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LEGAL ALERT

Law No. 20,855 which requires the release and cancelation of mortgages and pledges without conveyance that guarantee loans

On January 23, Law No. 20,855 (the Law) was enacted, which requires the release and cancelation of mortgages and pledges without conveyance that guarantee loans, once they are extinguished. The Law amends law No. 19.496 on Consumer Rights Protection (CRPL) in regard to services from the financial industry agreed on by adhesion contracts which are guaranteed with mortgages; and law No. 20.190, known as the Pledge without Conveyance Law, henceforth, the “PWCL”.

The Law distinguishes between mortgages granted as a general guarantee (guaranteeing not only the loan, but every obligation, either present or future, between the consumer and the lender), and those that are granted as a specific guarantee (guaranteeing only the loan):

- **Mortgages operating as a specific guarantee:** Once completely extinguished, the lender, at their own expense, will grant the release deed of the mortgage and other encumbrances granted for that purpose. The lender is obliged to enter the release deed into the Custodian of Real Estate (the CRE) within 45 days from the total extinction of the debtor's obligation, and the lender must report this within 30 days from the effective cancelation of the mortgage and the other encumbrances.
- **Mortgages operating as general guarantee:** Once the debt has been fully paid by the original debtor, the guarantor or the joint co-debtor, the lender must inform the debtor in writing within 20 days from the extinction of the debt. From that notification, the debtor may require, by any suitable physical or technological means, the release of the mortgage and any other related encumbrance and its registration or marginal note in the CRE registry to the lender, at the latter's expense. The lender must complete this within 45 days from the debtor's request. The lender must notify the debtor within 30 days of the cancelation of the registration. The Debtor is not required to maintain the mortgage or any other encumbrances in order to obtain a new loan if there are no pending obligations guaranteed by a

general guarantee mortgage. Nevertheless, the debtor is entitled to maintain the mortgage and the other encumbrances, if any exist.

Likewise, article 2 of the Law amends the PWCL and distinguishes between pledges without conveyance (hereinafter, the PWC) as they act as a general guarantee of a specific one.

- **PWC operating as specific guarantee:** The lender is obliged to grant the public deed or the private document of the PWC and any other encumbrance or prohibition within 45 days counted from the total extinction of the debt. The lender must inform both the extinction of the debt and the cancelation of the PWC within 30 days from the cancelation of the registration in the Registry of PWC.
- **PWC operating as a general guarantee:** Once the debt has been fully paid by the original debtor, the guarantor, or the joint co-debtor, the lender must inform the debtor in writing within 20 days. After this, the debtor may request the release of the PWC and any other encumbrance or prohibition, which the lender must do at their own expense through a public deed or a private document, accordingly. Registration in the PWC Registry must be canceled within 45 days from the debtor's request.

The Law shall govern every loan which has been fully paid from this date on. For loans that have been previously paid, the following rules apply:

- **Mortgages operating as a specific guarantee of loans that have been fully paid up to 6 years before the Law's enactment (January 26, 2010):** The lenders shall, at their own expense, grant the release of mortgages, other encumbrances and prohibitions and public deeds and manage the cancelation of the registration in the CRE. This must be done within 3 years from the date the Law comes into force. Nevertheless, the debtor may request the release of the mortgage and other encumbrances and prohibitions, which the lender must complete within 45 days from the debtor's request. The lender must notify the debtor within 30 days of the cancelation of the registration.
- **Mortgages operating as a specific guarantee of loans paid prior to 6 years before the enactment of the law:** If required by the debtor in writing, the lender, at their own expense, shall grant the public deeds and ask for the cancelation of the registrations of the mortgages and other encumbrances and prohibitions in the CRE within 45 days from the debtor's request. The lender must notify the debtor within 30 days of the cancelation of the registration.
- **PWC operating as specific guarantee of loans fully paid up to 4 years

prior to the enactment of the Law:** The lender, at their own expense, shall grant the release of the PWC and the other encumbrances and prohibitions granted, as well as manage the cancelation of the registration in the PWC Registry, within 18 months from the enactment of the Law. Nevertheless, the debtor may request in writing the release of the PWC and the other encumbrances and prohibitions granted to the lender. The lender must do this within 45 days from the request. The lender must notify the debtor within 30 days of the cancelation of the registration.

- **PWC operating as specific guarantees of loans fully paid prior to 4 years before the enactment of the Law:** If required by the debtor in writing, the lender, at their own expense, shall grant the public deeds and cancel the registrations of the PWC and other encumbrances and prohibitions in the CRE within 45 days from the debtor's request. The lender must notify the debtor within 30 days of the cancelation of the registration.

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