/Carey

February 11, 2021

LEGAL ALERT

Regulation of the Law 21,299, that rules postponement of mortgage loans, comes into force

On February 6, 2021, the Ministry of Treasury's Decree, that established the regulation of the **Law 21,299** , on mortgage loan postponements, was published in the Official Gazette (the "Regulation").

The Regulation sets rules the following topics: (i) Certain characteristics, terms and conditions of the postponement loans; (ii) postponement mandate; (iii) additional loan agreements; (iv) payment of mortgage loan; (v) third parties' consent; (vi) rules on registry annotations, and (vii) functioning of the Small and Middle Enterprises Guaranty Fund (Fondo de Garantía para Pequeños y Medianos Empresarios, "Fogape").

Characteristics of the postponement loans

The Regulation supplement the legal provisions on the content of these loans, their formalities, purpose, destination of funds and includes a regulation on related insurances.

Postponement mandate

It is set the minimum content of the mandate by means of which the borrowers may instruct the relevant financial institution to execute a postponement loan on their behalf, stating that no marginal annotation of such mandate in the Real Estate Registrar is required.

On an innovative manner, it is included several examples of remote communication means by means of which this mandate may be granted, including mobile apps and others.

Payment of mortgage loans

Legal provisions in this regard are reiterated and supplemented. In case there are 2 or more borrowers of the same loan, both shall request the postponement loan and grant the mandate referred to above, on a jointly basis.

The abovementioned rule is not applicable to personal guarantors and joint and several guarantors, both of which shall solely guarantee the obligations under the postponement loans if they agree so.

****State Guaranty****

Access conditions and characteristics of the state guaranty to guarantee postponement loans (the “State Guaranty”) are set, including the following:

- The borrower of the relevant mortgage loan cannot have more than 30 days of payment default, at the time of the request.
- The requestor shall have experienced at least a 25% income reduction, regarding 2019 or 2020 average.
- The Fogape’s manager shall tender the State Guaranties to the eligible financial institutions, with charge to the Fogape’s resources and shall set the requirements for the relevant financial institutions to enforce the relevant guaranty.
- The State Guaranty shall have a maximum validity of 60 months as from its granting and the renegotiation of guaranteed loans can solely be made prior consent from the Fogape.
- The maximum amount the State Guaranty may guarantee will be equivalent to 6 installments of the mortgage loan whose installments are to be paid with the relevant postponement loan.
- To enforce the State Guaranty, the relevant financial institutions shall, among others, demonstrate they performed collection actions, which did not succeed.

****Validity****

The Regulation came into force upon it was published in the Official Gazette and shall remain valid as long as Law 21,299 does so.

Authors: Diego Peralta