family learned about the foreclosure, just as the property was being put up for auction. The news caused Pedro to have two strokes. He informed Banco Popular of his lifetime tenure of the property and brought all the necessary documentation (utility, telephone, and water bills, garbage fees, and registration) to show the reality of the situation.

Pedro, who only wants to live the last years of his life in his own home, presented himself before the branch and the court to ask that they leave him alone, that they permit him to continue living there, even if paying rent. The response from Banco Popular was a resounding, "No."

Today, the bank continues to demand the home and has solicited the help of the court to take possession of it and carry out the eviction. They do not think of letting this man continue living in his home, the place where he wants to live. Social services have recorded these facts, but all they can offer to Pedro is a place in a

nursing home located nearly 60 kilometers from his birthplace.

We hope that after this book is published, the support of the PAH will succeed in helping Pedro sleep in his home in peace, as he has

### **Madrid. Two apartments for the price of one**

On April 18th of 2012, the PAH chapters of Madrid and the neighborhood of Carabanchel succeeded in preventing the eviction of Vicente, a 74 year old man with a recent heart surgery who shared the home with his grandchild. Both survived thanks to the pension of only 600 euros that Vicente received every month.

The only “mistake” Vicente made was to act as a guarantor on his son’s 2004 mortgage with Citibank to the amount of 170,000 euros. His son could not continue making payments on the mortgage and lost his home in June 2011. Not satisfied with just one home, Citibank ordered the eviction of the elderly guarantor and the grandson, without allowing for a hearing of any alternative proposal. The perverse Spanish law allowed Citibank to end up with two homes for the price of one.

The mobilization of the PAH, the neighborhood community and the denouncement of Vicente’s case in the media led the bank to partially rectify the situation and permit Vicente and his grandson to stay in the home for at least five more years for a monthly rent of 150 euros.

### **DACIÓN EN PAGO: A SYMBOL AGAINST THE MARKET DICTATORSHIP**

Winning the battle of *dación en pago* would be a victory for affected families, a triumph for social justice and a necessary condition to overcome the crisis. It would mean breaking with the twisted logic imposed by the markets, acting as a symbolic first step in the reclaiming of democratic control of the economy by civil society. *Dación en pago* is becoming a veritable index of the lack of political legitimacy of all those parties that position themselves against the interests of the people they are meant to represent. But people are no longer willing to be trampled over, and the tension rises every single day.

IN SUMMARY

Despite the constant jeremiads by financial institutions that warn that if *dación en pago* were approved it would bring forth an apocalyptic scenario with the collapse of the financial system, the fact remains that *dación en pago* as a measure to extinguish mortgage debt by releasing the property to the bank—in cases where said property has served as a main residency and when the defaulter has acted in good faith—is not just possible, but necessary. These are threats which attempt to reverse the undeniable social support for a bare minimum as demanded by those affected. Quite the contrary to the assertions by bank stakeholders and the same expert voices that until two days ago denied the housing bubble, the Achilles' heel of banks and savings banks is not family mortgage debt, but corporate delinquency in the real-estate sector, (four times as much), and a depreciation of assets that act as collateral for these much steeper loans. Although these corporations receive *dación en pago*, incomprehensibly, no alarms go off.

**The fight against evictions**

Obtaining a *dación en pago* is a necessary condition but not sufficient enough to carry on with a dignified life. There is still the other side of the coin: the threat of eviction without the possibility of relocation.

When we speak of the mortgage crisis, we also speak of an emergency housing situation that is testing the responsiveness of government. Administrations, completely overwhelmed by the avalanche of foreclosures that occur every day, do not offer relocation alternatives for families.

This is the context in which the *Stop Evictions* campaign emerged, successfully gathering people on the spot to prevent eviction orders being executed. In Spanish an eviction order is called an *orden de lanzamiento*, literally an “order to throw”, a sadly descriptive term that conveys the sense of families being thrown out on the streets by a judicial system that remains oblivious to whether they have any shelter or not.

WHEN LAWS ARE UNJUST,

TO DISOBEY THEM IS NOT ONLY A RIGHT BUT A CIVIC DUTY

Preventing an eviction against a judicial order is an act of civil disobedience.

ence: disobeying those laws that are deemed unjust is not just a right, but also a duty of all citizens. This is no gratuitous disobedience. Instead, it finds its legitimacy in a superior legal framework that has been systematically violated by the Spanish state: that of human rights.

In effect, mortgage foreclosures and wide-spread evictions due to economic reasons in Spain violate, among others, articles 24 (on judicial guardianship) and 47 (on the right to a home) of the Spanish Constitution; article 25 of the Universal Declaration of Human Rights; article 11 of the International Covenant on Economic, Social, and Cultural Rights, ratified by the Spanish state; and, more concretely, the General Observations of the United Nations Committee on Economic, Social and Cultural Rights, number 3 (obligations of member states), 4 (the right to a home), and 7 (the prevention of compulsory evictions).

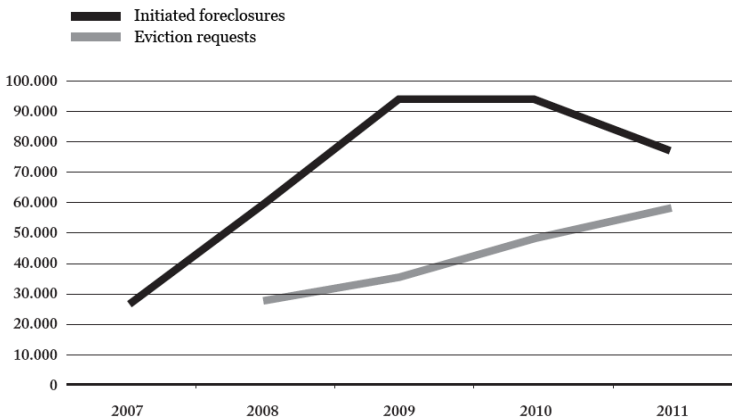
To put it more elegantly, in the words of the Spanish writer José Luis Sampedro: “we must respect the law for as long as the law is respectable”. Aside from disrespectful laws, it is easy to understand why the *Stop Evictions* campaign has gained so much popular support if we also find a bureaucratic administration that completely neglects its duties, failing to take any action in order to guarantee citizens’ rights, especially those of the most vulnerable sectors of society.

#### TO FIND THE FIRST CASE: THE MOST DIFFICULT CHALLENGE

While the PAH had no trouble starting the campaign for *dación en pago*, stopping evictions has proven to be far more troublesome. Several reasons explain the initial difficulty. First, there was a legal reason. Foreclosures are processes that can be quietly extended over two years in court, so that the eviction order, which is the last step in this process, can be a long time coming. Indeed, data analysis showed that from 2010, evictions caused by unpaid mortgages soared as a result of proceedings that began in 2008 and 2009.

More importantly, it was not a simple task to convince those affected of the usefulness of resisting evictions, above all because the group who had to lead the resistance (those affected) felt paralyzed, with strong feelings of guilt, a sense of personal failure, and an elevated level of fear and shame. Before dealing with evictions, there was first the task of creating and consolidating a space of trust within a regular meeting space

## Evolution of foreclosure and eviction requests



where people could experiment with the idea that their problem was not an individual but a collective one which was due to structural causes. Secondly, as a consequence of the first, they needed to be convinced that there was no need to feel guilt or shame. Third, that collective action could transform reality and make possible what seemed impossible.

Patient work was necessary to win the first case that embodied this struggle and to demonstrate that collective, disobedient action made sense. We needed a case that would show that we could achieve our goals. And it came in the form of Lluís, a brave and kind man from Bisbal del Penedes who, when faced with the eviction order, not only saw himself potentially living on the street, but also ran the risk of losing custody of his nine-year-old son precisely for not having a home to offer him. He was ready to fight back. It was in this way that the PAH established the *Stop Evictions* campaign, preventing the first eviction on November 3rd, 2010. From then we continued to apply the same protocol of action, in a peaceful but forceful manner which has allowed us to stop more than two hundred evictions in only one year, the majority in Murcia, Catalonia, and Madrid.

**PROTOCOL: THE PAH DOES NOT STOP EVICTIONS “ON REQUEST”.**

The PAH only intervenes in cases where the property has been the main and only residency, and when the reason for defaulting has been unexpected and involuntary. That is to say, the idea is not to stop any odd eviction, but only those when the fundamental right to housing is at stake. The *modus operandi* is extremely simple: gathering together as many people as possible, blocking access to the property so that neither the court clerk nor the bank’s legal representative can carry out the repossession order. Before and after this date the PAH attempts to negotiate with the financial institution exploring all administrative and judicial channels in order to arrive at a more stable solution than a mere postponement of the eviction.

**The #stopdesahucios turns one year old, exceeding the symbolic figure of over one hundred prevented evictions. Congratulations!**

During the morning of November 3rd, 2010, close to thirty activists of the PAH moved towards Bisbal del Penedes, on the outskirts of Barcelona where Lluís and his son resided—with banners, green shirts, overcoats, and plenty of nerves. The 3rd of November was the date that the court had set for Lluís, a man who had been without work and only received 426 euros in benefits, to leave his house that was to be awarded to CatalunyaCaixa through a foreclosure process. Moreover, the bank would be able to continue collecting a debt of more than 100,000 euros. Lluís never gave up. He could not simply give up with a nine-year-old son in his care, so he decided to take the activist plunge. His step would end up having great consequences. But at that moment, it wasn’t so easy. It didn’t occur to most families to resist an eviction. The idea simply didn’t exist within the popular imagination. Most people left the house on their own once the auction had taken place, fearing that the police would soon evict them. Lluís said, “enough.” He instilled bravery and faith into the activists of the PAH, who he had been getting to know little by little, week by week, within our clamorous assemblies. He started the campaign *Stop Desahucios*, which just celebrated one year and over one hundred prevented evictions.

Lluís continues to live in his house after five eviction attempts. Not only this, the constant denunciation and pressure put on CatalunyaCaixa has forced them to surrender. Today, Lluís sleeps soundly. The eviction has been suspended indefinitely and Lluís is no longer so worried about his case. Now he worries about people who find themselves in similar situations. Thus, he doesn't miss a single eviction or a single assembly. With the help of others, he started a PAH close to Bisbal del Penedes.

Lluís's story is one of many who overcame their fear. He's one of the many who've understood that, together, we can do anything and have thus started working together. Each day there are more of us paddling in that same direction. Each day we achieve little big victories that point the way. Although we have a long road ahead, occasionally we look back to realize the path we have forged, together.

Communication published on the website of the PAH, 27/11/2011

The PAH is not, nor does it want to be, a made for hire anti-eviction agency. It does not act before first getting to know the eviction case well. The PAH does not intend to be a team of anti-eviction professionals, but instead aims to contribute to the creation of collective processes that allow us to confront all daily injustices.

Finally, in an anti-eviction action we cannot forget that it is carried out to prevent the eviction of an individual or family. Thus, their will and welfare is always a priority.

Beyond the laws and the protocols, those who have participated in these actions know that stopping an eviction can suddenly become a magical moment. There are the frayed nerves, the uncertainty of not knowing until the last moment if it will succeed, the anxiety of the family, feelings of solidarity and determination and the rumors that a judicial commission is approaching. When the prosecutor and court clerk appear, the instinctive reaction of the group is to join together. While holding hands and arms, we defend the door of the home as if it



were our own until getting confirmation that there will be no eviction today, that the authorities have left, that we have once again succeeded. It's magic to see that, if we come together, things that seemed inevitable can change and things that seemed impossible become reality.

#### TRANSFORM MORTGAGED HOMES INTO SOCIAL RENTAL HOUSING, THE OTHER MAJOR GOAL OF THE PAH

In a country overflowing with empty homes but without a stock of social housing and with thousands of families trapped in foreclosure proceedings, seeing how financial institutions collect empty homes for profit is an intolerable violence. Therefore, stopping evictions and disobeying the law, if necessary, has become a priority not only of those affected but also for most of outraged society.

But it's not enough to stop evictions, as this only postpones the eviction; the judge can always set a new date. Given this scenario, the PAH proposes structural interventions, such as the conversion of the stock of foreclosed homes of insolvent people into a public stock of affordable social rentals. This is a proposal that, if there were the political will, could be applied in the following ways:

1. Condition public aid received by banks in a way that homes in the process of mortgage foreclosure are rented out to the former owner for an amount that doesn't exceed 30% of the family's earnings.

2. Expropriate the foreclosed homes for a minimum of five years and rent them to evicted families for a rent that does not exceed more than 30% of their income.

3. Expropriate foreclosed homes in the hands of financial institutions for the auction price. The PAH calculates that with the FROB fund (Fund for Orderly Bank Restructuring, created to assist banks in crisis), nearly one million homes could be awarded and thus make available necessary but currently non-existent public housing.

#### THE PAH, THE 15-M AND THE CAMPAIGN AGAINST EVICTIONS: A PERFECT ENCOUNTER

The campaign against evictions experienced a quantum leap with the outbreak of the 15-M movement. On May 15th of 2011, inspired by

the *Arab Spring*, thousands of outraged citizens organized themselves through social networks and went out into the streets to demand a true democracy. In one sense, this produced a *perfect encounter* between the PAH and the 15-M movement. The PAH experienced significant growth (creating new PAHs connected to the assemblies of 15-M), and the concentrations to stop evictions strengthened in number and force. The dissemination of calls through social networks multiplied. After the initial expression of unease and outrage, the 15-M movement wanted to take the next step by solidifying its objectives. It found in the PAH's previous work a useful source for assigning responsibility, objectives and solutions required, at least in the field of housing and finance. In this way, the 15-M movement immediately adopted, as its own, demands for *dación en pago* and joined in with the campaign against evictions.

In many locales where a PAH had not yet been established, the 15-M immediately assumed the functions and lines of work developed by the PAH. Thus, many of the housing commissions that emerged in the heat of the assemblies of the 15-M were, in fact, the seeds of future PAH locales. At the state level, the first PAH anti-eviction action with active participation of the 15-M took place in Badalona. Teresa, a 79-year-old woman and her son David were threatened by an eviction order and used the 15-M lorry to call for people to concentrate outside their home on May 25th in order to stop their eviction.

But surely one of the clearest examples of the integration between the *indignados* movement and the PAH can be found in Madrid. The spread of the movement was key and gave the necessary push for PAH Madrid, formally established only just before the 15-M, to begin moving forward. The first eviction that was stopped in Madrid in collaboration between the PAH and the 15-M was that of Tatiana and Anwar, on June 15th, 2011, before a strong media presence and involving more than two hundred people blocking the court entourage's way. This victory marked a turning point for PAH Madrid, sealed the alliance with the 15-M and catapulted the *Stop Evictions* campaign forward in the city.

The broad mobilization represented by the 15-M movement goes beyond that of the PAH and immediately brings attention to the evictions taking place within the rental market. Although the quantity is relatively small within Spain, hundreds of thousands of people choose

this option, more in larger cities than in smaller ones. In these cases, the PAH determines whether it is a small owner in distress or a larger owner who just wants to free up housing for speculation: in the first case, it is probably most useful to seek a compromise to arrive at the best solution for both parties; whereas in the second case, we act with force, because speculation is intolerable when there are lives at stake.

#### NEW CHALLENGES: OPEN DATA AND ATTEMPTED CRIMINALIZATION

But with growth emerges new challenges. The power of fighting evictions, which demonstrates the usefulness of collective action and generalizes civil disobedience, certainly causes elites and the powers-that-be to seek ways to disable it. As such, for example, some judges schedule open dates for evictions, preventing the possibility of organizing concentrations to stop them on a predetermined day and hour. This is an action that many consider illegal, given that it denies the person the right to know what day they will be evicted, making solidarity from neighbors difficult and forcing us to think about alternative strategies.

Faced with the fear that resistance with broad social support will become stronger and stronger, the government reacted and chose the wrong path. Disproportionately large police forces have been ordered to enforce the eviction, to disable the solidarity movement and discourage the public by disseminating criminalizing images or fining people gathered there. One of the first significant cases in this sense was the eviction of a family that had been subjected to real estate mobbing in the Barcelona neighbourhood El Clot in June 2011. In order to evict a couple and their three children from their home, several dozen anti-riot policemen were deployed. Neither the family nor the neighbours who had come to support them had been violent in the slightest. The PAH has had to face similarly disproportionate shows of force in Vic, Murcia, Madrid and Sabadell, among other cities.

One recent and grave episode of police violence took place in Salt, in the province of Girona, a community particularly punished by the crisis and with a very elevated number of foreclosures and evictions. On April 23rd, 2012, coinciding with the holiday of Sant Jordi (a Catalonian festival on the Day of San Jorge), there was an eviction order against a local family. As on many other occasions, PAH Girona and the neighborhood

of Salt barricaded the doors of the building in order to block the way and prevent the eviction. The bank had called for police reinforcement. This time the citizens seated peacefully on the floor could do nothing to stop it. The police attacked the demonstrators with batons and an unidentified officer of *Mossos d'Esquadra* hit and broke the shinbone of Ramon, who had to undergo surgery in the hospital. Ramon could not stand for three months. The PAH denounced this act in court and has brought these and other cases of police aggression to International Amnesty in order to open an investigation.

It is worth remembering that this escalation of police violence takes place in a political context marked by growing unrest, the result of cuts that state and regional governments are applying in the name of austerity. Some of the heads of domestic policy, such as Felip Puig of Catalonia, are leading a crackdown that seeks to criminalize any kind of protest, a dangerous drift towards authoritarianism more typical of another time. Arbitrary identification, the use of tear gas in peaceful demonstrations, the application of preventive detention, the restriction of freedom of movement and assembly, and a ridiculously disproportionate deployment of police, as during the European Central Bank (ECB) summit in Barcelona on May 3, 2012, are some examples. All these elements instill fear in citizens and design a state of emergency in order to deter the population from responding on the street. In the same line, Interior Minister, Jorge Fernandez Diaz has been talking about reforming the criminal code so that peaceful disobedience is classified as a crime of assault against authority. This reform aims to criminalize the mere spread of a call to action that could hypothetically end up with altercations. If the reform is approved, it could, for example, censor and shut down the PAH website, in which monthly calls for the *Stop Evictions* campaign are published.

Even so, the campaign against evictions is more alive than ever, and massive social support has helped the cause to grow. The Administration forgets that those who have lost everything do not have anything to lose, and that the movement is sturdy enough to not be deterred by threats of criminalization.

**SOCIAL WORK OF THE PAH: CITIZEN REAPPROPRIATION OF EMPTY, FORECLOSED HOMES**

Given this new scenario, this citizen movement has begun to react and develop new strategies that take initiative instead of accepting arbitrary judicial decisions. New campaigns dodge the repressive policies of the administrations and confrontation with security forces. New strategies like those implemented in other countries, for example the United States, where citizens help families reoccupy their homes and to reappropriate entire buildings that are empty and in the hands of financial institutions. With this intention, the *Social Work of the PAH* began. In the case that the Administration fails to guarantee relocation for threatened families, the bank refuses to offer the foreclosed home to the family for an affordable rent or the blockade to stop the eviction fails, the PAH supports the reoccupation of empty homes in the hands of financial institutions.

The fight against evictions has undisputedly claimed a double victory. It has succeeded in transforming the collective imagination,

**16 families from Terrassa get housing in two apartment blocks, property of Unnim and CatalunyaCaixa, thanks to the Social Work of the PAH:**

In December of 2011, PAH Terrassa made public that there were two entire blocks of apartments in the city, property of Unnim and CatalunyaCaixa, that were vacant but that, thanks to the collective action of the PAH, had been recovered to relocate families who had been victims of foreclosure.

In one apartment block, property of Unnim and situated in the neighborhood of Cogullada, lived five families. In another block, property of CatalunyaCaixa and situated in the neighborhood of Sant Pere Nord, lived 11 families cooperatively. Both blocks placed a huge banner on the facade of the building that read, *Social rent now, Social Work of the PAH.*

Terrassa PAH has appealed to the banks involved to negotiate social rent for these and other properties. In order to demonstrate the genuineness of their proposal, the affected families opened a bank account in the name of an association created specifically for

this purpose in each one of these banking institutions. Every month each family pays in as much as they are able to. Although until now the banks have refused to accept this money, at least they have agreed to sit at the negotiating table. At the same time, the PAH contacted the City Council and asked it to act as a mediator in favor of turning empty properties owned by the banks into social housing. So far, the City Council has been responsive and has publicly agreed to cooperate.

tearing away the veil of fear and the resignation that terrorized a good part the population. It dismantled the stigma associated with the threat of eviction for thousands of people who felt completely isolated and has turned what consumer society considered a personal failure (something to be ashamed of) into dignity and solidarity. It also, by stopping evictions, defended the most basic necessities of daily life, a concrete response to an urgent problem: not to end up on the street. The postponement of evictions and relocation to social housing has not resolved the widespread problem of eviction, but it has allowed most who have trusted in this mutual support to maintain their homes. This is not a small thing.

### **Motions in the municipalities**

#### **CITIES AND THE “HOT POTATO” OF RESPONSIBILITY**

A recurring problem, and not just limited to the issue of housing, is the lack of tools and resources available to municipalities when faced with a problem whose origin is global. Increasingly, conflicts specific to an urban area are caused by phenomena that exceed the formal powers held by municipal governments. This is the case of migration flow, business outsourcing and labor, mafias that live off prostitution, among many other examples.

The mortgage crisis and massive evictions in Spain put forth the same challenge: what can cities do to solve a problem that, in the best case, depends on state laws? More often than not, local administrations simply give up: City Councils cannot intervene in the workings of financial institutions that operate at the level of a transnational and

deregulated market, nor are they able to confront the unjust law that regulates mortgage credit at a national level. At best they can increase their social services budget in order to ameliorate some of the most dramatic and urgent consequences of the situation. As the economist and political scientist Joan Subirats has warned, this amounts to little more than “end of the pipe policies”. In the Spanish context this course of action signals the virtual suicide of local administrations.

As previously mentioned, the financing of Spanish local municipalities is one of the great unfinished subjects, a deficit that, during the housing bubble years, they avoided by allowing themselves to be funded by land speculation and urban redevelopment. A direct consequence has been the proliferation of corruption; another is that, when the housing bubble burst, their main source of income was abruptly cut off. Suddenly, cities found themselves on the threshold of collapse, deep in debt (similar to that of families) without any potential for short-term economic recovery and with more requests for aid and social services than ever before.

As a result of a housing policy of commodification from preceding years, local municipalities have no social housing where evicted families can be relocated. To make matters worse, the anomaly of Spanish Law expels thousands of families from the flow of mainstream society, who in turn become perpetual users of social services. With an increase in the demand for social services and aid but with less income than before, cities also pay the bill for a medieval legislation that consumes municipal public budgets.

This scenario has forced a new kind of rebellion to emerge in cities that exceeds the shortsightedness of the competitive perspective. Especially considering the thousands of empty homes in our cities.

Following this approach, in December 2010, the PAH launched a specific campaign directed at municipalities to position themselves and publicly urge central government to amend regulation and approve *dación en pago*. These motions force municipal governments to adopt measures in order to prevent evictions for economic reasons. Among other mechanisms, it provides for the establishment of joint committees in which the Administration, the PAH, neighborhood associations and other social organizations could participate in. The objective of these commissions would be to study and implement the necessary means to

avoid evictions, guarantee the relocation of families in those cases where it cannot be avoided, and to drive concrete measures that ease the situation of those affected while the law remains unchanged. The PAH has already suggested possible measures:

1. A revision of the protocols for social service intervention so that no family is threatened with the loss of custody of their children due to an eviction. We demand that social services collaborate to obtain deferrals, for example, by soliciting the court to suspend an eviction to allow residents to search for alternative housing.

2. Do not put any police at the disposal of an eviction.

3. To conduct an urgent census of empty homes in the hands of banks and apply interventions that penalizes their antisocial use, from recharging a property tax to the possible expropriation of the use of the property.

4. Questioning financial institutions operating in the cities to demand the suspension of evictions resulting from ongoing foreclosures and the cancellation of illegitimate debts. In the case that they do not respond, sanctions should be applied.

In this way the PAH is demanding that City Councils, as the most immediate public representatives, provide an urgent response to the critical situation that many of their citizens find themselves in, a situation that threatens to lead to social unrest in their cities. But at the same time, City Councils are also treated as victims of the mortgage law, which is depleting their already overstretched budgets.

In one year, close to two hundred cities approved the motion, in a campaign that extended from Catalonia to other municipalities throughout the country. Although many different political forces have given their support, we must acknowledge that the immense majority of the motions have been presented by the ICV, EUA, CUP, IU and the ERC.

In fact, this campaign also aims to pierce the solid structures of political parties, especially those that block the modified regulations in the Congress of Deputies. To the extent that these motions are mainly adopted unanimously at the plenary sessions of the municipalities with the agreement of all political forces represented, including the Popular Party (PP) and Socialist Party (PSOE), these motions bring up a contradiction within the major parties.



Obviously, the specific contents of the motions, especially the points which directly refer to municipalities, are not homogeneous but are by necessity different, and agreements that ultimately are approved in each municipality depends on the existing balance of forces. As such, while most of the municipalities have been limited to passing a mere declaration of intent, others have been pioneers in the search for solutions beyond the administrative skills that formally correspond to them. This is the case, for example, in Terrassa, a city in the metropolitan area surrounding Barcelona, where a very active PAH has led city officials to force financial institutions to sit at a table and offer real alternatives to those affected, such as the conversion of mortgaged homes into social housing. The Terrassa City Council has condemned the way financial institutions have accumulated around 5,000 empty properties in the city. This poses serious problems for the Council itself, which needs this housing stock in order to re-house homeless families, but also for countless neighbours who have to deal with a set of new owners (the banks) who neglect their duties to pay service and maintenance charges, creating conflicts within the community and generally making life in these neighbourhoods unnecessarily difficult.

Girona is another interesting example. Although still in its early stages, the first steps are headed in the right direction. The formation of the diverse commission, under the title *Committee for the Right to Housing*, has been led in good part by the PAH. The mandate of the Committee is clear and unequivocal: to achieve *dación en pago* and social rent, not refinancing. In addition, the municipal technicians will be trained by involving members of the PAH, bringing with them a vast store of experience and extensive knowledge in the field.

So far Barcelona has been the most important city to approve the motion. For now, however, despite high expectations, PAH Barcelona's motion has not produced the results it hoped for. The excessive respect that the financial institutions inspire in the municipal government has prevented decisive action from being taken. The city council of Barcelona refuses to publish the number of empty flats in the hands of financial institutions that exist in the city, as Terrassa has done. If there were the political will, an exercise in transparency of this kind, which would cost not even one penny, would encourage banks to think twice

before proceeding with an eviction. Unfortunately, this leads us to think that the Barcelona City Council is unlikely to go beyond a statement of intentions, the small gestures we have witnessed so far seem to be driven by a marketing strategy and the desire to improve their image, rather than a genuine intention to provide long-term solutions for the families affected.

We live in difficult times, and what steps society demands are brave and inspiring. The problem is not of ability, but of political will. We don't have plenty of examples, but we have some interesting ones that open up the horizon of possibilities beyond what hegemonic discourse say is possible.

### **The example of district X of Rome, Italy.**

We find an interesting example in Rome Italy's District X. In 2007, it's president, Sandro Medici, came to the conclusion that the emergency situation of housing in his district required urgent intervention. Faced with hundreds of evicted families or those threatened with eviction and hundreds of empty flats in the hands of large real estate and landowners, Medici passed an ordinance whereby in the district he would expropriate the use of certain properties that had been empty for years in order to house families in them. The local government only expropriated the use of the property and collected social rent that later would be offered to the owner.

Although there existed no specific law to include this action, the measure was not illegal: Sandro Medici limited himself to relating the emergency declared publicly by the Roman City Council with the state of emergency that is produced in natural disaster situations. In these occasions, municipal authorities can and should act swiftly and efficiently to protect its citizens. And this is what they did in this case. Later, the presidents of the other two Roman districts joined this initiative, and in October of 2007 the three districts signed ordinances to expropriate some 250 homes belonging to big landowners who had either left them abandoned or threatened to evict tenants for higher rents.

In this context, Sandro Medici made a brave move to not resign to a routine reading of the law. Of course, the owners of the empty

properties, who accused him of corruption and usurpation of functions, immediately denounced it. After various episodes in court, and to the surprise of few, in July 2011 the Roman courts agreed with him and acquitted him of the charges, setting an interesting precedent. Both the prosecution and the judge concluded that the presidents of the three districts, who with their ordinances in October 2007 protected the right to housing for 250 families, were competent to intervene in the declared emergency situation.

### **The ILP of shame**

In order to overcome the blockade of *dación en pago* in the Congress of Deputies, so as to force the Spanish Parliament to take action against evictions, the PAH, together with other social organizations, trade unions and grass-roots movements (*Observatorio DESC*, *CONFAVC*, *UGT*, *CC. OO.* and *Mesa del Tercer Sector*) presented throughout 2011 a Popular Legislative Initiative (ILP) for regulating *dación en pago* retroactively, applying a moratorium on evictions for economic reasons, and converting empty houses currently in the hands of financial institutions into social housing.

An ILP is a mechanism that allows citizens to put forward legislative proposals to be discussed by the Congress of Deputies. For this to happen there has to be a minimum of 500,000 signatures within a maximum nine-month period.

The idea to go ahead with this initiative emerged in November 2010, in Catalonia. It should be noted that when the proposal first appeared, despite the context of the crisis that we found ourselves in, the 15-M movement hadn't broken out yet. The social landscape was bleak and the PAH had only taken root in Catalonia and Murcia. Within these circumstances, an initiative that required 500,000 signatures was only viable with the active involvement of a large enough social infrastructure, organizational capacity and enough resources to carry it out.

In this sense, the main trade unions, that had been hit by the first defeats in the labor market, saw it as a chance to recover some of their

popularity. *Dación en pago* was a proposal that the PAH had been developing for a while and which had wide public support. If legislative change were finally achieved, trade unions would also share in a much needed victory. On the other hand, the PAH have always made it very clear that the battle for *dación en pago* could only be won if we were able to join and integrate a greater number of social organizations under a united front. Furthermore, we must not forget that unions are very large structures with hundreds of thousands of members and a base militancy that is also suffering the consequences of the current mortgage legislation.

At first, the ILP was only envisioned as a modification to introduce legislation on *dación en pago*. The articulation of the proposal was carried out on the basis of legal work previously developed by the *Observatorio DESC*, an observatory for social rights with a proven track record in the defense of the right to housing and who has always collaborated with social movements by preparing legal instruments and tools that help shape demands related to basic rights. On this occasion, also collaborating on the ILP, apart from *Observatorio DESC*, were *Comisión de Defensa del Colegio de Abogados de Barcelona* (Defence Committee of the Bar Association of Barcelona) and the *Comisión de Derechos Humanos del Colegio de Abogados de Girona* (Commission on Human Rights of the Bar Association of Girona). The initiative featured for the first time in the register of the Board of Congress in March 2011.

#### THE CONTROVERSY IS SERVED

The ILP application has been a difficult, confusing process and full of obstacles that have been possible to overcome thanks to public pressure. An ILP commonly known as the *ILP of shame* because of the inexplicable obstacles conducted by the Board of Congress, comprised mainly of the Popular and Socialist Parties, that delayed the process of collecting signatures so it could not be started before or during the general election in November 2011.

What was first supposed to be a mere administrative process, the acceptance of this ILP, became an obstacle course. Two weeks after filing the ILP, the steering group received a message that the Board had denied the processing of the proposed ILP. What was the motive?

There already existed a similar initiative that had been registered only two days prior. The Board, taken over by both the Popular Party (PP) and Socialist Party (PSOE), found a perfect excuse for blocking an initiative that interested neither of the parties on the eve of the general election. According to the Board, regulations governing the ILP procedure did not allow two initiatives to pursue a similar goal during the same parliamentary term. This took us completely by surprise. In the first place, although the ILP had been formerly registered in March 2011, since November 2010 it was already public knowledge that we were working on the issue and had been covered extensively in the media. For this reason, it seemed strange that somebody else was working on a parallel initiative without being in contact with any of the organizations within the steering group. The confusion grew as we got to know more details. Whoever had presented the initiative was a tiny political party with little influence (a fact that made it impossible to collect 500,000 signatures within the nine months as required by law) and without any previous work around the right to housing or problems associated to mortgage. In fact, the proposal that had entered the register was a total mess. In an effort to entangle the group, *Publico* (Spanish online newspaper), in an extensive report, demonstrated the links between this small group and the real estate sector in the Community of Valencia.

After the rejection by the Board, we decided to use this as an opportunity to expand on our initial proposal. We reformulated the ILP by adding a moratorium on evictions for economic reasons and to convert empty housing owned by the banks into social housing. With this extension, the ILP covered the main objectives that the PAH has demanded since its inception.

In spite of this reformulation, which moved *dación en pago* to the principal objective of the reform, the Board once again refused the initiative. It should be noted that press releases from the Board don't tend to be that detailed and are usually confined to authorizing or denying the application without communicating the reasons behind the decision. With this controversial decision it became more evident that this particular ILP was inconvenient and unwelcome.

At the same time, the rejection of the ILP caused great indignation and the media frenzy generated around the issue was remarkable. In

the end, social pressure forced the political group to withdraw their ILP in order to make way for the one set out by different social actors. The road seemed to open up a bit. However, just as we started to finally see the light at the end of the tunnel, the Board adopted yet another controversial decision. The situation that had created the withdrawal of the initiative was unprecedented and the rules did not provide for this possibility. They claimed that the lawyers would need more time to study the matter before it could be resolved. In the meantime, summer came and all the deputies were on vacation.

Finally, in September 2011, the Board met up again and had no other option but to accept the ILP application for retroactive *dación en pago*, moratorium on evictions and social rent a few days before dissolving Parliament because of the general elections taking place in November 2011. The ILP had been accepted, but there was not enough time to collect signatures during the election campaign, which was one of our main objectives.

#### THE ILP: A MECHANISM FOR LIMITED DEMOCRATIC PARTICIPATION

Among the numerous deficiencies of the democratic system in Spain, we find an almost complete lack of avenues through which citizens can actively engage with the government. Aside from voting every four years, the ILP (or Popular Legislative Initiative) is the only mechanism in place to ensure direct citizens' participation in governmental affairs. Despite this fact, it is by no means easy to navigate. According to the rules, citizens can submit a bill for consideration by Congress, without having to go through any political party, if they can collect 500,000 signatures. Although theoretically any citizen can do this, in practice there are so many obstacles and requirements that only a strong social organization is able to take it further.

The steps of an ILP are the following: once the proposal is articulated, it is registered with the Board of Congress. The Board's legal department then goes through what the initiative seeks, sensitive to how it will be regulated by this mechanism. When they have given it the go-ahead, then it is passed onto the Senate, and from there back to Congress who then sends it to the Central Electoral Council. But it doesn't stop there. Once it has been accepted and published in the BOE (Official State Bul-

letin), the committee will have to supervise and authorise the design of a written statement that will be used to gather signatures, this will have to follow a set of pre-determined criteria. After the statement has been approved, as many copies as the promoters of the ILP deem adequate will have to be printed. All of these copies will have to be taken back to the committee who will stamp each copy, one page at a time. In this respect, it is necessary to have money up front to cover the printing as well as shipping costs. This is an amount that is not in everyone's reach.

Once all of this has been done, one can start collecting signatures. The nine months begins once the Central Electoral Council approves the sheets and communicates its approval in writing to the promoting group, who still has to print the sheets out and get a seal on each copy. This is a process that takes, at least, one of the nine months that the law provides for collecting 500,000 signatures.

Finally, the result is not binding. After collecting all the signatures, Congress is only required to discuss the proposal, but can easily refuse it or not even take it into consideration. This is what they call *exemplary democracy*.

**BUT IF THE INITIATIVE ISN'T BINDING, WHY EVEN GO AHEAD WITH AN ILP?**  
As has already been stated, the only thing achieved by collecting the necessary signatures is that it forces a debate within Congress, a debate that will be subject to the correlation of forces within the political spectrum of the House. This debate has already been held five times before and each time it has led to the same conclusion. This begs the question: why try again?

The answer is simple. The situation changes dramatically when this debate has not been prompted by MPs from minority parties, but instead arrives at Congress thanks to a citizens' initiative backed by over half a million signatures. What is really significant, then, might not be the ultimate result of this initiative, but the social and political process that it can generate. The battle for *dación en pago* is not really taking place in the Congress chamber, but outside its walls. As each town, each local authority and each neighbourhood within our cities commits itself to this process, we move closer to victory. If the wide popular support that this campaign enjoys is backed by a campaign that goes beyond the

politicians' wildest expectations, political parties will have no other option but to answer to this call and implement suitable measures in order to guarantee the right to housing. Otherwise they will be openly neglecting their duty to listen to the electorate, provoking a clash of legitimacies. On the one hand, we have the legitimacy that is granted every four years through general elections, a legitimacy that becomes weaker as the electoral manifesto is repeatedly betrayed. On the other hand, we have the legitimacy earned through the active engagement of citizens in a participative process developed over several months. The consequences of this hypothetical scenario are hard to predict.

Collecting these signatures, however, is quite a challenge. It is not simply the desire to collect a half a million signatures, but to reignite a popular movement that fills the streets and squares of our cities. The level of organization required to deploy this is enormous, particularly for the PAH who is nourished by affected families and supporters who volunteer their time without any infrastructure or financial backing to even send out the signature forms. In this sense, the links between neighbours, neighbourhood associations and 15-M is completely essential. It will be in the streets and squares where the PAH will collect signatures and where the battle for the ILP will be ultimately won or lost.



## The Administration's response

From the beginning, one of the things that most surprised the PAH's founders was the profound ignorance shown by the Administration about the problem. It was not that they simply hadn't informed the general public of the risks of over-borrowing, but that they themselves were not even aware of the extent of household debt nor had they planned for the bursting of the housing bubble and the serious effects it would have throughout the country. Even less so were they aware of an archaic feudal law that would leave thousands of families not only without a home but stuck with a lifetime of financial condemnation. From February 2009 and on, the PAH showed a dumbfounded administration, first incredulous and then scared speechless when discovering the abyss that they had guided themselves into.

At the beginning of the crisis, people affected by the situation turned to the administration for help. They found little financial aid or any other means for softening the blow. The main demand of users of social services was related to housing, but the administration didn't have, as we have already seen, enough social housing to relocate people. The result was that, during the first two years of the crisis, the administration limited itself to: 1) Offering assistance that did not solve the main problem of those affected by the crisis (assistance for food, school, etc.); 2) Restricting criteria for allocating emergency lodging, without increasing the availability of social housing; and 3) in practice, medicalizing a strictly

economic problem, leading thousands of people affected by sudden impoverishment and stress created by the mortgage process to seek medical help to alleviate symptoms of anxiety, depression and other similar disorders.

In March 2009, a measure was finally approved at the state level that, at least in headlines, was aimed at responding to the unemployed who could not afford to pay for their mortgage. This was the *ICO Mortgage Moratorium* (ICO) agreement, submitted by the then Minister for Housing, Beatriz Corredor, as a solution for mortgage difficulties. In short, the moratorium was limited to providing incentives for putting a delay on a portion of the fees and only for mortgages not exceeding 170,000 euros (thus leaving out a majority of the mortgages in major cities) and for unemployed people that hadn't missed a single mortgage payment. In these limited cases, the ICO operated as a guarantee that, for a maximum of two years, one could defer 50% of the monthly payments with a limit of 500 euros a month. After two years, however, the person had to pay back the deferred amount *pro rata* and with interest such that the monthly installments increased by almost 30%. In the event that the person concerned could not pay after the two years, the State guaranteed payment of the deferral to the financial institution. This was a measure designed to provide more guarantees to the banks than to help people in vulnerable situations, for those whose overall financial burden increased approximately 3,500 euros after the implementation of the moratorium. The proof is in the total failure of the initiative: of the 6,000 million euros reserved for the ICO only 1.2% was used or about 15,000 operations compared to over 200,000 foreclosures initiated during that time.

In April 2009, the PAH took advantage of Corredor's visit to Barcelona by forcing a meeting with her, in order to explain the seriousness of the situation. The Minister would only say that this was not so and that the *ICO Mortgage Moratorium*, together with social services, was a good solution. The Minister, housing registrar by profession, demonstrated her complete disconnection with the reality of hundreds of thousands of Spanish families.

Through constant action made by the PAH, in collaboration with *Observatorio DESC*, the proposal to lay down minimum requirements to regulate *dación en pago* finally made it to Congress. On June 16, 2010,

the joint working group (ERC-ICV-IU) presented an amendment to the *Civil Procedure Act* (LEC) to the Congressional Commission on Housing in order to introduce *dación en pago* as a right to the people most in need, those who, against their own will, could not cope with their mortgage payments. From that point on, in the following months, the proposal was resubmitted four times in Congress, with similar results: ERC-ICV-IU supported it, both the Popular and Socialist Parties opposed it and the Convergence and Union (CiU) changed its opinion depending on whichever direction the wind blew.

In July 2011, the PAH appeared before a commission created by the Congress of Deputies to study possible modifications to rules on mortgage matters, a commission created from the need to give some kind of response to the growing social pressure coming from the street. From the very beginning, the PAH suspected that this commission had been conceived as a stalling device. In fact, its pacing seemed timed to not finish the job before the November 2011 elections. The joke circulating throughout Parliament was that the best way to dodge political reform that did not want to be addressed was to create a parliamentary study. Indeed, the general election came without the commission ending the round of hearings or drawing any conclusions.

The PAH appeared on the 13th of July to present proposals and arguments collected together in this book. We observed first hand the gross ignorance that reigned over mortgage matters, which surprised us considering that we met with a commission that specifically dealt with housing issues. Within the arguments by those who opposed *dación en pago* we found, in a majority of the cases, simple reproductions of theses held by bank employers. In the worst cases, we heard demagogic arguments without the slightest rigor. Among the latter, the CiU Deputy and President of the joint commission, Pere Macias, even said that if these modifications were approved, mortgages would become more expensive for those who, at that time, were making a huge effort to pay their mortgages. This was a complete outrage as existing mortgage rates depended on Euribor and a differential that was already agreed upon and fixed within the mortgage contract. Approval of *dación en pago* would never make already signed mortgages more expensive. Both the Popular and Socialist Parties used this to avoid the issue. When they were reminded

that *dación en pago* was a measure with unquestionable social support and to approve it was to put democracy in practice, these two parties also made it clear that they were also carrying the responsibility of millions of votes. When the PAH reminded them that a country that permitted two hundred evictions a day was closer to being a failed State than a righteous State, they had the nerve to interrupt this display.

At the end of the hearing there was one question that worried us the most concerning *dación en pago*: in whose hands had we left all the political decisions that affected the entire country?

During that same July 2011, the central government, faced with mounting criticism for inaction, increased by decree, and only for debts resulting from foreclosure, salary immune from seizure from 700 to 962 euros as well as the minimum by which a financial institution could claim for a property from an auction declared null, from 50 to 60% of the appraisal price. These were ridiculous measures that did nothing to alter the situation of thousands of affected people who would be hindered for life, on the street and without any guarantee of relocation. This was the great contribution by the “socialist” government before its crushing defeat in the late 2011 elections.

In March 2012, the Popular Party government approved a decree-law that included a *code of good practice* for financial institutions in order to minimize the impact of foreclosures and evictions that, for certain cases, would open the door to *dación en pago*. Beyond the sensational headlines, the details of the measure caused great disappointment among those affected.

In the first place, because the *code of good practice* is voluntary for financial institutions and therefore generates discrimination: similar families in identical economic situations, may or may not qualify, based on whether the financial institution signed the *code of good practice* or not. Secondly, because the criteria are too restrictive (primary and regular residence, everybody in the household unemployed, maximum mortgage of 120,000 euros in towns and 200,000 in large cities). Furthermore, in the cases where guarantors are included in the mortgage contracts, these guarantors cannot have any property in their name nor be receiving any income. In this manner, this code excludes more than ninety percent of those affected. Thirdly, because it is not retroactive: it excludes hundreds

of thousands of families who have already suffered a foreclosure and are therefore indebted for life. The government position stays within the realm of recommendations and rules out any retroactivity, therefore avoiding any conflicts with the banks, to the point of offering them new tax incentives for signing the code. It appears that this proposal is a strategy for silencing social protest, just as signatures are being collected for the Popular Legislative Initiative (ILP). In reality this measure, rather than benefit, has harmed those affected as all the *dación en pagos* that the PAH is negotiating for and are pending resolution have been thwarted because families don't meet the requirements of the *code of good practice*. In this way, the banks found a perfect excuse for denying *dación en pago* that, through pressure by the PAH, were being achieved.

At the regional level, this underlies both the position and adoption of such measures in Catalonia. It is not by chance that it occurs in one of the most affected communities and exactly where the PAH was born in February 2009, therefore a region where there is notably more social pressure. In June 2009, *Observatorio DESC* organized a conference in Barcelona under the theme *Foreclosures and housing rights: legal strategies for dealing with family insolvency* that filled the auditorium of the Bar Association. Also participating was the Department of Housing of the Government of Catalonia that started to outline the dimensions of the problem.

During the same year, Carme Trilla, the person technically responsible for Housing within the tripartite government, began negotiating with the Catalan Federation Savings Bank to sign an agreement in which they were committed to carry out *dación en pago* in cases of primary residences and proven financial need. In addition, apart from *dación en pago*, she proposed to allow former owners to stay in their homes within a system of affordable rent. In exchange, the government insured the payment of these rents with endorsements and economic aid and offered to assume the general management of rents for those financial institutions that could not do it themselves. After a year of conversations, the savings bank decided that it was not interested and closed the negotiations. A year has gone by and the Generalitat still has not put forward any measures to deal with foreclosures, which are becoming ever more frequent. All it can offer are measly grants that are completely inadequate.

In January 2010, in the wake of the failed agreement, the government

decided to take whatever dialogue and exchange had been achieved with the central savings banks and other banks to foster a mediation service called *Ofideute*. This was done with the intention of “stepping in for a family with payment difficulties to the financial institution in order to renegotiate a new deal for paying back the mortgage loan in a way that was viable and allowed one to stay within the home without an onerous termination of the contract”, and with the main objective of “avoiding evictions caused by nonpayment of mortgage loans”. But this mediation service, once again, was exclusively based on the good will that those institutions might or might not have.

The Government, like the rest of public administrations, aims to intervene only by undertaking actions that in no way interfere with financial institutions. But this is a pointless task. The result of this *mediation* is that only those cases the financial institutions themselves want to sort out get sorted out, their criteria remains indifferent to the actual needs of the people affected. For example, the different policies that Caixa Penedès and La Caixa have in place regarding defaulters makes it virtually impossible to negotiate a *dación en pago* with the former but not with the latter. Hence clients of Caixa Penedès will find it impossible to reach an agreement even if they are in exactly the same situation as clients of La Caixa. The mediation of *Ofideute* is unlikely to change this fact. Hence, in the final instance, the intervention of the Catalan administration has a discriminatory effect, however involuntary, that remains unacceptable. In the last instance, it contributes to the consolidation of an unjust system in which it is up to the financial institutions to decide which lives are doomed to long-term misery and which are spared. With its talk of mediation the Government is merely providing fresh air to these institutions, by diverting social and media attention away from the structural measures that remain necessary to tackle this problem. The PAH has led more than one hundred cases through *Ofideute* and found that most remain unresolved. Even more: the greater the case’s difficulty (and therefore most in need of support and intervention), the less its mediation success.

Between 2011 and the beginning of 2012, other regional communities, such as Andalusia, La Rioja and the Basque Country, among others, started to import the Catalan model for mediation. Although

these administrative structures are the result of social pressure, the PAH will have to attentively follow and exercise strict control over these devices, to ensure that they act in defense of those affected. As we have pointed out, there is a danger that, in some cases, these mediation services end up serving the objectives of banks. The desire by the government to avoid any conflict with the financial sector leads it to offer false solutions to those affected, such as completely absurd refinancing that only postpones but does not resolve the problem. Furthermore, actions of this type could disable existing social mobilization, the true engine of change, without getting to the root of the problem and undertaking the necessary structural reforms to give an adequate response to the situation.

In June 2011, in front of growing social awareness, the Catalan Parliament convened a working committee, to try to agree on a joint proposal for mortgage reform and move it to the Congress of Deputies. On this occasion, the PAH participated by repeating their same message: *less commissions and more democracy*. When the PAH had already spread throughout the country, other regional parliaments, as well as ombudsmen, finally showed their concern in front of an avalanche of foreclosures and support for the demands of those affected.

Finally, at the local level, with a campaign of motions fuelled by the PAH since December 2010, municipalities began to develop their own discourse and position themselves in front of a problem that could not be stopped without the proper tools. Once again, a movement of people affected by mortgage, without resources, grants or support structures, was the leader in not only identifying and visualizing the problem, but also providing proposals and forms of action.





## Small big victories

From the start, the PAH made it very clear that the battle for the right to housing would be a long-distance race and, accordingly, that it was necessary to specify objectives and to make short, medium, and long-term goals.

From the beginning it was very clear how important it was to accumulate small big victories, as much in the symbolic terrain as in the concrete one. Victories that have carved out the way and at the same time fed a movement, making it each time stronger and more clearly articulated. Celebrating these victories is a fundamental component and probably one of the most important tasks for any political intervention that seeks to challenge prevailing predatory capitalism. We have to prove to ourselves that, contrary to the sentencing from the political, judicial, academic and media platforms, a more just and egalitarian world is possible and the current dynamics are reversible.

### **Marisa went forward thanks to inner strength and support by the PAH.**

Marisa, married and from Cerdanyola, worked as a nurse. She earned a good living and had a “normal” life. She had two children, one born autistic and the other suffering from cerebral palsy. When conditions began to worsen, she became ill and was no longer able to make the mortgage installments. Her husband, cowering in front

of the difficulties, abandoned her and the children. But she did not give up. Although Banco Santander did not offer her any solution and hid judicial correspondence from her, Marisa never threw in the towel. She went through the auction and the bank adjusted the house for 50%. Summing interests and costs, it left her 260,000 euros in debt and with an eviction date fixed by the court. She solicited the intervention of the local and regional administrations, but they did not help her at all. However with the help of the PAH and public outcry she continued exercising the necessary pressure to make Banco Santander back down a few days before the eviction, in May 2011. After explaining her case to numerous media sources, the bank ceded by allowing her to pay off her house through a regimen of affordable rent.

Today, the balance in this terrain is positive and hopeful:

- It has been possible to reveal a problem that affects a good part of the population but has remained inexplicably silenced. It is a task of building up awareness that goes past our country's borders. International media, like *The New York Times*, *The Guardian*, *BBC* and *Al Jazeera*, were able to get to know and report on, thanks to testimony by the PAH, the dramatic impact of a criminal mortgage legislation.
- Besides discovering a social reality that, until recently, was invisible, we identified the structural causes that created this reality and put forward serious, feasible proposals for solutions to the problem which were necessary at all levels of government (local, regional and state) and which received unquestionable public support. In this sense, one of the outstanding achievements is how a totally unknown technical term, *dación en pago* has become popular. Even the public administration developed a discourse that feeds off the work and documents generated by the PAH.
- Financial institutions are now more receptive and willing to negotiate. Public scrutiny and actions by the PAH exposed abuse, irresponsibility and the *modus operandi* of banks and savings banks, which forced financial institutions to take care of a very poor public image and to be more sensitive to the demands of the people affected.

Social pressure has also impelled governments to act:

- The first step was to raise the minimum amount that could be claimed through repossession. Then they modified the *Civil Procedures Law* so that the price at which banks were allowed to send properties to auction was raised from 50 to 60% of their original appraisal price. While this might seem like an insignificant and clearly insufficient measure, it had an enormous symbolic value. Mediation services and working commissions were also set up in order to analyze the situation and debate proposals at a national, regional and municipal level.
- There have been hundreds of *daciones en pago* and some cancellations of debt after the auction and we have prevented around two hundred and fifty evictions. In addition, families threatened with eviction from their homes have succeeded in staying in them and paying rent instead. For those cases where it wasn't possible to prevent eviction, we put pressure on the government to relocate families to public housing.
- In front of awakening social awareness of the problem and inhumane results of the foreclosure process on families, different courts and provincial audiences found loopholes to interpret the law according to the current economic crisis and pass judgment awarding *dación en pago* and accusing banks of unjust profiteering.

In a broader sense, in the judicial sphere, more and more voices have responded to the questioning of the PAH. Thus, for example, beyond the judgements, the Supreme Court of Justice of la Rioja emphasized the need to amend mortgage legislation to introduce *dación en pago*.

In Valencia, on a proposal by Intersindical Valencia, the PAH received official support from the board of the Administration of Justice (which brings together officials of all the courts within the province of Valencia) and their commitment to the PAH's demands: a moratorium on evictions, *dación en pago* and social rental housing. The proposal, approved by all the justice trade unions, showed a concern by civil servants for the high number of evictions occurring in Valencia. It also recognized the situation that many affected families found themselves in and expressed the desire to avoid clashes with the evicted families and the citizens that supported them.

## THE KEYS TO THE MOVEMENT

As a movement, one of the key factors behind the PAH's success is its ability to anticipate what is happening at the moment and to always stay one step ahead, a factor that enables the PAH to set up the rules of the game and parameters that move the discussion. Albert Recio, a lecturer in Economics at the Universitat Autònoma of Barcelona and a veteran of neighbourhood associations in the city, provides a succinct explanation: "Whoever decides what gets debated already conditions the results. This is a fact that those in power are acutely aware of. This is why it is crucial that any resistance movement is particularly careful when it comes to choosing what problems to focus on. In this sense, for example, the *Plataforma de Afectados por la Hipoteca* has foregrounded the problem of the right to housing over that of creditors' rights".

On the other hand, some of the characteristics that explain the influential power and rapid expansion of the movement are:

- Its independence from any particular political party.
- Elaboration of serious, feasible and well-argued proposals.
- The carrying out of clearly communicated, direct and visible campaigns.
- Development of strategies at all levels that managed to combine open dialogue with government administrations with peaceful civil disobedience which has heightened in both manner and tone when minimum demands put forth by the PAH were ignored.
- Perseverance: a stable social reference.
- A combination of the heterogeneous and transversal
- A focus on collective guidance as a tool that both empowers people and turns an individual problem into a collective struggle.
- Decentralization, which amplifies grievances and multiplies actions.
- The PAH, a useful resource: despite being aware that the solution is a political one, the PAH gives immediate solutions to the daily problems of people.
- Strategic alliances: coordination within social networks and the 15-M movement.
- The work by the press is instrumental in giving a voice to the issues and demands of the movement. However the PAH dictates its collaboration with mainstream media. It doesn't allow an approach that is purely

testimonial. People coming to the PAH have personal problems that they decided to face in a collective manner. This is also news.

- Generating empathy. Along their journey, the PAH found unexpected collaborations: from a bank attorney who in theory represented the financial institution but ended up helping to stop an eviction, to court officials who produce *communiqués* in solidarity of the victims and opposing the law and even to publicists working for banks who leak out information to us about the communication strategies of these institutions.



## Towards a paradigm shift: from the housing bubble to the right to housing

As we have noted at the beginning of this book, in 2006 Miloon Kothari, the Rapporteur of the United Nations for Adequate Housing, visited Spain on an official mission. From this mission, he presented a report at the UN General Assembly in which he claimed that the policies implemented in recent years in Spain had commodified housing, making it inaccessible for much of the population. The report also warned of the risks of having a model that treated housing as a product of investment. In March of 2012, his successor Raquel Rolnik visited Barcelona on behalf of *Observatorio DESC*. During her stay she had the opportunity to meet with hundreds of people coming from all parts of Spain and hear first-hand stories by people who could not pay off their mortgage debts. She found that the warnings made by her predecessor were justified and that his worst predictions were met. In a memorable final speech to those present, Rolnik stated that housing had not only undergone a process of commodification but was now subjected to a process of *financialization*.

She was quoted as saying, “The first gun to the head was forcing people to buy, pushing them into mortgages by making them believe that this was the only way to have access to housing. In reality, what this did was set up the global capital needed for opening up new fields for extracting more interest and profits”.

In order to serve a system based on the unlimited expansion of credit

and a continuing need to conquer new niche markets, housing went from being a social policy objective to a commodity to becoming a financial asset. This occurred in an environment driven by an expansion of credit and subject to a financial logic: “The housing bubble was not a detour along the way but the very requirement for financial revalorization of a financial product”.

To achieve this conversion it was necessary to squeeze to the point of exhaustion any alternative that did not involve private property, like housing cooperatives, co-owning, renting or social housing. In this way, the options open to citizens were severely limited, they either gained access to a mortgage or they gave up on the idea of stable housing.

The condemnation of the rapporteur went even further and directly blamed politicians for the situation that thousands of families were going through all over Spain. She considered that “it was the political choice of the government to abandon the idea of housing as a matter of social policy, as a human right”. Moreover, she finished by emphasizing that “what is illegal is not to resist an eviction, but the *attitude* of the Spanish authorities by defending a mortgage law that tramples over the fundamental rights of people and tacitly condoning the eviction of thousands of families through their silence”. This is a fact that goes against many international treaties of which the Spanish state is a signatory.

#### A BUSINESS MODEL BASED ON A PYRAMID STRUCTURE

To summarize, the Spanish crisis was the result of an economic model primarily based on property speculation. It is a model that translated into a heavy indebtedness of companies related to the construction sector and led many people to overborrow in order to acquire a home. It is a business model based on a pyramid scheme and, as what happens in these types of businesses, when those on the bottom can no longer pay, the entire structure falls. Therefore, when the bubble burst, the *Spanish miracle* faded away from one day to the next.

In the first part of the book, we analyzed this process and how we got here. It is a necessary diagnosis if we want to avoid making the same mistakes in the future and an analysis that inevitably leads to the ownership of responsibility.



## FROM THE PYRAMID SCAM TO A PYRAMID OF RESPONSIBILITIES

As a society, it is clear that we have fallen short of aspirations and it's time to surrender ourselves to collective reflection. We lacked maturity, were naive and failed to question the decisions and policies that, in the light of recent events, proved harmful. We allowed ourselves to be blinded by the mirage of steady growth fueled by debt without worrying too much about the actual foundations that supported our economy and created jobs. We turned a blind eye to a model with an expiration date, which rewarded a *get rich quick* culture and turned its back on the most basic needs of the population. In this sense we are all responsible in one way or another. It is a responsibility that we cannot run away from nor can it be shared equally. There are those that, either by the positions of power that they occupied or by privileged information they had at their disposal, are more responsible than others.

But then aren't the people that signed a mortgage also responsible?

The answer is yes, but not any more than the notaries who testified they knew about the abusive contracts that people unknowingly signed or the appraisers who inflated housing prices in favor of the banks, or the financial institutions who sold mortgages filled with lies and unfair conditions or the real estate companies that coordinated *avales cruzados* (cross guarantees) and falsified payrolls or politicians who, on the behalf of general interest, paved the way for all of this to happen.

For these reasons, the Administration stands on the highest part of the pyramid of responsibilities. The various succeeding governments were the main endorsers and architects of this model. Banks and major construction companies are at the next level of the pyramid. Multinational companies also acted knowingly by using lobbies to exert pressure and influencing political decision making. Private entities profited by speculating on a primary good and still derive benefits from these actions.

Today no one doubts the complicity between these two levels of the pyramid. A complicity that completely undermines the rules of democracy and allows us to say that Spanish society has fallen victim to a widespread mortgage fraud.

At the base of pyramid are those that, by becoming unemployed, could not assume the debts incurred just to obtain a basic need, a home. These people, under no circumstances, shirk their responsibilities. They are

responsible to the extent that they allowed themselves to be cheated by administrations that, day after day, pushed them to buy a home, and by financial institutions who shrewdly convinced them to borrow.

Often we hear that for years we were living beyond our means. This is not exactly correct. If we were living in this way it was because of the possibilities that the system offered us and it is this very system that made it possible and even encouraged it.

#### IS EACH ONE PAYING BACK ACCORDING TO ONE'S RESPONSIBILITIES?

What is being called into question are the double standards for measuring out different responsibilities. The Administration continues to reward financial institutions that have led the country to bankruptcy. Injections of public money failed to regain neither control nor management of money. Former executive officers, who sat on the board of directors of rescued financial institutions, received multi-million euro compensations. Others, like De Guindos, jumped into politics and now preside over ministries. Current directors of audited financial institutions still demand obscene salaries while foreclosures continue and houses are awarded at bargain prices. Not only have none of them taken any responsibility, but in fact they still receive favorable treatment from a government that no longer has to hide when surrendering to the interests of the financial markets. It is a very dangerous drift. Nobody knows the whereabouts of all the money that all the big promoters and real estate developers made during the housing boom. These are businesses that closed with the onset of the crisis, settled any debts with any assets they had available, and were not obliged to justify themselves either to society or to any court. Nobody was required to assume any responsibilities.

The only ones held into account are the families left without work that can't pay their mortgages. They are families that, on top of this, have to hear from their own government that they were responsible for the crisis, a perfect scapegoat for avoiding any guilt from the truly culpable ones. People, families, *mortgaged lives* that, not only accept their share of the responsibility, but are also ordered to pay the bill for others' errors and negligence. People evicted from their homes, condemned families, expelled from the system, and denied the opportunity to recover or lead a dignified life. This is a contemporary version of slavery.

But men and women are not born to be slaves and sooner or later they end up rebelling when they see their and their loved ones' survival threatened. In this sense, the second part of this book tries to rebuild this rebellion. The PAH is a constructive response for getting out of the crisis and, at the same time, a social and collective response to the crisis. The PAH is a haven of hope where a government is absent and fighting where the major parties back down. The PAH is social justice. For many it is the last trench in the battlefield of the crisis.

**GUARANTEEING THE RIGHT TO HOUSING,  
A NECESSARY STEP FOR EXITING THE CRISIS**

We cannot overcome the crisis, however, without first going to the root of the problem and trying to understand the path that led us here. This requires reversing the process of financialization that housing has been subjected to in the last decades.

The systematic violation of the right to housing forces families to use more than 50% of their income to pay their mortgage or rent. This represents a transfer of income from lower and middle classes to elitist property owners, reproducing an unproductive economic rentier model. At the same time, this model hijacks the few resources that today are as rare as they are valuable. To the extent that the current crisis is also a crisis of personal debt and consumption, freeing up these resources would have a decisive impact in reviving the economy and domestic demand.

On the other hand, if the real estate business stops being a profitable option, investors will channel their resources into more productive and sustainable areas. It is not by chance that those economies that did not concentrate on speculative housing are the ones that have weathered out the crisis more easily.

Definitely one of the greatest successes in the PAH's approach has been to clarify that the fight was not confined to the real estate market. As already mentioned, the mortgage crisis is the current face of a more fundamental problem: the commodification of housing in Spain. Therefore, from the very beginning, the PAH chose the motto *From the housing bubble to the right to housing* and its manifesto is not limited to demanding *dación en pago* or a moratorium on evictions but demands the need for a complete social audit report, following the example of Iceland, which

investigates who is responsible for the housing bubble, who benefited from it the most and what happened to all the money. This same audit would be used to outline measures used to reverse the trend of recent years, with the end result of regulating housing as a primary good and not an investment. Within these measures it would be necessary, without a doubt, to look at the creation of social housing and the development of new tools for controlling the mortgage market and allocation of credit. This would limit the population's capacity for borrowing, guarantee the social function of property as a basic right which major landowners abused and reform the *Law of Urban Rentals* to make renting a real, stable and affordable solution, among others.

These are measures to avoid the formation of new housing bubbles, reducing the effort that families have to make in order to obtain housing.

#### TOWARDS A PARADIGM SHIFT

##### THE LESSON THAT WE TAKE FROM THE CRISIS

But we need to go even further. As we have seen, we cannot talk about mortgages without talking about housing policies, or about housing without talking about the economic model, or even to mention the terrain where decisions are made. This crisis served to confirm serious democratic deficits in our societies and the risks in leaving the economy in the hands of financial institutions and other large corporations that only look for the maximum profit to distribute amongst their shareholders, disregarding whether it will bring down the actual economy which is what produces jobs for the vast majority of the population. For this, in addition to legislation that guarantees the right to housing, we have to do still more structural rethinking. This will regain the helm of economic policy, exercise more democratic control and revise the mechanisms for investments and allocation of credit that puts collective interest ahead of short-term profits. Injections of public money into banks opens up new opportunities for regaining public banks that manage depositors' money under more responsible, ethical and sustainable criteria.

##### LET'S GO SLOWLY, BECAUSE WE ARE GOING FAR

We have to go step by step, with a cool head and a warm heart but without losing sight of the major objectives (the right to housing, more and

better democracy and social justice). A movement of people affected by mortgage managed to open up a loophole precisely to distinguish objectives in the short, medium and long term. This vision has permitted us to start accumulating small but large victories, victories that are necessary in order to feed a movement. Victories that are essential for boosting the morale of a population worn out by social cutbacks and the withdrawal of rights. A society that watches, stunned at how the neoliberal policies that caused the crisis are radicalized, or what Naomi Klein calls *the shock doctrine*; that is to seize the moment of confusion, fear and paralysis by the population in times of crisis in order to implement policies that aim to dismantle the welfare state and take away basic rights to be placed on the market. For all this it is important to resist this onslaught in order to gain ground.

In this sense, and within the fight for the right to housing, the response by the Administration, which has slowly yielded to growing public pressure and, although lukewarm and totally insufficient, shows us the way. Retroactive *dación en pago* is no longer taboo. Converting homes owned by the banks into social housing, and therefore preventing thousands of families from being evicted, is now considered a matter of common sense, despite the ongoing power of speakers to continue reproducing neoliberal discourse and shaping the popular imagination. People understand that we are faced not with an individual but a collective, social and political problem. And so it is under these terms that one has to continue situating the debate and working with networks of mutual support and collective organization.

In the same way, and on other fronts, cutbacks within education and health have served in articulating a coherent response. The 15-M movement and neighbourhood assemblies are food for hope. All of these, sufficient elements to take on the problem and not throw in the towel, continue building alternatives.

#### WHERE ARE WE HEADED

During recent times, individualism, egoism and consumerism have been values awarded in our society. The results are obvious. The year 2012 was a difficult year, a year of economic recession that, among other things, increased the amount of foreclosures and evictions in a time when there

were more social cutbacks.

We already know the neoliberal recipe offered for systematically exiting the crisis: more cuts, dismantling of the welfare state, commodification of social rights that means the opening up of new markets so far banned to private enterprise. The case that most exemplifies this is what is happening in Greece. These are old recipes that capitalism prescribes when an economy enters recession. These were recipes imposed in various Latin American and Asian countries in the 1990s with well known results. It is no coincidence that countries like Argentina have picked itself up again after moving away from the script and refusing to pay part of an outstanding debt with international creditors, debts considered illegitimate by society. Another more recent example of a country who refused to submit to the adjustments and opinions of official doctrine is that of Iceland, with encouraging results.

Therefore, if we already know where the path of fiscal austerity and cutbacks takes us, then perhaps it's time to look at and experiment with other options.

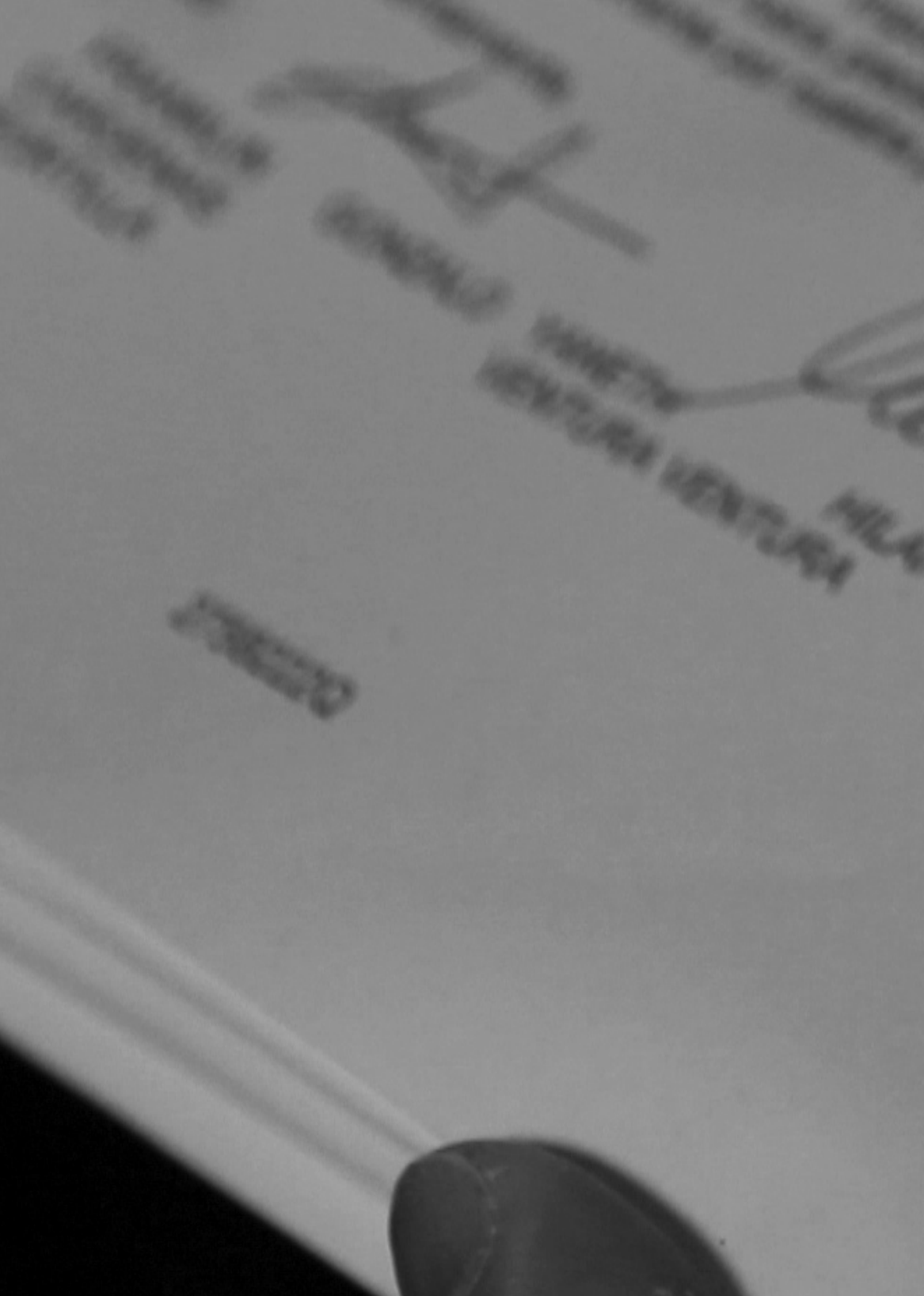
On the other hand, this crisis has also shows us how obsolete some of the social organizations are that until now have acted as guarantors of the rights of the population. Among others, the labor unions that demonstrated their inability to respond to the blackmail of layoffs and relocations. This is not only their problem. We live in a world with increasingly better technology, and therefore more productivity, but with a productivity that does not translate into better living conditions, which become more and more precarious. In this world, workload as a factor of production is becoming more residual, bringing with it a decline in negotiation power and the influential capacity of unions.

The result of this equation is paradoxical. We live in an increasingly rich world but with each day more inequalities.

We must therefore think of new devices that move beyond established union structures by creating new social architectures that ensure the provision of goods and basic services for the population. A new way of organizing oneself that opens doors for a new unionism more aligned to living conditions and territory than to the workplace. New formulas and social agents that respond to the current needs of the people and with the ability to reissue and seal a new societal pact.

In this sense, networks of mutual support based on solidarity, like the PAH or the neighbourhood assemblies that have proliferated under the umbrella of the 15-M movement, are a promising experiment for reconfiguring existing relations and posing a challenge to the State that, sooner or later, will have to reinvent itself in order to attend to new social demands if they don't want to lose their legitimacy and, through this, power. If the social buffers that we, as a society, were given become shattered, sooner or later, they will end up being replaced by others. If the public administration ignores this, then new political subjects will replace them.

We find ourselves, therefore, at a crossroads and we must choose. We learn more and more that we have chosen to walk towards another paradigm, towards a new way to relate to and organize ourselves. We know that it is not an easy path and it won't be error-free and we will have to deal with many contradictions. As the famous Zapatista motto goes, "asking we walk". This is not a utopia, but the only civilized way out of the crisis.



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LEGAL ASPECTS:  
TIPS AND RESOURCES



## The mortgage and foreclosure process in Spain: anomaly or perversion?

In Spain, mortgage debt does not disappear with the forfeiture of one's property. This is something that very few knew about but soon traumatically discovered. Loan contracts signed by individuals are personal ones in which the home acts as a guarantee. In the case that one is unable to pay off the loan, the creditor can enforce the guarantee (and auction off the mortgaged home). However, this does not mean that the result will be sufficient enough to liquidate the debt. The loan is the homeowner's primary obligation and the mortgage is the right that a creditor has over the indebted owner's home.

To stop making loan payments is to break the contract we have with the financial institution, which can lead them to reclaim payment from us. As we will see later, they can do so through the courts or through extrajudicial means, before a notary. In both cases the procedure is one (in legal language) of *imbalance*: initially the bank is already in the right, and the law turns the judge or notary into nothing more than an automatic executor. Both, by law, must be on behalf of the bank and, given that the mortgage is constituted as a public document before a notary, it is presumed that all that is needed is to enforce a contract that was freely agreed upon. For this reason, the procedure is not *deliberative*, which is to say that it does not allow the judge to listen to the debtor: even if he wants to or considers it relevant. He cannot know if the individual is unemployed, sick, has children or has been scammed. Nothing outside

of the payment of the debt can fall under his evaluation. Even more problematic is that the majority of the paperwork related to foreclosure is routinely managed by computer programs and judicial secretaries, without any intervention by the judge.

Although this already sounds pretty tough, the procedure becomes even more ruthless when we factor in other examples, such as what is known as *early termination*. Although this refers to long-term loans (with terms of between 30 and 40 years), Spanish law does not differentiate between systematic and recurrent non-payment and a contingent inability to meet a payment. Thus, when one suspends payment, not only do the unpaid bills plus the interest for late payments accumulate, but also the creditor can reclaim the entire debt at once.

At the auction, we encounter one of the most controversial steps: the possibility that the bank may be awarded the home at 60% of its original appraisal value if the auction is unsuccessful. We must note that this percentage is arbitrary: the law says 60%, whereas a few months ago it said 50%, as it could also say 10% or 80%. There is no objective justification. It depends solely and exclusively on the will of Parliament that passes and reforms these laws. Lastly, the debt not covered by the adjusted value is an active debt that the individual must attend to for the rest of his or her life. As Article 1.911 of the Civil Code states: "The debtor responds to the fulfillment of obligations with all of his present and future assets". These obligations also extend to the guarantors of the loan, who can lose everything as well.

The ignorance of the law is no excuse and everything we have described until now is enforced with merciless rigor, without exceptions. However, what is striking is how these laws and control mechanisms fail to keep up the same level of rigor when they apply to the practices of other actors involved in the same contract and same procedures.

Much of the harsh manner in which impoverished people, unable to pay their mortgage, are treated is based on the fact that they freely signed their contracts. But remember how they signed these contracts: with disinformation, lies, and even false documents made by the institutions themselves, with an indisputable imbalance between the parties. Think, for example, of the role of the appraisers who inflate prices at the request of the institutions but are never investigated nor held respon-

sible. Or of the notary, who is forced to meet with the debtor to sign the mortgage and conditioned to see it through. This is systemic failure. While in theory they are responsible for bearing witness that the signing parties were fully knowledgeable of the implications, appraisers and notaries earned huge profits during the years of the real estate bubble at the cost of a systematic malpractice that, up to now, has avoided any punishment.

In summary, we highlight the following as key elements that would question the proportionality and appropriateness that would be required within a mortgage procedure:

- Disinformation and deception in the recruitment of mortgages.
- Disproportionate punishment of the debtor.
- Absolute helplessness of the person liable for payment, who cannot claim anything.
  - Arbitrariness of the adjustment value after an unsuccessful auction.
  - Anti-social results (human rights are violated and it breaks the social cohesion).
  - Anti-economic results (it promotes an underground economy and constrains consumption).

#### THE BANKRUPTCY PROCEDURE

The insolvency procedure is what is popularly known as *declaring bankruptcy*. When a debtor finds himself unable to pay his creditors, he can ask to declare himself bankrupt before a commercial court. The court designates a trustee who makes a report on the causes of insolvency and a summary of all assets and debts. An agreement is then reached with the creditors in the form of payment of debt or liquidation of the estate. Whatever is obtained is used to pay off the creditors and even possible partial debt forgiveness for those debts not covered by the liquidation. Another advantage is that, during the entire examination process, interest rates and foreclosure procedures are suspended.

At the beginning of the crisis, a rumor spread that, in order to avoid debt and eviction, families could declare bankruptcy just as businesses could. While it's true that, officially, bankruptcy law is aimed at both companies and individuals, in practice this is not the case. The law makes no reference to the consumer and the main problem of families, the

mortgage, is excluded from the procedure. It does not serve to save the home. Individual bankruptcy only suspends a mortgage foreclosure if the home is used for professional activity. We encounter a paradox within this procedure. It does not work for the main problem of citizens but at the same time allows the suspension of foreclosures for real estate businesses, themselves more irresponsible in their operations than families and who, moreover, signed a mortgage not to acquire a home, but to speculate on one.

The bankruptcy procedure for individuals is only recommended when over indebtedness extends beyond the mortgage, such as personal loans and credit cards: even then, it is a difficult process. Even if the bankruptcy extends to the mortgage on the primary residence, the procedure would still not be recommended for individuals: it submerges them in a complex procedure that lasts a long time, is very expensive (whether paid by the claimant or the State) and involves day-to-day monitoring of the bankrupt family (in which the administrator has to authorize all expenses). Given the volume of people currently facing foreclosure proceedings, if these people were to declare bankruptcy *en masse*, the court system would collapse in a few years. Most importantly: we don't need to penalize a social and economic problem even more, but to resolve it.

#### THE LAW ONLY REFORMS TO MAKE IT HARDER

In 2009, already two years into the crisis, the devastating effects of the Spanish mortgage procedure started to become evident. Nevertheless, the Spanish government not only failed to apply reforms to protect the rights of affected citizens but also reformed the mortgage law to make it even harder.

The Royal Decree 716/2009 on mortgage market regulation and other rules of the mortgage and financial system gave even greater coverage to the interests of financial institutions. Among others, it considered the possibility that financial institutions could unilaterally extend the mortgage, demanding new guarantees if the house suffered depreciation in the initial appraisal value. Thus, for individuals, if the value of the home was, during one year, 20% less than the mortgage loan, the bank could require an extension of the mortgage to other assets (salaries, new properties, new guarantors). In the case that the individual refused or



did not have the capacity to offer new guarantees, the reform allowed the financial institution to settle the contract: to reclaim the entire debt and proceed with the mortgage foreclosure, even if the debtor was on time with his or her payments.

While this was happening, the government (first the Socialist Party, then the Popular Party) steadfastly refused to listen: despite numerous voices calling for urgent reform to provide a solution to the most vulnerable victims of the crisis. Neither for *dación en pago* nor a mechanism for a second chance that legal experts consulted by the government itself recommended implementing: with the excuse of the complexity that modifying such basic laws would entail, that could affect the legal security of those contracts. The inevitable question is: where is the rule of law and legal security for hundreds of thousands of families affected by foreclosure that sentences them for life?

### **And how do they do it in Europe?**

The Spanish housing anomaly is not just confined to mortgage. We are also the European leaders in empty homes (six million, according to a 2012 estimate by the Spanish Statistical Office), corruption in urban development, the percentage of homeowners and over-indebtedness. Conversely, we are the country in Europe with the least amount of rentals (10% of the housing stock against 30% of the European average), and we almost don't appear as a statistic for social rent (below 1%, just ahead of Greece and light years from 35% of the Netherlands or 20% of Austria, United Kingdom, France and Finland). Evidently, as already explained in the first part of the book, there is a direct relation between the lack of policies that encourage renting or other alternative forms of property ownership, the absence of public housing and the over-indebtedness of the population.

Regarding mortgage, the Spanish anomaly stands out once again. In neighboring countries, which our government has as a reference and model on many issues, especially economic ones, debt settlement in certain circumstances and the right to a second chance is the rule, not the exception. Although it's true that *dación en pago*, as it is implemented in the United States, does not exist in Europe, it is also true that in almost

all European countries, there exists some procedure to overcome the insolvency of the individual.

Basically there are two models. On the one hand, there is the Anglo-Saxon model, which allows for a fresh start and would be the one closest to *dación en pago*. It proposes a bankruptcy procedure that, in cases of debtors in good faith, uses available assets in order to pay off the debts, including the mortgage of the primary residence, and the judge condones what cannot be covered, even if the creditor disagrees. This permits individuals to start from scratch and generate new income without fear of it being seized. The idea is that, for humanitarian reasons, people should have the right to a second chance, and that there is a responsibility of the creditor who granted the loan. It is good for society at large for the debtor in good faith to reenter as soon as possible into economic and consumer activity.

The other model, more common in Europe, is that of rehabilitation. This is more focused on finding a viable plan for debt repayment through renegotiation, which can be done through the courts or out of court, but always using mandatory mediation. Here there is no automatic remission of debt but neither does it carry a life sentence: after a certain time, and if the debtor of good faith has done everything possible to settle the debt, he or she will earn the benefit of a partial debt write-off.

Germany, for example, schedules a negotiation phase prior to court. If no agreement is reached, the debtor can resort to the bankruptcy route, providing a feasible payment plan. The judge may approve this plan even if the creditors disagree. If this is not feasible, then all available assets are liquidated and debts not covered expire after six years. In France, there is also a pre-trial stage: in this case an *administrative indebtedness route* in which all executions are halted, including the mortgage, and one studies a payment plan. If no agreement is reached, there is a *second chance law* from 2003 that, only in cases of debtors of good faith and severe insolvency, allows for the termination of all debt. In the worst cases, it is designed that the payment plan is prolonged for a maximum of ten years.

In short: the fact that there exist routes such as the obligatory mediation for the financial institution, bankruptcy procedures which allow for substantial debt forgiveness and debt requirements that allow a reasonable time for people to start over, means that, in practice, many institu-

tions apply de facto *dación en pago*. If banks know that individuals can resort to mechanisms that ultimately release them from debt, then they prefer to save time and money by accepting *dación en pago*. The result: Europe continues lending but in a much more responsible way and with less inflated appraisals than in Spain, denying the threats made by Spanish banks about the risks of legislating *dación en pago* or any kind of formula that allows for a second chance.

#### EUROPEAN DIRECTIVE

In 2008, the European Economic and Social Committee published a report, *Credit and social exclusion in a society of abundance*, in which it warned that the differences between the mortgage regulation systems within different European countries “favors a situation of unequal opportunities creating social injustice, on one hand, and distorting and obstructing the completion of the internal market, on the other”. The logical conclusion was to point out a need for appropriate intervention by the European Union, in order to rebalance the situation.

Although for years in Europe one talked about the need to harmonize aspects as important as the mortgage market, the interests at play delayed any intervention. At least until, with the crisis, the malfunctioning of financial institutions and, in particular, the subprime mortgage crisis (high-risk or junk mortgages) put the system in question and caused mistrust among consumers. This lack of trust is what made the idea possible that common rules could be achieved. European Parliament has proposed to approve before the end of 2012 a directive on mortgage credit to access the residential property market.

But in early 2012, the same Members of European Parliament responsible for putting forward the directive text and negotiations for approval recognized that in order to guarantee consensus, the text could not be too ambitious. If the financial lobby is powerful in Spain, it is equally so in Europe. In addition, the directive had to be approved by Parliament, the Commission, and the Counsel, where those who end up being in charge are the governments of countries that make up the European Union.

The formal objectives of the directive are threefold: to improve integration of the European markets, promote consumer protection

and optimize financial inclusion. But, predictably, the final text will not say anything about how current issues distress the population, such as the execution of the debt in case of non-payment. It will limit itself to improving on pre-contract information, to promote transparency in the sector, to improve appraisals and studies of creditworthiness prior to the contract, and so on. Issues that, without a doubt, would be better regulated but do not address the main concerns of the citizenry: regulation of a second chance or mortgage market regulation to prevent over-indebtedness. When you read the text in detail, it is clear that the main objective is to return confidence to the financial market to continue feeding the big business of mortgage, more than the need to guarantee fundamental rights to people and encourage other more sustainable forms of accessing housing.

In late January 2012, at a public seminar in Brussels on the presentation of the draft directive to the press, numerous Spanish state media were interested in the proposals of the new directive in a critical situation such as the Spanish one. The speakers simply responded that the Spanish problem was unique, particularly serious, but an anomaly in the European context. Therefore, they could not drive regulation across Europe for a problem that was only in one of the countries and that “excessive regulation would be negative.” Negative for whom? For the financial institutions, of course. In any case, it became clear that Europe would not arrive at the solution to the Spanish anomaly.

### **Sentences with sense and sensibility**

In December 2010, Section 2.a of the Provincial Court of Navarra passed an unprecedented sentence that confirmed a judgment by First Instance Court of Estella. This sentence stated that the awarding of a home by BBVA was sufficient to pay off the debt. The news spread quickly in the media, announcing that a Provincial Court had applied *dación en pago*. In reality it wasn't, since *dación en pago* can only be done when the person affected is still the owner of the property. On the other hand, no judge can disrupt the current enforcement proceedings. Therefore, in reality, the enforcement procedure was happening under current law and BBVA had awarded itself the home for 50% of its value after the

auction was declared null.

When BBVA intended to use the privilege given by the law to keep claiming the debt not formally covered by the 50% of the adjudicated value, the judge rejected this claim. To do so, the court reminded that, according to Article 3 of the Civil Code, “the rules must be interpreted in accordance with the reality of the time in which it should be applied and the financial institution’s claim to keep chasing after the debt in the actual context of the crisis would constitute an ‘abuse of rights’”. This was true especially because 1) the institution had done the appraisal of the home for a value much higher than the pending debt and now could not ignore this appraisal; 2) the financial institution incorporated the home into its assets not for the 50% but for the original appraisal value; 3) financial institutions in general had a direct responsibility for the actual crisis, and if the home in that moment had an inferior market value, it was directly attributed to the bad management of these institutions.

Almost a year after a court order in Navarra, in September 2011, the Section 2.a of the Provincial Court of Girona accepted an appeal against the decision by the First Instance Court of Girona to continue with a procedure once the home had been auctioned off. In this case, the decision of the court was not ratified, instead the debtor was granted the right to appeal against the decision to claim the outstanding debt, opening the way for lawyers to appeal against foreclosure orders that take place after the property has been auctioned off.

The Court also considered an “abuse of right” the aims of Deutsche Bank to keep claiming the debt, when this institution had incorporated the home into its assets for a superior amount, which would provoke an “unjust enrichment”. The resolution recalled that mortgage loans are contracts of adherence that, in a strong part, the bank cannot change the terms (the appraisal, among others), which is agreed upon in writing. Moreover, the court order established that granting the possibility of continuing the foreclosure procedure once the property had been auctioned could be considered an “abusive clause” in the mortgage contract, and therefore null according to the General Law for the Defense of Consumers and Users 1/2007.

Apart from these two decrees, that have been the most well known and in part the most relevant, given that it was a Provincial Court that

pronounced it (and therefore a higher court than the investigating courts), there have been a gradual trickle of similar statements throughout the country. Among this trickle, the following stand out: Section 2.a of the Provincial Court of Ciudad Real (January 2011); the First Instance Court no.44 of Barcelona (February 2011); First Instance Court no. 3 of Vinaroz (March 2011); First Instance Court no. 5 of Elche (July 2011); First Instance Court no. 5 of Lleida (December 2011); Investigating Court no. 3 of Torrejón de Ardoz (January 2012); First Instance Court no. 3 of Arenys de Mar (February 2012); First Instance Court no. 1 of Mataró (February 2012); First Instance Court no. 8 of Valladolid (March 2012). And when this book is published, we can surely add more.

What these sentences say is not that one does not have to answer for loans taken out. Indeed, the very idea of a loan would make little sense without some obligatory responsibility towards it. However what is necessary to propose, is that this responsibility can be limited in some exceptional cases, in which an unexpected and involuntary cause resulted in the inability to pay the loan back. On another hand, what is unacceptable is that there is an arbitrary value of awarding that condemns the weaker party and exonerates any responsibility of the stronger one.

#### THE JUDICIAL WORLD MOBILIZES

These sentences that, in a certain way, apply an indirect version and *a posteriori* of *dación en pago*, mostly highlight the sense of unease or discomfort among many judges and legal professionals with a procedure that causes serious injustices. But apart from these decrees, there have been other actions.

Perhaps one of the best known is the question of unconstitutionality raised by the First Instance Court no. 2 of Sabadell. In September 2010, Judge Guillem Soler proposed his suspicions to the Constitutional Court that the foreclosure procedure could be unconstitutional: at the very least by violating the fundamental right to effective legal protection, the right to decent and adequate housing and the principle of interdiction of arbitrary action by the public authorities. In July 2011, the Constitutional Court responded by filing a complaint, claiming it was not their jurisdiction, but the legislator's.

Another action in progress is the ruling by Judge J. M. Fernandez Seijo before the Court of Justice in Luxembourg. Starting from the demands of one of the affected whom, having suffered both the foreclosure and eviction, claimed for the annulment of three potentially abusive clauses that could have been the triggers for his insolvency and subsequent eviction. The judge posed to the European Court that the Spanish mortgage procedure could be violating the rights of consumers listed in the European Directive 93/13/CEE. The issue has been accepted for processing and the Court will listen to the plaintiff, the financial institution, Spanish State and other States before deciding.

Outside of the courts, important professional associations such as Judges for Democracy have issued some convincing press releases in which they have clearly positioned themselves in respect to the need for mortgage legislation reform that must be obligatory and not voluntary for financial institutions. Carlos Castresana, district attorney of the Supreme Court, issued very harsh statements last March 2012, denouncing the “bleeding inequality” that foreclosures cause. Castresana urged the government to regulate *dación de pago*. At the same time he put forward the need to establish a rescue fund for families, in the same way that the State has done with the banking sector. His intervention concluded recommending citizens be mobilized for the defense of their rights.





## The phases of the process

Fruits of the collective and voluntary labor by many people and the timely support of various legal professionals with practical experience over the past three years, the PAH has been accumulating a detailed knowledge of the procedure that begins the moment you stop paying your mortgage. This knowledge is used within group counseling sessions and is complemented with tips and resources that have been developed and consolidated with daily practice within the assemblies of various PAHs.

Here we share a summary of the three main phases and some guidelines. We want to emphasize that these are only useful guidelines: in many cases these allowed us to achieve a *dación en pago* or stop an eviction, but in others it was impossible to resolve the case. Once again, we must remember that the key to all of this is to organize ourselves in order to change the law that, until now, leaves it up to the financial institutions to decide whether the case is resolved or not.

In this sense, we offer you a general tip, useful for whichever one of the phases: watch out for the vultures! Any person or company is simply lying if they tell you that, for a lot of money, they can solve your problem. Not even the best lawyers can secure any victory with such an unjust law as it is now. If a financial institution is clear that it wants your home, no lawyer or company can stop this. Of course a good professional can help you negotiate better with the institution, however this

is something you can do alone by following some guidelines or, better still, with the support of the nearest PAH. In this way you don't have to spend money you don't have and will discover that by getting together with other people you will feel less alone, enjoy the solidarity that it brings and learn how to empower each other. This is priceless.

Among the people who try to take advantage of the misfortunes of others, one must take special care of the pseudo-mobsters that move around the courts. These people spend their time going through all the bulletin boards of each court where, by law, all foreclosures, including personal data (name, last name and address) are advertised. This allows them to send letters, make phone calls where they present themselves as someone who has all the information about your case and, if you pay them, they can "help" you. Sometimes they pass themselves off as lawyers acting on behalf of the financial institution, others use commercial names or plagiarize images from initiatives like the PAH in order to attract customers. This was the case of one *Anti-Eviction Platform, Legal Solutions to Mortgage Problems* or of *Catalan Xarxa Legal Defense*. If they contact you, the only thing that will happen is that you lose money that could be used for other more important things.

Other general advice, also valid for whichever one of the phases and, perhaps, the most important: calm, lots of calm. Nobody goes to prison for not paying a mortgage and the judicial proceedings for a foreclosure and eviction take time, at the very minimum some months (but more like 18 months). It doesn't happen overnight and this gives us time to figure out what we can do. It's very common to feel anxious from the moment one starts to experience payment difficulties, further complicated by the office manager or contact person of the financial institution who refuses to offer any solution or even threatens to throw you out on the street and leave you with nothing. The anxiety over the possibility of losing a home is completely understandable, but once you decide to stop paying, because you could not do anything else, it doesn't help to worry about it anymore. Give priority to your wellbeing and that of your family. Don't allow these economic tensions to ruin your day-to-day. It's always possible to do something and even more so with the PAH that is closest to you or another similar collective based on mutual support.

### Phase 1: Stop paying. Tips.

This is the phase that doesn't have any judicial procedure yet. It starts the moment that you are still paying but you know that soon you won't be able to, and continues during those months in which you have stopped paying but the financial institution is more or less open to negotiation. The main partner is the financial institution and with whom you should be negotiating.

You should know that, while you are still paying, hardly any institution would offer you an alternative solution. Paradoxically, the more responsible you are, the less ground you stand on with the institution. It is therefore likely that if, in anticipation of the approaching time when you can no longer pay, you go to your bank to raise the situation with them; you will receive instead a generic phrase such as "try to pay" and "we can't do anything". The system is so perverse that the bank is happy when you are paying and doesn't want to hear anything about your mortgage difficulties. It's the same to them whether you need to prostitute yourself, stop eating or rob a store in order to pay the mortgage. Therefore, more often than not, it's impossible to begin any serious negotiation with the institution until you stop paying.

Another thing to take into account is that this negotiation is even more complicated when there are guarantors. The presence of guarantors (usually parents or other people close to us that want to help because they love us) becomes an added incentive for the bank: they can seize not only the holdings of the mortgage owners but also those of the guarantors, which makes the judicial process more attractive for them. Current regulation is just as ruthless with the guarantors as the titleholders, and therefore guarantors may also see their present and future assets seized. There is no way of removing guarantors from the mortgage if the financial institution does not agree to it. Banks, by definition, look for the major benefit possible with minimum risk. They never accept taking away the added guarantee given to them by the guarantor except when offered another guarantor as a substitute or form of collateral.

The topic of guarantors makes it difficult to obtain *dación en pago*. But just because it's more difficult does not mean that it's impossible. Many *daciones en pago* were obtained with mortgages containing guarantors, but

these depended on the will of the bank and our perseverance in drawing out this will.

Finally, in this phase, at the moment of stopping payment, you have to prepare yourself for the harassment you will suffer because of the technical procedures for reclaiming the debt: claim letters, calls at home, work and to guarantors. Depending on the financial institution, these techniques are more or less aggressive. The worst ones are those that subcontract services because, in these cases, they are dedicated professionals who chase down people and often have added incentives by earning commissions if they can get somebody to pay up.

In extreme cases, they exercise real abuse, by making people feel guilty or looking for any weak points where they can cause pain: talking on the telephone with young children or colleagues at work. Don't be afraid. If you are scared then they will push more. On the other hand, they will eventually leave you alone, if they sense that it is not working.

#### TIPS

Make sure you decide on which solution you want and then respect it. At the beginning of the negotiation, it is most likely that the bank will tell you that what you are proposing is impossible. Or if you talk with somebody within the administration, it is possible that he will tell you that there is nothing that can be done, that the law is the law and you should accept whatever the lending institution is proposing to you. Don't be discouraged. Defend what you believe in as much as is necessary.

In other cases, a grace period will suffice: if the economic difficulty is short-term and there is an anticipation of recovery. For a set time, not exceeding a year, the client agrees to pay only the interest, without reducing the capital amount, which brings down the monthly payments. However with the crisis, most cases deal with mortgages signed at the height of the housing bubble (with almost no reduced capital), and with economic difficulties that are severe and long lasting. At the same time, the real estate market is at a complete standstill and it is impossible to sell houses at a price equivalent to the debt. In these cases, a majority of the people prefer to hand over the property and exit from the debt in order to start again with an affordable rent, either in the same house or

another. For this, most of the people affected claim the right to *dación en pago*.

*Dación en pago* exists in current mortgage law, but not as a creditor's entitlement. It is provided as a possibility for both parties to agree on when signing the contract. Because most people didn't know about it, most of signed mortgages did not include the possibility of *dación en pago*. Still, it remains possible if the lending institution permits it. Currently, when you arrive at the bank office for the first time and ask for *dación en pago*, in 99% of the cases they tell you that it is impossible and cannot be done. Don't worry. This is normal. What you have to do is insist on it. It's probable that they will make you a counterproposal and for this you have to be very clear about what you want and don't want.

The financial institution will usually propose a refinancing or *novation*, substituting a new contract for the old one. This implies modifying the conditions of the mortgage with the result of reducing the monthly payment; for example, extending the repayment, increasing the capital amount and modifying the applicable interest rates. You have to be very careful with these proposals because most of the time they are bread for now and hunger tomorrow. This only prolongs the agony and increases the debt. Reducing the monthly installment becomes, in the end, not as significant as you first thought. For example, although they might go down for a year, they will go up again even more than before. Novations also involve additional costs that the institution will often not explain (notary, management, property registration, reappraisal, commissions, etc.) but that you end up paying for. Even worse is when they propose that you take out a personal loan, saying that you can compensate the money that you can't pay with the money they are lending you. In the case of personal loans, interest rates are very high which would increase the debt in the end to an unreasonable amount. This only adds fuel to the fire.

If there is anything that we have learned so far, it is never to sign anything until we are sure we completely understand it. You must always demand that all proposals are given in writing, allowing you and somebody you trust to take enough time to read through everything slowly.

### WHEN TO STOP PAYING?

Another decision that can only be taken by the person who is directly affected is the moment when you stop paying because you are no longer able to do so. Frequently, many people, when faced with the anguish that goes along with the foreclosure and eviction procedures, will ask for money from family members and people around them in order to continue paying the mortgage. Even worse, they stop paying for basic necessities, such as food, water, electricity or gas. Another common situation is that many people continue to pay, using up their unemployment benefits, knowing full well that when these benefits stop, they will not be able continue with the payments.

Only you can decide when to stop paying but, from our experience, we can suggest three things: 1) No house, mortgage or financial institution deserves the sacrifice of any family; the family's health comes first and you should never stop attending to basic needs in order to pay a damn mortgage. 2) If you know for sure that you are not going to be able to pay, (for example, within three months from now when the unemployment benefits dry up) then you should think of these months, when you are no longer paying, as money saved that could be used towards caring for the family. If you know for sure that you will not be able to pay, then do it: paying a few more months will not reduce the final debt. 3) Once you have made your decision, try to be more positive and less worried about everything. You did everything you could.

A last bit of advice: don't believe office managers that tell you: "Just pay what you can because the bank will see that you have good intentions". As soon as you stop paying the entire amount you are in breach of contract and start to accumulate interests (which are very high). Therefore, unless you have something in writing about a grace period or reduction in monthly installments, "Pay what you can," means losing money and (if the bank decides) the start of judicial proceedings.

### TECHNIQUES FOR NEGOTIATING WITH THE BANK

When we start negotiating with the bank, before anything else, we need to be aware that: 1) we haven't done anything wrong. 2) fear and anxiety works against us. Except for a few honorable exceptions, office managers (who are under pressure from their superiors to get results) create

a shield to people's suffering and do not willfully ignore personal situations but sometimes even use these as an opportunity to exert greater pressure. There are many cases where people, who for years received insults and threats from the same office, were suddenly treated with kindness as if from one big family, when the PAH intervened.

Whether the bank is friendly, indifferent or aggressive, you need to be as calm as possible when starting to negotiate. At the moment considered appropriate (either before or after you stop paying), you need to go to the office manager, inform him of the situation and propose a solution. Ideally, do this in person and take everything in writing with two copies, one for the institution and another to be stamped. If you wish to ask for *dación en pago*, you can use the standard model letter found on the PAH website. If the manager says that it is not in his hands, request that it be carried forward to the head office. This is definitely something he can do.

From here, it is a question of applying common sense and, slowly but surely, increasing an insistent tone. Upon presenting the proposal, for example *dación en pago* plus rental of the apartment, you need to wait until they give you an answer. There is no predetermined time for them to answer you; sometimes it happens quickly but more often than not it takes weeks or even months. You are not in a hurry. Rarely will the bank start with a judicial proceeding during the time you are negotiating and, for this reason, it buys you time in the home without having to pay for it.

It's possible that, before giving a definite answer, they ask you for additional documentation (receipts to show that all your property tax and community services are paid-up or a document that proves your income). This is a good sign that they are seriously studying your proposal. In the cases of *dación en pago*, it is usually required that all payments related to the house are current and that there is no additional burden on the home (for example an *usufruct* or other seizures resulting from other unpaid debts).

It's more common that they don't accept your proposal for *dación en pago* and instead put more pressure on you to find the money to pay it off or even offer, as we have seen, a refinancing or personal loan which makes the debt bigger while allowing the bank to hide the bad debt in

their accounts for a few more months. You must hold out, stay firm and be insistent. However, if they are considering the possibility of accepting the proposal, don't fall into the trap of adding guarantors. Within this proposal they might include a slight improvement to the conditions in exchange for increasing the number of guarantors by telling you "We could make an arrangement to the current agreement and offer a lower fee if you add your son as collateral..." As we have already seen, this traps the guarantor into a loan for life. It is not worth it. You will lose more sleep from mortgaging a loved one than being left with a debt and no home.

Therefore, it is with much calm and firmness that you explain to your contact person that perhaps he didn't understand you. Your situation requires a *dación en pago* and he better have another look at it. If necessary, you present the proposal in writing one more time. If he comes back saying that it's "impossible", show that you are well informed and explain that you know that it was possible in other cases and with the same financial institution. Why is it not possible in my case? Are you discriminating against me?

We can also use resources from the Administration to strengthen our petition. We can, for example, add a report by social services to our petition, which certifies that we have no resources. Alternatively, in those municipalities or regional communities that have mediation services to financial institutions, asking that they get in contact with the headquarters of our institution to support our application.

At any time during the negotiation it is essential that we turn it around, by making it known to the institution that we have lost any fear: until now, the banks have grown stronger and taken advantage of the anguish and stress felt by those affected by pressuring them to refinance their contracts. They must understand that we are not afraid and we are aware of everything that we have lost (the house, incurred a debt for life) and therefore have nothing more to lose. We have informed ourselves and therefore know that they won't be able to seize anything if we put our things under somebody else's name and work under the table. We will stay in our homes until the last possible moment and it will cost them a lot of money to evict us. Until now this mortgage and this bank has been our worst nightmare and perhaps now we might turn into theirs.



We will continue insisting as is necessary. If they ignore us, it is now perhaps a good time to ask for the support of our nearest PAH. With the experience of the last years, we found that we have more lobbying power when we touch on the institution's public image. A possible action is to situate ourselves, peacefully yet persistently, at the entrance of a banking branch and distribute flyers to the customers explaining what the bank is doing and how it treats its customers when they suffer financial difficulties. Some people have even camped out for several days and in this way managed to set up a meeting with the bank representative to find a solution.

For the most extreme cases, where they don't want to receive us or they treat us badly, we can turn to the media and report the case. We can also do collective actions, getting together with other people affected by the same financial institution and force a collective negotiation. It is always important to never give up and to persevere.

#### THE POSSIBILITY OF RENTING OUT THE HOME

If the economic difficulty that prevents us from paying the mortgage is a temporary one and we have some alternative housing (for example, family) which won't place a burden on anybody, then there is the option of renting out the home. However, if the insolvency goes on for longer, the rent is not enough to cover the entire mortgage payment, or if you simply have no other place to go: better to not complicate life even more.

Another potential usefulness of renting out the home is to keep possession of it once it is auctioned off and the bank becomes the new owner. At the beginning of 2012, a message spread like wildfire around the Internet which claimed to have found the perfect solution for preventing evictions. By renting out an apartment for a symbolic amount and for an indefinite period to somebody you trusted, the bank would have to respect the rental contract when it took over the property. It's not exactly like this, but there are some elements of truth in some cases that could prove useful.

Although some mortgage contracts contain an abusive clause in which it's not allowed to rent out the home, the fact is that the property owner can rent out his apartment whenever and to whomever he wants. However, if he wants this contract to be valid with a new owner, he must

take care that there is no indication of fraud. For example, by putting the contract in the name of somebody close to him (such as parents or children), putting the rent too low or making an indefinite contract: signs that this contract was made to circumvent justice and, as a result, can easily be annulled by a judge. Ideally, the contract should be signed before one stops paying the mortgage. The tenant should register the property and put all services (water, electricity, gas) in his name. The rent should be for a reasonable amount, close to the market price and there is some receipt of bank transfers that prove payment of rent. Although not required, it is recommended that the contract be registered with the Urban Property Chamber, which gives more credibility to the contract even though it requires some registry and notary fees. Should a judge annul the contract, one can start another process to defend it. The mere fact of initiating this procedure serves to delay the eviction. Although this is unlikely, should the judge decide with certainty that the rental contract is fictitious and the property owner has committed fraud, then he could be prosecuted for concealment of assets (article 257 of the Criminal Code).

Concerning the contract's duration, the *Law of Urban Rentals* (LAU) makes it very clear that, in the case of foreclosure, the new owner will only have to respect the first five years from the signing of the contract. After the five years, the tenant could receive an automatic extension of three more years but only if the bank fails to notify about the contract's termination.

#### BE CAREFUL WITH THE CODE OF GOOD PRACTICE ADOPTED BY THE GOVERNMENT

In March 2012, the government, pressured by the social alarm awakened by thousands of foreclosures, adopted a Royal Decree of "urgent protective measures for mortgage debtors without resources". These measures included a *code of good practice* for financial institutions that aroused a strong expectation to the extent that, when the government announced it, it was presented as a possibility for *dación en pago*.

However if we read through the final version of the decree in more detail, we see that very few people can actually get it, and that *dación en pago* is the last of the possibilities. For this reason we say "careful"! From

the onset, this code is only voluntary for the banks. If your financial institution didn't sign, then you are excluded from it. In the case that the institution has signed, you are eligible only if all family members are unemployed, if the mortgage is for the primary residence, if you have no other property, if the mortgage was for accessing this home (excluding the thousands who mortgaged their homes to save small businesses or jobs) and if mortgage payments are higher than 60% of family income. In the case where there are guarantors, if they have property and therefore assets for covering the debt, then you are also ineligible for the *code of good practice*.

This list of requirements excludes a majority of those affected. However even those that are eligible should take care because *dación en pago* is not the first option. The code establishes that the bank must first make an offer to refinance with a series of options that include the possibility of increasing the mortgage to 40 years. It is only in the case that the final proposal implies a monthly payment of more than 60% of the family income that you have an option to have the debt reduced or *dación en pago*.

In conclusion, it appears that the code proposes to limit or reduce *dación en pago* and force unwanted refinancing on people. In fact it was quite significant that most financial institutions quickly signed and adhered to this voluntary code a few weeks after it was adopted. In late March 2012, the PAH claimed that financial institutions used it to put a stop to negotiations-in-progress, freezing *daciones en pago* with the excuse of not meeting up to the stringent requirements of the *code of good practice*. Therefore, remember the first advice: decide on the solution that you want and make sure that this is respected.

#### USEFUL RESOURCES

##### **Document for requesting *dación en pago* or renting out the home.**

It is a very simple model that you can download from the PAH website ([www.afectadosporlahipoteca.com](http://www.afectadosporlahipoteca.com)). You only need to fill out your personal information, personalize the requests (leave out the request for *dación en pago* if you want to rent or, in the case that you want *dación en pago* then delete the request for affordable rent), make two copies and take them to your bank branch: one for them to forward to the central branch and the other to stamp. You can also make a third copy and send

it, through registered mail, to the management service of bad debts of your bank's central office.

**Government aid.** If you have severe economic difficulties that compromise basic living (housing, food, basic services or children's schooling), turn to municipal social services and the housing offices within your regional community. These are various aids that certainly will not solve all your problems, but they can offer a bit of support. Unfortunately, current administration, with their management of the crisis, is cutting this already insufficient aid. You have to go directly to social services within your area to find out what the current support is.

**Institutional mediation services.** As was already explained, the first experience of mediation led by the Government of Catalonia, known as *Ofidute*, have influenced other mediation services between people and financial institutions within various regional communities and municipalities (Terrassa, Sabadell or Logroño, among others). They only act in the cases of primary residence and recommend that people make contact with them as soon as possible, as soon as they begin having payment difficulties. These services can only intercede on the basis of good will and cannot therefore guarantee any results, whatever the situation of the person concerned. Remember, when you deal with them, clearly express what your demands are, to avoid this mediation becoming a strategy that the bank uses to push a refinancing which you do not want. The PAH's experience tells us that in those cases in which more help is needed (less economic means, advanced legal proceedings) the less likely these institutional mediation services can resolve them. In any case, it is a useful mechanism for applying more pressure in your negotiation. Ask your local municipality and regional community if they have a mediation service.

**Making a complaint to the financial institution and the Bank of Spain.** All financial institutions have a customer ombudsman and any customer who believes he or she has been unfairly treated may submit a written complaint. Once the complaint is admitted for processing, the ombudsman must ask for the necessary documentation from both parties, the bank and customer, in order to make a decision, in writing, within a maximum of two months. Similarly, the Bank of Spain has a claims service where you can report bad banking practices. A require-

ment for using it is that it be used via the ombudsman of the customer's financial institution. The claim must be made in writing using an official form that you can find on their website: [www.bde.es](http://www.bde.es). In both cases, it will hardly lead to the resolution of your process, but at least serves as a tool for applying pressure. If everyone did the same thing, then we would succeed in forming a collective action that made it clear to financial institutions and the Bank of Spain that, although perhaps their practices are legal, the public considers them unjust, illegitimate and immoral.

### **Phase 2: Immersed in the process. Tips.**

This is the phase where the financial institution starts the procedure for reclaiming the unpaid debt. It can start the moment when you stop paying which results in a breach of contract. Normally, the banks wait a minimum of three months before starting the formal process, but you should know that it could start with only one missed payment. An additional problem in Spanish legislation is what is known as *early termination*: from the moment that you stop paying, the bank can reclaim the unmade payments plus interest for late payment but also the entire outstanding loan.

Our interlocutor will still continue being our financial institution during this phase because, despite the intervention of a judge or a notary, the procedure is designed in such a way that we cannot claim anything. What is our objective? Extend the procedure for as long as possible, for two reasons: first because, come what may, there's time that we gain for staying in the home and second because the more you prolong it, the more time you will have to force a negotiation. Think that the more advanced the process becomes, the financial institution can always stop and come to some agreement with you, so never stop negotiating.

#### **A. JUDICIAL ROUTE**

It begins when you receive a burofax at your home (the mortgaged home) which informs you of the amount owed and demands payment. As this is a burofax, it functions in the same way as a registered letter. The postman takes it to the house and asks you to sign a receipt. Even

if you don't open the door for the postman or sign for the burofax, the procedure will still go ahead. Therefore, it is better to collect it, to be informed and react quickly. If you don't pay the outstanding fees plus interest, the bank then files a lawsuit to the court and all persons included as loan holders receive a notification of the start of the foreclosure procedure. This is what is popularly known as *el tocho* which consists of a quantity of important papers (the application, a photocopy of the mortgage contract, a notarial certificate which outlines the unpaid installments plus interest for late payment and generated court costs). Once again, even if you don't receive this package in the mail, the procedure continues regardless.

With this notification, the court gives you ten days to pay. If you don't pay, the court sets an auction date for the home. The loan holders receive notification of this date a minimum of twenty days in advance. It is also published on announcement boards at courthouses so interested people can participate in the auction.

Throughout the procedure, and up to to the day and time of the auction, there is only one way to stop it (valid only for primary residence cases): pay everything that you owe from the moment the lawsuit was issued, plus interest for late payment plus legal costs but, for now, saving you from owing the entire mortgage debt. Of course, in the current crisis, whoever stops paying does so because he is unable to and if not in the beginning then, even more so, later when the debt increases with added interest. The law does not provide the possibility of any appeal, only what are called *causes of opposition*, in the unlikely event that formal defects in the procedure or errors have occurred in the calculation of the amount claimed.

On the scheduled date, the home goes up for auction at the appraised value listed on the mortgage contract (which usually coincides with the initial appraisal value, although it could be different). In theory, the law allows for any person to participate in the auction, subject to prior consignment equal to 30% of the listed price, and that the auction goes to the highest bid provided that it exceeds 70% of the auction value. In practice though, with the crisis, few people attend auctions and almost all auctions remain deserted. In this case, the bank has twenty days to notify the court if the house went for 100% of the debt or 60% of the

appraised value. You know, from the experience taken from this book, that the bank usually takes advantage of this opportunity. In rare cases, 60% of the appraised value is equal to or greater than the debt. This frees the loan holder from any debt, including receiving the difference if it is higher than he owes. But in most of the mortgage cases, signed during the height of the housing bubble and with virtually none of the capital amount repaid, 60% means leaving the person with a considerable debt for life.

Despite the general helplessness that this procedure causes, which by law prevents us from explaining our personal situation, there is a small consolation to those who suffer harassment from debt collection companies. Once you start with the court proceedings, at least you no longer have to suffer from their debt claim techniques.

## TIPS

### REQUESTING FREE LEGAL AID

Article 119 of the Spanish Constitution recognizes the right to access free legal aid. This 1996 law governing the procedure for accessing legal aid recognizes the right for all citizens who cannot afford legal assistance if their household income does not exceed twice the IPREM (Public Indicator of Multiple Effect Income). In 2012, the IPREM was 7,455.14 euros per year. You can request legal aid, a lawyer and attorney office, at any stage of the proceedings, which can be used for different things. First of all, to present yourselves and therefore ensure that you receive complete information and have the opportunity to present this in writing. Secondly, in order to gain time as the proceedings stop the moment you apply for legal aid until you have the answer of whether or not you have been granted it. Thirdly, to avoid being charged legal fees at least during the time when your economic situation does not improve. It is understood that if you are requesting free legal aid for the foreclosure procedure then you will not have the money to pay for the court costs.

One disadvantage to public versus private defenders is that you cannot choose who represents you. Like any other profession, you can touch on someone who takes it very seriously, pays attention and is willing to listen to your proposals, or have the misfortune of having somebody who is incompetent or, worse yet, poorly motivated, resigned and convinced

that “there is nothing to do”. If the lawyer fails to keep you informed or you think is acting against your interests, then you can try asking for a change within the corresponding lawyers’ association.

#### MAINTAINING NEGOTIATION WITH THE FINANCIAL INSTITUTION

Convincing the bank to reach a settlement is your only chance to stop the foreclosure procedure. To do this you can still use all the advice given in the previous phase, both in negotiation techniques as well as turning to social services, if this hasn’t been done already, and other services provided by the Administration, such as mediation.

#### STOP OR ATTEND YOUR OWN AUCTION

You should know that, contrary to what many people think, the auction is not a solemn affair: it is a mere formality which the judge is not even involved in. In the hallway, the clerk asks if there are any bidders. If there aren’t any, then he prepares a brief which is delivered to the bank’s attorney and, if present, to the person suffering the foreclosure. Whether you have a lawyer or not, you have the right to attend the auction of your own home. You can’t do anything but, at the very least, make the officials who run these auctions as an everyday routine become a little more aware that there are lives sinking behind this procedure. If you consider it appropriate, you can also try stopping the auction through collective action by inundating the courts and preventing judicial proceedings, however this is difficult to realize (courts have police present) and this will only buy you a little more time. In any case, if you go to your own auction and, once realized, the officer asks you to sign the minutes of the auction saying that the bank can now award the house for 60% of the appraisal price, refuse to do so. You don’t need to validate an injustice with your signature and, whether you sign or not, it doesn’t change anything.

#### USEFUL RESOURCES

**Application for free legal aid.** You can ask for it in the courts or Legal Advice Services (SOJ) of the lawyers’ association closest to you (you can find it at [www.Justice-gratuita.es/pjg/home.do](http://www.Justice-gratuita.es/pjg/home.do)). They will ask you for a considerable amount of documentation to prove your income.



**Appeal in case of denial of free legal aid.** If you are refused free legal aid, you can file an appeal within five days from the time that you have been notified. It is common that they at first refuse you because of an overly restrictive interpretation which fixes on if your income exceeds twice the IPREM. But it is worth appealing because you will manage to get them to examine your case more closely and assess all the circumstances (if you have people in your care, other expenses, and so on).

To do this, you can use the form available on the website of the PAH: [www.afectadosporlahipoteca.com](http://www.afectadosporlahipoteca.com).

**State and regional ombudsmen.** In the event that you receive unfair treatment by any of the public administrations (social services, free legal aid or, for example, where court officials deny access to information on your case to try to convince you not to ask for legal aid), present a complaint to both state and regional ombudsmen. For more information go to the website of the State Ombudsman: [www.defensordelpueblo.es](http://www.defensordelpueblo.es)

**All resources of the previous phase.** Precisely because the judicial process leaves no room for manoeuvring and our goal is to continue negotiating with the bank, bargaining techniques and resources such as the written request for *dación en pago*, government aid, mediation services, complaints to ombudsmen or the Bank of Spain are still useful resources at this stage.

## B. EXTRAJUDICIAL ROUTE

While financial institutions use mostly the courts when it comes to foreclosure, by the end of 2011 the PAH reported that it began to receive cases of people whose financial institutions had started to demand the unpaid mortgage balance using a hitherto unknown route: *the extrajudicial procedure*. In fact, almost all mortgage contracts contain this possibility, in a way that the bank can decide to foreclose through a judicial or extrajudicial process.

If the judicial route has been widely denounced for being unjust and expeditious, the extrajudicial route goes even further. In the first place, it is even faster (it can be resolved in three months). In the second place, it takes place before a notary and, therefore, the person involved does not even have the right to free legal aid and is left utterly defenseless. Third, the system is developed that if, after three attempts, the home is still not

auctioned off, then the bank is awarded the home without a minimum rate, not even a euro. In the first auction, the house goes for 100% of the appraisal value, in the second for 75% and in the third without a fixed minimum. As in judicial auctions, with the crisis, most extrajudicial auctions are left deserted, which allows a financial institution to claim the home for whichever amount it sees fit, leaving the debtor to pay the difference not covered by the amount.

Fortunately, once again mobilization by those affected has not only served to visualize this procedure in front of the ignorance and inaction by public administrations, but has also started to provoke reactions. This first took the form of concentrations of citizens before notaries carrying out these auctions, then the PAH requested a meeting with the dean of the Association of Notaries of Barcelona and managed to get that same Association to recommend that all Catalan notaries apply the same fixed minimum at judicial auctions, at that time 60%. Manuel López Paradiñas, president of the Association considered it “imperative that notaries offer citizens the same guarantees that a judge would”. In the same statement, the highest governance body of notaries urgently requested that the Minister of Justice, Alberto Ruiz Gallardon, change extrajudicial mortgage regulation to ensure the rights of consumers. Finally, in March 9th, 2012, a Royal Decree amended the extrajudicial procedure, in cases of primary residence, making it comparable to the judicial route, by setting the minimum rate to 60%.

The problem remains, however, that this is a faster process with fewer guarantees for the debtor and with a substantial problem remaining: adjudication of the home for 60% of its appraisal value which, as in the judicial route, leaves people indebted for life. For this reason, the need remains for social pressure to make a change in regulation that gives people a second chance. In very little time, we have moved from 0% to 60% of the appraisal value within extrajudicial adjudications. The movement works.

#### TIPS

If you have stopped paying the mortgage and somebody who says he is a notary knocks on your door, do not open it or accept any paper. The only way of avoiding the extrajudicial route is by not accepting the

### **The case of D. Lozano-Viladecans**

D. Lozano contacted the PAH just as the third auction was about to take place using an extrajudicial procedure. The PAH contacted Banesto, to try to negotiate a fair way out of this, but the bank's representative made it very clear that they would take advantage of the current system and that the house would be awarded to them for a low price. The PAH also contacted the notary, who extricated himself from any responsibility and just repeated that he was applying the law as it was, by allowing the adjudication without a minimum value.

On January 26th, 2012, the day of the auction, twenty people, members of the PAH, accompanied D. Lozano to the notary. Despite appeals to the notary, he allowed Banesto to be awarded the home for 35% of its appraisal value. However neither the person concerned nor the PAH gave up, but brought their complaints to the media and the Association of Notaries of Catalonia. Finally, faced with the growing social alarm that the news generated, Banesto contacted the PAH and accepted forgiveness of the debt up to 60% of the appraisal value.

notarial document delivered to your home. In this case, the law states that the bank has to follow the ordinary judicial route. If you accept it, however, there is no way to stop the procedure.

Remember, despite that the adjudication by notary route is faster than the judicial one; the notary cannot enforce the debt nor evict you. To do this, the financial institution must follow the judicial route and in this case you can follow the advice provided in the third phase.

### **Phase 3: Once the home is auctioned off. Tips.**

Once the auction takes place, which in most cases remains deserted, we have a double problem: the remaining debt and threat of eviction.

While it is true that the house is no longer yours, and therefore leaving you with less room for maneuvering, one of the main tips is

still valid: keep calm because it's not the end of the world yet. In fact, different PAHs throughout the country achieved various cancellations of debt and prevented dozens of evictions after auctions had occurred. The key is not to give up.

Another point to make very clear is that completion of the auction does not mean an automatic eviction or seizure of both payroll and property. For these two things to happen, the bank needs to ask for a court order for which you have to be notified of well in advance.

Regarding the remaining debt (not covered by the adjudication price from the auction plus interests and court costs) there are financial institutions that don't implement this immediately. Don't put your trust in this. By law, mortgage debts expire after twenty years and personal debts at fifteen. The problem is that the term starts again; each time the creditor takes an action to reclaim this debt. For this reason, in practice, we are talking about eternal debt. On top of this, to the extent that this also generates new interests, the debt grows. However, they cannot take everything, there is a fixed minimum that is immune to seizure.

Unfortunately, you must also take into account that this seizure is not the only negative result of the debt: your name will appear on delinquency records which prevents you from doing many things and will make the day-to-day more difficult: buying a washing machine, getting a telephone contract, accessing public housing or even getting a job.

Concerning the eviction, it's very important to know, for your wellbeing, that it does not happen from one day to the next. The police cannot suddenly appear at your home. The law protects the inviolability of the home, and removing somebody from the home can only be carried out in accordance with a few guarantees. Among others, the person being evicted has to be notified of the day and hour of the eviction with a minimum of one month's notice. Even if there is a specific deadline, given the collapse of the courts, the time between the auction and eviction typically takes between six to twelve months, sometimes even more. Once the date arrives, there are various resources that can help us put it off even longer.

An additional problem: taxes claimed after an auction or a *dación en pago*. If it weren't enough to have to suffer through an auction or *dación en pago*, you soon discover that the nightmare isn't over yet. The

system is so perverse that it doesn't distinguish one situation from the next. Even though you lost the home, the government can still demand from you a least two taxes, the *Municipal Added Value Tax*, or *plusvalía*, and the *Income Tax for Individuals* (IRPF) within your annual tax statement.

The *plusvalía* is a tax on the increase in value of urban land (IVTNU). During a normal sale, the seller pays the municipal *plusvalía*. In the case of *dación en pago*, in which the home is used to pay off the debt, or if you lose the home in an auction, you are still required to pay the *plusvalía*. The amount depends on the number of years since the previous sale and tables of the framework law on local government. Payment is due within thirty business days from the assessment or adjudication after the auction. As a result of social pressure, some municipalities (like those of Sant Feliu de Llobregat in Catalonia, Madrid Torrejon or Logrono in La Rioja) or even entire provinces like Vizcaya are exempting people hit by foreclosures from this tax, as well as cases where people successfully obtained *dación en pago*. The municipal government is solely responsible for the *plusvalía* tax, therefore if your local government is still collecting this tax, speak with local groups and pressure your local government for them to eliminate payment of *plusvalía* in the case of *dación en pago* or adjudication by auction.

On the other hand there are *plusvalías* from the sales operation, which are the capital gains that the owner has when selling the property and therefore taxed as personal income in the annual tax report. Until now, the treasury considers *dación en pago* as if it were a sale. If we add that many mortgages were given out at 100% to 120% of the appraised value, and at the moment of obtaining *dación en pago* this amount was increased significantly because of late payment interest, to the treasury it could appear that you made a profit, by giving away the home for a higher value than it cost you.

Finally, fiscally a *dación en pago* is more expensive than an auction. *Dación en pagos* have to pay the transfer tax twice: the debtor has to pay when the creditor carries out the *dación en pago* and the creditor makes him pay it when he sells the property. However, auctioned properties are only taxed on the basis of the adjudication value. And banks benefit from the possibility of taking their time to adjudicate the property to a third party, so that they only have to pay tax once. Moreover, property transfer

tax as well as stamp duty are set by regional governments.

There is also the risk that you will continue paying property tax (IBI), community costs or you may even be prevented from accessing public aid because you are registered as a property owner. Many financial institutions take a lot of time registering the change of ownership to avoid paying taxes. In these cases you have to get a court resolution stating that your property was adjudicated to another. You can do this through your lawyer or by going straight to court with your personal identification. When you have this document, give a copy to whomever you have a problem with (the municipality, in the case of property tax, or the home owner's association in the case of community costs). You can also issue a complaint about the financial institution for tax evasion to the treasury.

#### TIPS

##### ASKING FOR FREE LEGAL AID

If you have not already asked for it during the previous phase, you can ask for it now. If some court worker tells you to not ask for free legal aid because “at this point there is nothing more to do and it would be useless” then ignore him. This is your constitutional right and nobody can tell you otherwise. Additionally, this phase, same as the last one, helps put a halt to the proceedings pending resolution of your request and allows you to save time and resources for requesting postponements of the eviction.

##### CURRENT RESOURCES

Among the professionals in the legal world (lawyers, judges and court clerks) there are many who are quite resigned, when faced with the harshness of current mortgage procedure, and think that it is not worth doing anything about it. Maybe you meet a lawyer who tells you that it's of no use to present any appeal, or a court clerk that tells you there is nothing he can do. Insist on it. You have every right to do this and it will always allow you to do something. At the very least, you gain extra time for negotiating with the bank. It is therefore possible to succeed in suspending the eviction (the law provides for this possibility). Many times, a judge, if he has a minimum amount of sensitivity, may suspend the eviction a second or even third time.

In the case of the implementation of the debt and the request by the bank for the judge to give out this order, this could be a resource for requesting that this not be carried out because the real value of the auctioned home was much higher than its awarded value. Judges are becoming more and more receptive to these arguments.

#### DEMAND A CANCELLATION OF THE DEBT

Once the home is auctioned off, *dación en pago* is no longer possible because you no longer have a home to give back to the financial institution in exchange for the debt. To the extent that the final debt depends on the law and also the will of your creditor (the financial institution), the creditor can also free you whenever it wants by cancelling the debt. For this reason, it's important not to throw in the towel and to continue negotiating with your financial institution. The PAH has managed to get various cancellations. It is completely possible. On the other hand, the PAH, together with other institutions, continue working on regulation for retroactive *dación en pago*. Join this movement. The more we are, the more likely we are to achieve it.

#### FACING UP TO THE CONFISCATION OF YOUR ASSETS

If you didn't obtain a retroactive *dación en pago* or a cancellation of your debt, then the bank can start to seize your assets, however not everything. Make sure you apply the latest reform from July 2011, which states that they cannot take out more than the allowable limit. They cannot touch the first 962 euros of your salary or 1,347 euros if you have other people in your care. Apart from this amount, there is also a progressive table for confiscation. If the bank does not respect this minimum, then file a complaint with the National Institute of Social Security (INSS). The same applies with guarantors who must also respond to the debt with present and future assets, including wages.

The bank can confiscate not only the salary from both you and your guarantors, but also any property in your name and current accounts. Properties cannot change owners once the proceedings have started, as it is considered a concealment of property (a fraud). In regards to current accounts, once you deposit the payment with the proportional amount seized by the bank, immediately withdraw all remaining money

from that account. If it stays there a few days, then it may stop being considered an amount immune from seizure and converted into a seizureable asset.

### GO TO SOCIAL SERVICES

Although some municipalities work better than others, going to social services during this phase, in general, will help you for two reasons. On one hand, they can help you to request a temporary suspension of the eviction to the judge. This is not the same as when you request it alone from City Hall, arguing that you had not yet found alternative housing but were still looking. If they do not want to do this letter for you, at the very least they can provide a supporting document that you are doing these steps. This can serve as a motive for postponement by the judge.

On the other hand, the municipality can also put pressure on the bank that allows to you stay in your home with affordable rent. If you don't get this, then City Hall must find suitable lodging for you and your family. It's possible that, in the beginning, they may say that they have no public housing. You must insist. If you have no other housing possibilities, they are required to prevent you from ending up on the street. In the worst-case scenario, they offer you temporary lodging.

A warning: although this only occurred in certain cases, you should know that sometimes social services threaten to take custody of young children in the event of an eviction where the family does not have any alternative stable housing. If this happens to you, don't be afraid and quickly issue a complaint to both the media and Ombudsman. Ask help from the closest PAH and other support groups to help you develop complaint actions and visibility for your case. You can also register yourselves at the home of a friend or family member in order to have a permanent residence on record.

### RESISTING AN EVICTION

You have exhausted all attempts at negotiating with the financial institution and all administrative and legal channels for delaying the eviction and/or securing affordable housing and there are no indications that they will have satisfactory results. When the eviction date finally arrives, then you can resist the eviction as a way of postponing it.



The PAH has a detailed protocol that allows you to stop evictions in a peaceful manner. As there are, unfortunately, dozens of evictions taking place each day, judicial commissions have turned them into a routine practice. This means that, as a rule, the first order to evict does not require any special arrangements. All they do is simply move the home in question forward to the court clerk, the bank prosecutor and, many times, a police patrol. Given this scenario, it is relatively easy to stop an eviction. It is enough for a group of people, forceful but peaceful, to place themselves outside the door so the judicial commission cannot enter. It is not the job of the court clerk to use physical force. Furthermore, if this is used, he must obtain a specific court order to do so, apart from the eviction. Consequently, it is more often that, when faced with the concentration of people, the judicial commission decides to suspend the eviction. Upon returning to the court, he has to communicate the impossibility of carrying it out to the judge and from this set a new eviction date. This must also be communicated to the person or persons being evicted.

Having achieved the postponement (which could be within one to four months or, on occasion, has been only two weeks) we are still not finished. On the contrary, it is now time to apply more pressure. On the same day, once certain the eviction has been suspended and making use of the dozens of people concentrated around the home, the PAH sets out as a demonstration to City Hall or the district. We use public pressure, the visibility generated when stopping the eviction and the media accompanying us to demand that some municipal official receives us to make concrete commitments regarding this particular case. In general, this makes it possible for opening up channels for communication and/or intervention for other similar cases. Apart from the local administration, it can also raise issues at the regional level and, of course, put pressure on the financial institution.

If you are unable to stop the eviction or see any hope for moving forward with it and have no place to go, then you are left with the possibility of reoccupying the home. This is an action that more and more people do every day, not only because it's the only way to have a home but also a form of public denouncement of the senselessness of leaving needy families on the street while banks hoard away empty homes for

future speculation. Obviously, this action may involve legal risks, including criminal ones. What happens in most cases is that you start a new procedure that, months or even over a year later, ends with eviction. Time spent within the home gives you a home and allows you the opportunity to put more pressure on the financial institution: you will leave the home voluntarily if they cancel an illegitimate debt. On the other hand, in some cases, judges begin to show signs of understanding the social reality behind these occupations. In the case of the judgment file of criminal proceedings, known as *Building 150* in Barcelona, the judge did not only file, but the judgment's wording also condemned the bad behavior of the financial institution that owned the building.

#### USEFUL RESOURCES

**Document on the amount of payroll immune from seizure.**

Available on the PAH website. This document is useful for calculating the maximum amount of family income that the bank can take from your account.

**Document for requesting cancellation of debt by the financial institution.** Available on the PAH website.

**Document for requesting that the debt not be implemented.** There is a form available on the PAH website that outlines favorable rulings that have occurred so far and invites the judge to interpret the law as he sees fit when handing out sentences.

**Resource for requesting postponement of the eviction.** Form available on the PAH website. You must present this appeal and also the one above it to your lawyer. If you don't have a lawyer or, he refuses to do it, go to the court and insist that they accept it in writing. If they want to, they will take it.

**Social work of the PAH.** In the case that you cannot prevent the eviction, the Administration doesn't offer you decent alternative housing and you are thinking about the possibility of reoccupying the home, get in contact with the PAH closest to you.

To recap: however complicated your situation is or advanced the process, remember the basic lesson that we have learned from our experiences over the last three years. When everything is lost, then there is everything to gain. Dozens of cases, where it seemed impossible to come to any solution, have been won through much perseverance and solidarity of hundreds of people who are permanently mobilizing within different PAHs throughout the country.

**Contact information for the PAH**

[pah@afectadosporlahipoteca.com](mailto:pah@afectadosporlahipoteca.com)

[www.afectadosporlahipoteca.com](http://www.afectadosporlahipoteca.com)

Tel.: 667 662 756

In the “Contact Us” section you will find your nearest PAH.



## Data on foreclosures and evictions

The current data on evictions of habitual residences has always been a concern for movements and collectives working in defense of the right to decent housing. Now, with the crisis and onset of issues related to mortgage, these statistics start to be interesting for other social actors, starting with the media. Despite repeated requests to various administrative authorities, it remains difficult to access information that is of essential importance for carrying out a good analysis of housing policies and, in general, social policies. How can we assess, for example, whether specific assistance for payment of rent or the creating of new public housing is sufficient enough if we don't know how many homes were lost during a certain period?

### **Official data**

Though insufficient and too generic, the only official currently available data comes from the General Council of the Judiciary (GCPJ). Based on these statistics, gathered from proceedings resolved in the courts, we have a summary of the most relevant data and interpretive findings.

### **FORECLOSURES**

Foreclosure proceedings are those used by creditors (usually financial institutions) to demand payment of an unpaid mortgage loan. What

provides for this type of procedure is the auctioning of the property, which acts as a collateral for the loan. As a result of this auction, it may arise that the new owner, if he wants to, initiates a court procedure to evict the former owners.

According to the General Council of the Judiciary (GCPJ) data, between 2007 and 2011, there were 349,438 foreclosures across the country, led by Andalucía (68,053), Catalonia (65,670) and Valencia (65,220).

#### Evolution and total number of foreclosures per province

	Total 2007	Total 2008	Total 2009	Total 2010	Total 2011	Total
Barcelona	2.804	6.759	10.738	10.445	7.925	38.671
Madrid	2.802	6.501	10.655	10.276	7.533	37.767
Alicante	2.636	5.422	7.617	8.292	6.271	30.238
Valencia	2.278	4.127	6.553	7.509	6.671	27.138
Murcia	1.013	2.715	4.575	4.957	4.154	17.414
Málaga	1.140	2.983	4.475	4.354	3.633	16.585
Tarragona	890	2.282	3.771	3.378	2.365	12.686
Sevilla	970	2.266	2.996	3.036	3.150	12.418
Almería	638	1.742	3.463	3.292	2.716	11.851
Las Palmas	730	1.653	3.108	2.554	2.316	10.361
Baleares	723	1.754	2.677	2.305	2.133	9.592
Girona	536	1.403	2.248	2.905	2.297	9.389
Santa Cruz de Tenerife	706	1.563	2.443	2.265	1.792	8.769
Cádiz	668	1.486	2.180	1.994	1.973	8.301
Toledo	481	1.307	2.345	2.215	1.778	8.126
Castellón	455	1.042	2.120	2.301	1.926	7.844

	Total 2007	Total 2008	Total 2009	Total 2010	Total 2011	Total
Granada	381	1.056	1.741	1.937	1.826	6.941
Zaragoza	444	981	1.953	1.625	1.515	6.518
Lleida	308	796	1.296	1.384	1.140	4.924
Córdoba	284	735	1.049	1.240	1.076	4.384
Huelva	283	672	950	1.089	1.061	4.055
Asturias	546	756	1.003	864	768	3.937
Ciudad Real	302	583	909	996	792	3.582
Jaén	231	518	920	971	878	3.518
Pontevedra	266	576	839	866	856	3.403
La Coruña	284	536	831	715	835	3.201
Badajoz	241	448	680	877	759	3.005
Cantabria	275	561	761	709	691	2.997
Valladolid	216	519	799	785	554	2.873
Vizcaya	363	557	663	594	586	2.763
Navarra	178	451	738	679	614	2.660
Guadalajara	185	418	688	634	505	2.430
La Rioja	154	391	687	615	488	2.335
Albacete	163	379	500	575	590	2.207
León	184	334	551	537	385	1.991
Burgos	164	327	498	447	369	1.805
Cáceres	120	275	350	486	306	1.537
Huesca	74	202	432	404	393	1.505
Guipúzcoa	125	236	300	360	350	1.371
Salamanca	100	196	350	359	339	1.344
Cuenca	104	158	278	261	259	1.060
Álava	96	192	292	221	238	1.039
Ávila	60	130	278	266	169	903
Lugo	68	126	212	202	176	784
Segovia	44	110	192	165	176	687
Orense	83	131	171	159	136	680
Palencia	65	136	138	167	102	608
Zamora	35	82	154	196	138	605
Teruel	27	71	93	97	90	378
Soria	20	42	59	76	61	258
Total	25.943	58.686	93.319	93.636	77.854	349.438

## EXPULSIONS AND COURT-ORDERED EVICTIONS

These figures show court orders to remove occupants from a home, using force if necessary, to restore possession to whomever is legally listed as owner of the property. This may occur for both non-payment of rent and mortgage foreclosure.

## Evictions per province

	Total 2008	Total 2009	Total 2010	Total 2011	Total
Madrid	3.878	5.222	8.919	9.460	27.479
Barcelona	3.581	4.866	5.869	5.801	20.117
Valencia	3.075	3.872	5.254	7.267	19.468
Balears	2.893	4.180	2.941	3.656	13.670
Alicante	1.526	2.243	3.597	4.648	12.014
Málaga	1.010	1.508	2.419	3.280	8.217
Asturias	541	1.007	1.549	1.872	4.969
Zaragoza	877	873	1.456	1.639	4.845
Vizcaya	715	752	1.161	1.260	3.888
Granada	582	706	917	1.518	3.723
Cádiz	614	665	1.017	1.337	3.633
Castellón	329	336	1.068	1.796	3.529
Almería	319	408	840	1.189	2.756
Las Palmas	507	586	647	894	2.634
Lleida	345	455	776	988	2.564
La Coruña	474	483	795	783	2.535
León	335	500	713	680	2.228
Pontevedra	346	463	712	682	2.203
Valladolid	287	327	464	885	1.963
Santa Cruz de Tenerife	1.024	226	352	346	1.948
Sevilla	395	275	436	675	1.781
Huelva	194	274	504	672	1.644



	Total 2008	Total 2009	Total 2010	Total 2011	Total
Álava	272	252	421	580	1.525
Córdoba	226	263	433	599	1.521
Cantabria	250	335	423	453	1.461
Guipúzcoa	222	293	381	402	1.298
Murcia	93	108	260	833	1.294
Jaén	151	180	320	594	1.245
Navarra	232	300	344	336	1.212
Toledo	169	214	329	389	1.101
Badajoz	107	154	284	381	926
Salamanca	167	211	270	260	908
Ciudad Real	207	254	235	163	859
Zamora	68	196	238	346	848
Guadalajara	87	118	256	366	827
La Rioja	111	193	222	244	770
Orense	96	136	214	227	673
Burgos	131	130	192	146	599
Lugo	111	113	166	193	583
Albacete	88	120	140	156	504
Palencia	85	93	186	123	487
Cuenca	28	28	89	64	209
Cáceres				58	58
<b>Total</b>	<b>26.748</b>	<b>33.918</b>	<b>47.809</b>	<b>58.241</b>	<b>166.716</b>

#### TENTATIVE CONCLUSIONS FROM OFFICIAL DATA

##### A. FROM AVAILABLE DATA WE CAN HIGHLIGHT THAT:

- A disproportionate increase in foreclosures occurred since the outbreak of the crisis in 2007. Particularly noteworthy are the regions of Andalusia, Catalonia and Valencia, with a number of foreclosures well above the average. The decrease in foreclosures beginning in 2011 compared to 2010 does not mean, as some media suggest, that the foreclosure problem was resolved in Spain. An outrageous total of 77, 865

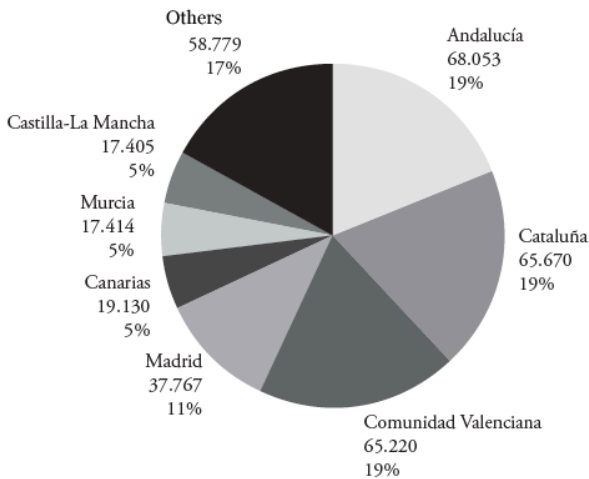
foreclosures occurred in 2011, triple to the 25, 943 that took place in 2007. We are far from resolving the mortgage foreclosure problem and, unfortunately, in 2012 we will continue with these frightening figures.

- The daily average of initiated foreclosures, using available data from 2011, is 213 throughout the country.
- The significant increase in court ordered evictions in the last years: 166,716 in the entire country since 2008. Madrid is the province most affected (27,479), followed by Barcelona (20,117) and Valencia (19,468).
- The daily average of evictions, using available data from 2011, is 159 throughout the country.

**B. MAJOR PROBLEMS OR DEFICIENCIES ARISING FROM THIS DATA:**

- Figures are only given for regions or provinces, but never specific municipalities or neighborhoods.
- These figures treat all evictions and foreclosures, from commercial locales to houses, equally, even though we know that most of them relate

**Distribution of Foreclosures 2007-2011 per region**



to habitual residences. They also do not distinguish between primary residences and second or third homes.

- They don't tell us anything about the final results of these evictions and foreclosures (if this affects a family or single person, if there are children or elderly people involved, if there exists any proposal for relocation on the part of social services proposed, etc.). In the case of foreclosures, they also do not reflect on whether, besides the loss of property and possession, the property was auctioned off, if the former owner was left with a debt, nor do these figures specify the average amount of outstanding debt after the auction.

- They don't resolve the confusion between foreclosures and evictions. A foreclosure is a procedure that implies different consequences for those affected: the loss of the home that served as collateral for the loan, maintaining much of the debt in the event that the auctioning off of the property was unsuccessful and the loss of possession of the property. Thus, a foreclosure is not as simple as an eviction, but usually ends (after a procedure that can usually last one or two years) with an eviction. Most of the evictions, however, are not present in these statistics of evictions by court order. In many cases, people, especially those with young children, prefer to "auto-evict" themselves to avoid having to suffer any violence through police intervention.

Summarizing, we can say that: 1) any foreclosure ends in eviction even though this is not reflected in the statistics of court ordered evictions; 2) in order to arrive at a total number of home evictions, one must include both evictions resulting from foreclosures and evictions resulting from non-payment of rent. To achieve this total, one must revise the way official data is collected.

### C. APART FROM THE INSUFFICIENCIES OF THE DATA, WE CAN NOTE:

- It should be a priority of any administration (state, regional, local) to know exactly where evictions and foreclosures are taking place, in order to design adequate measures and policies.

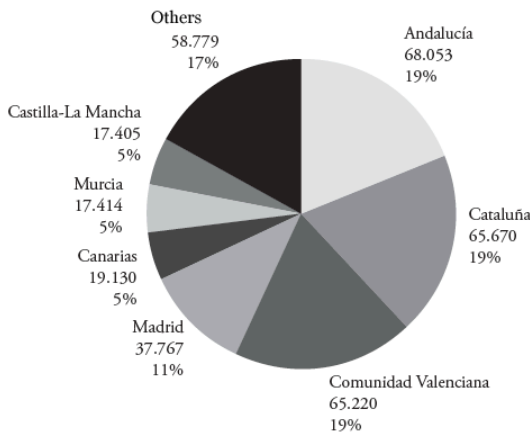
- Although laws regulating evictions and foreclosures are at the state level, the magnitude of the problem and its effects at the local level obliges local and regional administrations to also intervene. This involve-

ment can range from taking action to improve available data to promoting measures to stop evictions before they occur or, in the case of not arriving on time, to guarantee decent rehousing for those affected.

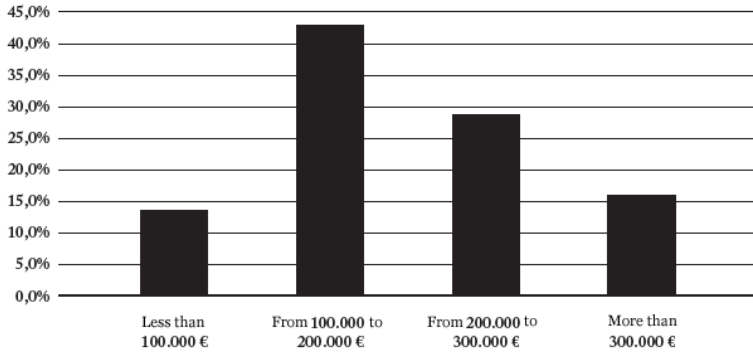
**Other data of interest**

Given the lack of official data, in 2008, the PAH started collecting data to fulfill a great need of making all aspects related to the mortgage problem more visible. In February 2012, a survey of 6,000 people affected by problems with their mortgage, who at some point had been in contact with the PAH, fed this database. We summarize here with some graphs, using data from cases of people who have either suffered or are currently suffering a foreclosure, which illustrate the importance of having detailed information. For example, the graph that shows persons affected according to nationality, breaks the cliché that foreclosures are the problem of immigrants. On the other hand, the graph on the presence of small children in families experiencing foreclosure is enough to make the blood run cold. In 82% of foreclosure cases, at least one child lived in the home.

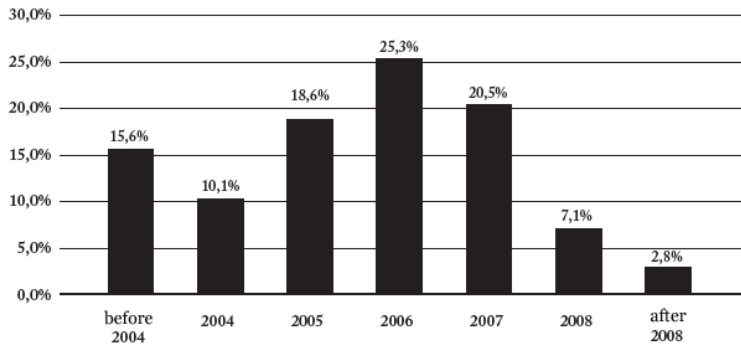
**Distribution of Foreclosures 2007-2011 per region**



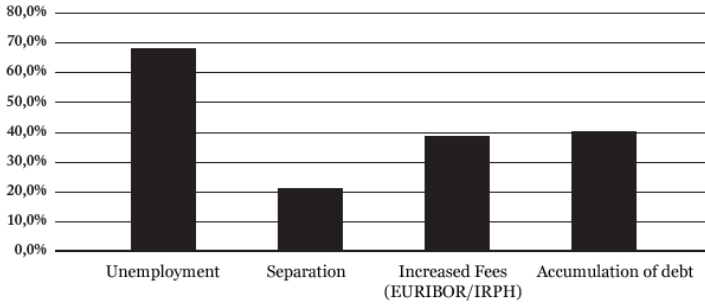
### Average amount of foreclosed mortgages



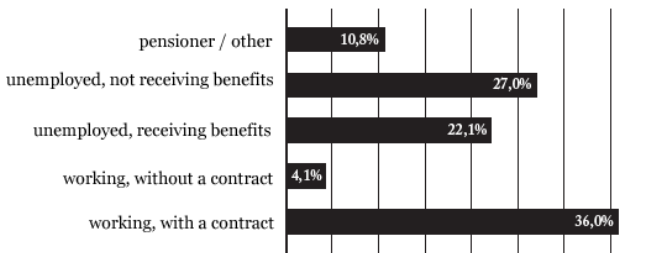
### In which year did you sign the mortgage?



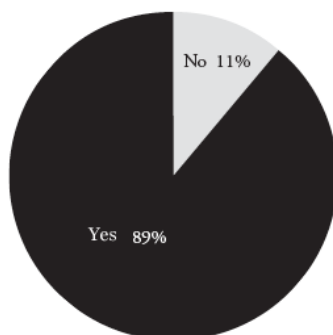
### What do you think are the main reasons why you couldn't pay the mortgage?



### What is your current work situation?



Did you intend to renegotiate with the bank?



## Foreclosures according to nationality





### Are there young children in the home?

