

# The PAH's Green Book

A basic guide to the PAH  
Platform for People Affected by Mortgages

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# WHAT IS THE PAH?

*A CITIZENS' MOVEMENT*

p. 5 to 9

The Platform for People Affected by Mortgages (PAH) was born in Barcelona in February 2009 with the aim of building a citizen response for those people who were unable to pay their mortgages and whose banks were demanding repayment of a stratospheric amount of debt even after they had lost their homes.

Now, almost 5 years later, **the PAH is a non-partisan citizens' movement comprising more than 190 nodes across the Spanish state, in which people directly affected organise alongside others in solidarity with them to denounce and change the situation.**

The PAH takes action in many forms - from the emotional to the political; media-facing, legal, public communication and beyond - to seek changes in the law that respond to the human rights violations suffered by those affected; and, in a wider sense, the PAH's actions propose solutions that make the right to housing a reality for everyone.

The unjust and dramatic situation that so many people have faced and are facing is a direct consequence of public policies designed to convert housing into a business instead of a right guaranteed by the law. At the same time, financial institutions have, with the complete collusion of politicians, benefited from laws that over-protect them, making millions in profits from selling mortgages. In light of this the PAH denounces the political and financial elite as the principal culprits of the present situation.

**We are all affected by mortgages: the housing policies of the real estate bubble, the mortgage scam and the bad praxis of the banks are at the root of the crisis that today condemns millions to unemployment and precarity.**

Today the government cuts basic rights such as healthcare and education so as to continue bailing out those responsible for the disaster.

Although this issue affects us all, in this manual we use the term ‘people affected’ to refer specifically to those that find themselves in the difficult position of not being able to pay their mortgage; people in the process of mortgage repossession who are at risk of a grave violation of their right to housing: eviction.

For the last five years the PAH’s principal battle has been against unjust and anomalous housing legislation, searching for solutions for those affected by the mortgage scam. We propose three emergency measures as our minimum demands: stop all evictions until definitive solutions are found; debt cancellation for those who have lost their homes; and the use of the homes repossessed by banks as a public stock of social housing. We demand in particular that all housing owned by the SAREB, the “bad bank” that has, with our money, bought thousands of empty

homes from the banks just to sell them on to private speculative funds, be used for social housing.

To achieve these minimum demands the PAH has started the following campaigns:

- **Stop Evictions**
- **Motions at town halls**
- **Negotiation and pressure campaigning of financial institutions**
- **ILP – People’s Legislative Initiative**
- **Escraches<sup>1</sup>**
- **Obra Social<sup>2</sup>**

You can find more information about these campaigns at [www.afectadosporlahipoteca.com](http://www.afectadosporlahipoteca.com) or by asking at any PAH assembly.

<sup>1</sup>Escrache: a term coined in Argentina for protests that confront powerful individuals at their homes, places of work or at public appearances

<sup>2</sup>Obra social: Loosely translating as ‘social work’, the PAH appropriated this term from Spanish banks, who use it to market their philanthropic activities.



**A collective negotiation action**

# HOW CAN I PARTICIPATE IN A PAH?

*DIRECT IMPLICATION  
OF ALL WHO PARTICIPATE*

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More often than not those who come to PAH meetings are frightened, misinformed and facing threats from their bank. They are often depressed, ashamed and experiencing an overwhelming feeling of culpability - without really knowing what to do. On the other hand many come to the PAH to help out in a variety of ways: people interested in carrying out research projects about us, the media and those wanting to help out with actions and negotiation.

**The PAH is a space of encounter, mutual aid and trust in which anyone can help and be helped.**

In the PAH you will be able to explain your case in the assemblies, share your story, air your doubts and find answers to them. Listening to other people affected you will realise that there are many people in the same situation as you and, if we act together, we can achieve things that alone would be much harder, if not impossible. Over the last few years we have seen that one of the principal

strengths of the PAH is that those affected get involved and fight to resolve their own situation, as well as the situations of others. The direct involvement of everyone who participates in the PAH, whether we are directly affected or not, in resolving this collective problem has been the key to reaching a point where the majority of the public are aware of and in support of the work and proposals of the PAH.

It is very important that we understand that the PAH is not a “traditional” advisory service, of the kind where a person arrives, recounts their problem to someone who understands it better, and waits for the problem to be solved for them. We need to fight together if we want to achieve results.

**The PAH is neither a consumers’ association nor a charity: it is a citizens’ movement to defend and conquer our rights.**

Following the principles outlined above, we organise actions to achieve our aims such as: negotiations with banks, filing formal requests to banks, filing paperwork with the courts, collecting petition signatures, squatting bank-owned flats, demonstrations...

You can find a list of all the PAHs on this webpage: <http://afectadosporlahipoteca.com/contacto/>  
Come along and get involved!

# HOW PAH BARCELONA WORKS

## *GROUPS AND MEETINGS*

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You can find our calendar  
of activities in our building  
or on PAH Barcelona's website:  
<http://pahbarcelona.org>

The PAH in Barcelona organises through various groups and assemblies. But as a living, dynamic movement, the way we organise can change according to different needs that we identify together. New groups appear all the time: new working groups, new meetings of people affected by certain financial institutions, working groups to prepare a specific action, etc. However there is a basic, skeleton structure that doesn't change and is always open to whoever wants to participate.

These are the different groups and meetings that make up PAH BCN:

### **1 Joining form hand-in (see calendar for dates)**

We ask that people affected who decide to get involved in the PAH fill in a form that will make it easier for everyone to follow their case. The form should be filled in after attending a few meetings.



## 2 **Welcome meetings (Mondays at 18:00)**

For many this is their first direct contact with the PAH. This meeting begins with explanations of what the PAH is, of the current state of the right to housing, and of the hot topics of the moment. Next the different stages of the repossession process are explained along with their possible responses. The people affected present their case and air their doubts. It is a key moment for listening, learning and, vitally, realising that we are not alone. Telling our story aloud and having our doubts resolved will allow us to lose our fear, to gain understanding and confidence and to feel the strength of the solidarity of others, where they are people affected or not. To lose our shame and our fear is the best way we can start to confront this situation.

As well as all the knowledge that you will pick up in the assemblies, you can also access many useful documents on the PAH's website:

<http://afectadosporlahipoteca.com/documentos-utiles>

## 3 **Meetings for collective negotiation grouped by financial institution (see calendar for dates)**

In these groups we organise collective negotiation and awareness-raising actions specific to different financial institutions. See our website to find out when each group meets. Experience has taught us that the outcome of negotiations with banks depends of the amount of public pressure we subject them to, given that current laws require them to do practically nothing. In these assemblies the progress of people's cases is tracked, doubts arising from negotiations are resolved and individual and collective actions are planned (dates for the latter are decided in the General Assembly). As well as giving each other advice, we also arrange to accompany each other to negotiate with banks, so more experienced comrades can support and help out with the negotiation.

#### 4 **PAH BCN's general assembly (Tuesdays at 18:00)**

The general assembly is where questions about the Platform's general strategy, organisation, current projects and campaigns are discussed. In these meetings we decide together what actions we are going to carry out, we organise them, and we coordinate the actions proposed by the collective negotiation assemblies.

#### 5 **The *Obra Social* working group**

The PAH pursues all available routes to achieve solutions to debt problems and to the need for decent housing. We speak to banks, social services, housing offices, we present papers to the courts... But when all this isn't enough, when the authorities don't adequately respond to the urgent housing needs of thousands of affected people, we believe that civil disobedience, taking the upholding of our rights into our own hands, is not just legitimate: it is necessary. The PAH's *Obra Social* campaign in Catalonia

has so far reclaimed 15 buildings that belong to banks and to the SAREB with the aim of negotiating social rents proportionate to income for the families that now live there. This tactic has already successfully achieved social rents in Terrassa, Manresa and Girona and we have rehoused more than 700 people. In Barcelona we reclaimed Catalonia's 13th *obra social* building, known as '**ImPAHrables13**' (**UnstopPAHble13**).

#### 6 **Communication commission (see calendar for dates)**

This working group drafts public statements and shares updates about PAH Barcelona's actions and campaigns on social networks and via our mailing list.

## 7 **Judicial commission (see calendar for dates)**

A group of lawyers and other people with legal expertise that develops documents and resources for collective use in negotiation with financial institutions and in the PAH's campaigns.

## 8 **Gender and housing commission (see calendar for dates)**

We have found that the tension generated by repossession proceedings often amplifies the tension within families, leading to separations and in some cases gender violence. These cases require specific attention that is given in this working group.

For other meetings of groups and commissions, we recommend consulting PAH Barcelona's calendar in our building or on our website, or signing up to our mailing list (join by giving us your e-mail at the welcome meeting or by signing up on our blog).



**A PAH meeting**

# THE REPOSSESSION PROCESS AND HOW TO RESPOND

## *CLARIFICATIONS*

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The Spanish mortgage repossession process is unjust and is unlike that of any other European country. Spanish law over-protects financial institutions and leaves individual debtors of good faith completely defenceless. Because of this no 'expert' or legal professional can guarantee you anything: the person who can best defend you is you. In the PAH you will find: 1) training and tools to defend yourself, developed with the help of supportive lawyers (among others), and 2) mutual support: you will never be alone again.

**Listen, question and put into practice all that follows; it is the result of the best learning process there is: shared experience.**

### **Clarifications:**

- No one goes to prison for not paying their mortgage. It is not a crime.
- You cannot have your children taken away for not paying.
- Your children do not inherit the debt.
- You cannot be made to leave the country for not paying.
- It is a long process, eviction does not happen immediately.
- You have not done anything wrong. You are not a delinquent.
- **It is a long process: do not lose hope.**

# **PHASE 1: YOU HAVE STOPPED PAYING YOUR MORTGAGE OR YOU WILL DO SO SOON**

*ADVICE AND NEGOTIATION*

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### If the following are true, you are in the first phase:

- Repossession proceedings have not yet begun.
- You have stopped paying or you will do so soon.
- It is at this stage that the bank is willing to negotiate.
- If you are still paying it will be harder to negotiate (usually you are not even paid any attention until you stop paying).
- It is likely that you are going to have to put up with harassment from the creditor (phone calls, letters...) before formal legal proceedings begin.

### Tips

- It is important that you know what you want (debt cancellation by property return<sup>3</sup>, debt relief, a social rent contract...) before you begin to negotiate. In the PAH we can give you useful information to help you clarify your ideas but we cannot tell you what to do, we can only advise.
- If it is clear that in the future you will not be able to pay, we advise that you stop paying at the first opportunity. Don't throw away more money in vain.

<sup>3</sup> Debt cancellation by property return: *dación en pago*, one of the PAH's key demands. See translator's note for more information

— **Pay for the basic needs of the family before you pay the mortgage (food, basic services, children...): your lives are worth more than any flat.**

- When the bank tells you to “*pay what you can each month*” you should be aware that if the repayment is not on time or paid in full it is considered unpaid, generating interest at a higher, penalty rate and opening the possibility of repossession proceedings. It is like gifting the bank the money.
- Refinancing, interest-only grace periods and contract renovations tend to come at a cost for us: new people might be written into the contract, monthly repayments can dramatically increase once the grace period expires and the loan period can be extended by a number of years. So be careful! It is essential that the time be taken to read through the bank's offers at home before signing anything. You must consider whether you will be able to pay the mortgage once the interest-only grace period is up, otherwise you will only be lengthening the agony and increasing the debt you owe.

## Negotiation

- 1 Negotiation requires a cool head so that our anxiety cannot be used against us to put us under pressure.
- 2 It is important to read the mortgage documents several times and to understand them well.
- 3 Once we have thought carefully about what we want and made a decision, we have to go for it. It is important not to change our demands and positions at the bank's request, always holding firm as far as is possible.
- 4 Any proposal, be it yours or the bank's, should be written down so that there is evidence that negotiations are ongoing. Remember: words get lost on the wind.

### To apply for debt cancellation by property return:

You should present two copies of the application document (available in the Useful Documents section of the PAH website): one for the bank and one for you to keep once stamped and signed by the bank.

From here:

- Common sense.
- Negotiations must start calmly and then (if necessary) the tone can increase in intensity, obviously while remaining peaceful. For example: start with firm negotiations in the bank branch, escalate by carrying out actions at the branch, and then escalate further by getting in touch with the media.
- Patience will be required; it might take weeks for you to be given a response.
- The banks needs to see that you can no longer be cheated now that you are well informed and now that the PAH have your back.
- ***Insist, insist and insist again.***

During this phase it is important to find out whether or not we fit the criteria of the “Code of Best Practice”. This code forces banks to offer debt cancellation by property return to anyone who fulfils a stated set of requirements.

Don't be alarmed if, like the majority of people affected, you do not fit the criteria. Nearly all of the debt cancellations that the PAH achieves are for people who do not fit these criteria. If this is the case for you, make sure you tell the bank immediately that the Code doesn't apply to you so that they do not waste your time checking. If you fulfil the requirements, make it clear on your application for debt cancellation by property return in the hope that it gets approved more quickly.

**The requirements to have your case dealt with under *the Code of Best Practice* are:**

1 That the mortgage is tied to your sole place of residence and you have no other properties.

- 2 If you live in Barcelona, that the flat was bought for less than 200 000 euros.
- 3 The annual combined family income must be less than 19 000 euros (gross)
- 4 That there has been a substantial change in the family's economic circumstance during the last four years, leaving the family in a situation of special vulnerability.  
Or, alternatively, that the family is either 'large' (containing three or more children), is a single parent family with two or more children, includes a family member with a declared disability or status of dependency, or includes children under three years of age.
- 5 That between 40 and 50 per cent of family income is used to pay the mortgage, the exact percentage depending on the details of the case.
- 6 If the mortgage has other signatories or guarantors, they too need to satisfy these criteria.



At all stages of the process, including this one, it is vital to make use of the public services that might strengthen our negotiating position:

- **Go to social services** and request a report that confirms our current situation
- **Go to Ofideute**, the office of the Catalan regional government that mediates between people affected and the banks.

We should make sure that our financial institution sees that we are no longer afraid, and that we are certain of what we want. Remember: the bank will use your fear to put you under pressure.



# PHASE 2: BEGINNING OF REPOSSESSION PROCEEDINGS

## CLARIFICATIONS AND STEPS TO TAKE

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### Clarifications

- Before the proceedings begin you will be formally served with papers informing you of the amount of debt demanded of you and giving you a deadline for repayment.
- If the debt is not repaid in full as demanded, we will be delivered what we refer to as “*the tome*”, the court papers seeking repossession.
- After these papers are served the court allows 10 days to either pay the debt or mount a defence. The debt to be repaid will include, on top of the usual monthly repayments, additional interest at a higher, penalty rate.
- The proceedings offer very few opportunities to win concessions, but since the European Court of Justice’s ruling in February 2013 we have a strong case against the presence of abusive clauses in some mortgage contracts. Some – very few – judges are annulling repossession proceedings on the basis of the presence of these clauses.

— The judge will decide the date of the auction, which will be communicated to signatories of the mortgage with at least 20 days notice.

— At auction, the bank will take possession of the flat for 70% of its appraised auctionable value, an amount written into our mortgage contract. The bank will only be liable for 60% of this value if it is enough to pay the debt.

— There are two types of mortgage repossession: judicial (in a court) or, more commonly, extrajudicial (in the presence of a notary lawyer)

— No matter how many times they might tell us otherwise, the bank can choose to halt proceedings and reach an agreement at any time. It only depends on whether they are willing.

## Steps to take / Negotiation

1 Once we have received the “tome” we have 10 days to present ourselves at the relevant court to **apply for a free duty solicitor and/or barrister**. Although it is best to do this during the first 10 days, we are still able to apply at any point in the legal proceedings.

It is crucial to apply for a free duty lawyer for various reasons:

— It will gain us time (the proceedings halt until the application is processed).

— It allows us to be represented at the hearings, which will allow us to receive information and to demonstrate to the judge that we are doing everything possible to resolve the problem.

— It lets us present claims against the repossession, such as claims against abusive clauses in the mortgage contract, which can at least lengthen the case. To do this we can make use of the documents in the “emergency kit” found on the PAH website.

— It saves us the vast majority of the legal costs, which can be very high.

—> It is possible that at first we are denied a duty lawyer, in which case an appeal must be submitted (see the template available on the website).

## **2 Keep negotiating with the bank just as in phase 1.**

- Resubmit the application for debt cancellation by property return
- Gradually increase the pressure: actions, media coverage, protest camps...

## **3 Make use of public service and secure more evidence of our situation:**

- Social Services
- *Ofideute* (the Catalan regional government's debt mediation office)
- Local authorities: city and county councils
- Submit the PAH's template documents to the courts

# PHASE 3: EVICTION AND DEBT RECOVERY

*STEPS TO TAKE AND CLARIFICATIONS*

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### **Clarifications:**

– Once the house has been auctioned it becomes the bank's property and they can demand repayment of any outstanding debt.

– This outstanding debt is the difference between the value adjudicated at auction and the total debt. This amount should include interest accrued at the penalty rate while in arrears, plus legal costs.

– The auction does not immediately lead to eviction nor to your bank account being frozen, both of these actions will only happen after separate notice has been given.

– There is a minimum level below which wages cannot be seized: see the explanatory document on the PAH website.

– It should be noted that we will now be listed on registers of borrowers that have defaulted.

– In urban areas city councils can demand payment of a tax on the increase in land value. However thanks to actions taken by the PAH in Barcelona and other municipalities it is possible to secure an exemption.

– The value adjudicated at auction will also increase our income tax liability, as also happens if we negotiate debt cancellation by property return.

## Steps to take if you have received an eviction order

### 1 Apply for legal aid

### 2 Appeal for the eviction to be halted:

We win time to keep negotiating with the financial institution and we lose them money by extending the process. We can appeal to the sensitivity of the judge for the eviction to be postponed.

- An appeal using article 704 of the Civil Procedure Law (*Ley de Enjuiciamiento Civil*) can usually delay an eviction for a month or more, depending on the judge.
- An appeal using law 1/2013 (a partial eviction moratorium) can, if we satisfy certain criteria, delay the eviction until May 2015. BUT BEWARE! The fight must go on as, even if this appeal is successful, the debt owed will keep increasing and after the time limit they can evict us.

To take advantage of this law (1/2013) all the following economic requirements and one of the following social requirements must be met:

#### Economic requirements:

- a) The annual gross family income must be less than 19 000 euros, and the family's economic circumstances must have changed significantly in the last four years.
- b) The monthly repayments due must have been more than 50% of income, and must have been for the family's only property and only place of residence.

Any one of these social requirements: 'large' families (three or more children), single parent families with two or more children, families where all members have used up the unemployment benefit available to them; or families including either a child under three, someone with a declared disability or status of dependency, or someone who has been a victim of gender violence.

- 3 **Request that the bank cancel the debt (again, take 2 copies): apply pressure and insist.**
- 4 **Request that the judge cancel the debt.**
- 5 **Go to social services: this helps with the application for a temporary suspension of the eviction.**
- 6 **Go to the local authority housing office to apply for emergency accommodation.**
- 7 **Check if your local council has passed a motion approving exemptions from the tax on gains in land value.**

Barcelona city council has. If your council has passed such a motion, you have a month from the date of debt cancellation by property return or of the auction to request the exemption from your local council.

If the date of eviction comes and all possible routes - for negotiation with the financial institution, for administrative or judicial suspension of the eviction, or for securing social housing - have been exhausted without finding a solution, we can resist the eviction with a rally in the street as another means of postponing it. In one way or another we have managed to stop nearly all evictions we have come up against.

**If the eviction cannot be stopped we can then join the PAH's *Obra Social* programme. Don't forget that in the PAH nobody ends up on the street!**

We are the people responsible for fighting our own case, but remember that the many comrades who have fought their own case already can offer many insights – this is why our advisory process is a collective one. Talk and listen to the people that have already passed through any of these three phases: they will be able to give you lots of information that could be useful in your own case.

**¡SÍ SE PUEDE!**

**YES IT'S POSSIBLE!**

**Translator's note:** The PAH's key demand, *dación en pago*, has been translated as 'debt cancellation by property return', unlike other translations that leave it in Spanish. The difficulty in translating *dación en pago* arises from the fact that the demand seems neither necessary nor desirable outside of Spain. Giving back the keys in return for losing the debt and your stake in the house is a poor option when price increases leave your stake more valuable than the outstanding debt. Thus the PAH's demand is little celebrated by activists in the USA where it is already written into law. However after house prices have fallen dramatically, as is the case in Spain, it is a vital escape to the negative equity trap."



**Obra social PAH**

**Banner slogan: "We bail out people, not banks!"**





## **PAH**

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

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## **PAH Barcelona**

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Welcome meetings: Mondays at 18:00

In collaboration with:



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