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LAW 21,299: REGULATES POSTPONEMENT LOANS OF MORTGAGE LOANS AND SETS STATE GUARANTY TO GUARANTEE THEM

On January 4, 2021, law No. 21, 299, which allows the postponement of mortgage loans installments and sets a state guaranty to guarantee the so postponed installments was published in the Official Gazette (the "New Law").

The new law allows banks, loans and savings cooperatives, managing agents of endorsable mortgage loans, lenders of loans granted by such managing agents and insurance companies (jointly, the "Lenders"), to grant "Postponement Loans" to their borrowers of obligations secured with mortgages (the "Mortgage Loans"), to the extent such borrowers request so.

Characteristics of the Postponement Loans

• They are money loans, granted by means of public deed.
• Their sole purpose is the payment of certain Mortgage Loan installments.
• They are not considered prepayments and thus, no prepayment fees are accrued.
• Their interest rate cannot be higher than the Mortgage Loan to be paid.
• They are exempt of stamp tax.

Power of attorney to execute Postponement Loans

The borrowers of Mortgage Loans may grant a power of attorney to the Lender, so this, on its behalf, be empowered to execute the relevant Postponement Loan and perform any formalities that may be required for its perfection. This power of attorney may be granted on a digital manner, using simple electronic signature and its specific characteristics will be set by means of a rule that will be enacted in this regard.

Payment of Mortgage Loans

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The Lenders shall partially pay the Mortgage Loans, in the relevant amounts, within 10 banking business days following to the execution of the Postponement Loans. By virtue of such payment, the mortgages that secure the Mortgage Loan will secure the Postponement Loan as well, by the sole ministry of law.

However, only for both enforceability before third parties and publicity purposes, the Lenders shall request the relevant Real Estate Registrar to register the Mortgage Loan partial payment statement, which will not affect the registration date of the original mortgage. The fees for this process cannot exceed CLP2,000 (around US$3).

State Guaranty

The New Law introduces a state guaranty, granted by the Small and Middle Enterprises Guaranty Fund (Fondo de Garantía para Pequeños y Medianos Empresarios, FOGAPE), to guarantee the obligations under the Mortgage Loans for housing purposes (when commercial appraisal of the relevant real estate does not exceed UF10,000 (around US$415,000) and the Postponement Loans, in addition to the relevant mortgage.

This guaranty shall be valid for 60 months and will guarantee a maximum of 6 installments of the relevant Mortgage Loan whose installments were paid with a Postponement Loan.

Validity

The new law will come into force once its rule is published in the Official Gazette, which shall occur within 15 days as from January 4, 2021.

The new law shall be valid for 64 months, as from the date of the first awarding of the first tender that must be made pursuant to the provisions which will be set forth in the new law's rule.

The Postponement Loans can only be executed within 4 months as from the abovementioned first tender.

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