

EXCEPTIONAL MEASURES AFFECTING REAL ESTATE LAW

The Government of Spain declared the state of alarm on 14 March 2020. In the following days, various legislative texts were adopted to take action, but also to deal with the consequences of the alarm state. In relation to real estate law, the following exceptional measures should be observed:

1. Contractual matters (in particular lease and purchase agreements)

According to Royal Decree 463/2020 of 14 March, declaring the state of alarm for the management of the health crisis situation caused by COVID-19 (RD 463/2020 as follows) all periods of limitation in procedural, administrative and civil law have been suspended. Therefore, the deadlines specified in the Civil Code (CC, as follows) are interrupted during the alarm. This applies, among other things, to the claim for possible damages, for example, due to hidden defects in acquired properties.

However, RD 463/2020 does not refer to the time limits agreed in private contracts for the fulfilment of obligations.

In this respect, the question arises as to whether, for example, the term of a deposit contract for the formalization of the deed of sale expires during the duration of the alarm state, or whether the owner has recently terminated the lease and is currently impossible to find a new home and the tenant will be homeless?

These cases must be resolved by means of the force majeure instrument regulated in the CC or by the relevant case-law.

Article 1105 CC provides that "beyond of the cases expressly mentioned in the law, and for those in which the obligation so affirms, no one shall be held liable for events that could not have been foreseen, or if foreseeable, were unavoidable". The prevailing opinion in the doctrine agrees that the statement of alarm falls within the scope of this provision if one of the parties is effectively prevented from fulfilling its contractual obligation. The main consequence of this is that damages cannot be claimed for non-compliance with that obligation. Consequently, if the obligation to formalize the deed of sale cannot be fulfilled within the contractually agreed period, for example, because one of the parties cannot travel to Spain for notarized legalization of the contract, in principle, no compensation should be paid. In the case of a deposit, the buyer does not lose the paid deposit. However, if the circumstance justifying the state of force majeure ceases, the obligations of the contract must be fulfilled.

However, the use of the force majeure instrument may be excluded by contract between individuals. In these cases, the applicable case-law has ruled that contracts can be adapted when circumstances have changed completely.

All contracts in question should be thoroughly examined to check what measures can be taken. Ideally, the parties would agree on a reasonable extension of the time limit and set it in a contract.

The question of the extent to which a tenant is required to vacate his home if he cannot find a suitable replacement due to the circumstances of the health crisis is not legally clear. Unfortunately, there is no general solution applicable here. Each contract must be considered and evaluated individually. The exact moment and reason for termination will be important in this case.

2. Basic supply contracts (light, water, gas, etc.)

Royal Decree-Law 8/2020 of 17 March on extraordinary urgent measures to address the economic and social impact of COVID-19 (RDL 8/2020 as follows) has also provided for some measures in this area. The most important is the temporary prohibition of the suspension by companies supplying electricity, natural gas and water supplies to "those consumers with vulnerable, severe vulnerable or socially excluding consumer status" within one month from 18 March 2020.

These concepts are defined in Royal Decree 897/2017 of 6 October, which regulates the figure of the vulnerable consumer, the social bonus and other protective measures for domestic consumers of electricity.

3. Administrative procedures

RDL 8/2020 declares the suspension of the deadlines for processing administrative procedures, except for those procedures which have particular links to the state of alarm. Consequently, the interruption of the period concerns, inter alia, all procedures relating to the application for a building permit or a tourist license.

The calculation of the deadlines and the processing of the procedures shall be continued at the time when the alarm state or, where appropriate, the extensions thereof is finished.

4. Mortgage moratorium

RDL 8/2020 provides for a moratorium on mortgage debts for the acquisition of main residence in mortgage debtors with a particular economic vulnerability as a result of the COVID-19 health crisis. Cases of economic vulnerability are explicitly defined in the legislative text, so debtors who do not meet the requirements set out in the legislative text will not have this benefit.

The requirements are the following:

- The mortgage debtor becomes unemployed or, if he is an entrepreneur or professional, suffers a substantial loss of his income or a substantial fall in his sales.
- That the total income of the members of the household does not exceed, in the month preceding the application for the moratorium, a multiple of the Public Multi-Effects Income Indicator (IPREM) that is determined in the legislative text according to the family circumstances.
- That the mortgage share, plus basic expenses and supplies, be greater than or equal to 35% of the net income received by all members of the household.
- That, as a result of the health emergency, the family unit has suffered a significant alteration of its economic circumstances in terms of housing access effort.

Debtors who are in this situation may apply to the creditor for the moratorium, up to fifteen days after the end of the term of RDL 8/2020 (i.e. until 3 May 2020, unless RDL 8/2020 extension).

The application will result in the suspension of the mortgage debt for the stipulated period and the non-application of the early termination clause.

During the moratorium, the creditor may not demand payment of the mortgage fee, nor shall it bear additional interest of any kind.



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