

## SERNAC PUBLISHES INTERPRETATIVE CIRCULAR ON PREPARATORY CONTRACTS IN THE REAL ESTATE MARKET

On July 26, 2023, SERNAC published a new interpretative circular that refers to the protection of the real estate consumer in the sale of real estate and its preparatory acts.

Although this circular establishes mandatory guidelines for SERNAC officials, it also constitutes a guide to be taken into consideration by real estate providers when complying with their legal obligations.

SERNAC considers that both real estate reserves and promises of sale, in view of the existing information asymmetries and the negotiation capacity possessed by each of the parties, can be qualified as preparatory and adhesion contracts, so that suppliers must comply with the rules of equity in the stipulations and in the fulfillment of the adhesion contracts, established in paragraph 4 of Title II of Law No. 19,496, Consumer Protection Act ("CPA").

### Preparatory acts analysed by SERNAC

•**Real estate reserves:** SERNAC understands that this type of act is based on the choice, by a consumer, of a unit of the project offered, which the selling company extracts from the market for a determined and limited period. In return, the consumer undertakes to conclude a promise contract within a certain period or to pay a fine in the event of withdrawal. It is, according to SERNAC, an onerous contract, given that the interested consumer generally delivers an amount of money that would then be paid at the foot or purchase price of the real estate.

•**Contract of promise of sale of housing:** SERNAC indicates that it is one in which two or more people commit to enter into another contract in the future, within a certain period or in the event of a condition. In this regard, the Service refers to the regulation of Article 1,554 of the Civil Code.

In this context, it refers to the modalities of "purchase" in "white" and

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"green", which for SERNAC do not constitute a purchase in legal terms, but a promise of sale because construction has not begun (white purchase) or does not have the final acceptance granted by the Municipal Works Directorate (green purchase).

In this regard, SERNAC refers to the obligations set forth in Article 138 bis of Decree 458, General Law on Urban Planning and Construction ("LGUC"), which applies to those engaged in real estate activity and entering contracts promising the sale of projects that do not have final acceptance.

### **Regulations applicable to real estate contracts**

SERNAC considers that the Civil Code, the LGUC and the CPA constitute a protective statute for consumers in the Chilean real estate market.

SERNAC interprets that Article 2 letter e) of the CPA would confirm the competence of the Service and the application of the CPA in real estate matters and, specifically, in relation to definitive contracts for the sale of housing and preparatory contracts signed in that context. Notwithstanding the foregoing, it recognizes that it is excluded from this supervision and regulation related to the quality of housing that is regulated in the LGUC.

Check the complete content of this circular in the following [link](#).

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