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CORONAVIRUS: MORATORIUM ON MORTGAGE PAYMENTS

Spanish Royal Decree-Law 8/2020, of 17 March, on urgent extraordinary measures to address the economic and social impact of COVID-19 ("RDL 8/2020") was published in the Official State Gazette on 18 March 2020.

The measures include the application of a moratorium on the payment of mortgage loans for those debtors considered "economically vulnerable".

1. WHAT DOES THE MORATORIUM ENTAIL?

RDL 8/2020 establishes the application of a moratorium on the payment of mortgage loans granted for the acquisition of first homes, with regard to those debtors who prove that they are in a situation of "financial vulnerability".

During the term of the moratorium (which is not defined in RDL 8/2020):

- no amount will be due or payable (even partially) by the mortgagor,
- no ordinary interest will accrue,
- no default interest will accrue,
- the acceleration of the mortgage in question will not be possible.

The fact that RDL 8/2020 fails to establish the valid term when the moratorium will apply seems to imply that the parties will be able to determine this according to the circumstances of each debtor. The rest of the measures will mandatorily apply and cannot be mitigated.

Although this is not stated in RDL 8/2020, we understand that the final maturity date of the mortgage loan will be extended.

2. WHO CAN BENEFIT FROM THE MORATORIUM?

Those mortgagors who are in a situation of "financial vulnerability" will benefit, as will their guarantors (*avalistas* and *fiadores*) in the same terms as the former.

In the event that the guarantors (*avalistas* and *fiadores*) or non-debtor mortgagors should find themselves in a situation of "financial vulnerability", they may request that the debtor's assets be depleted, even when they have expressly waived the benefit of *excussion*.

3. WHO CAN BE CONSIDERED "FINANCIALLY VULNERABLE"?

RDL 8/2020 considers that financial vulnerability exists in the following circumstances:

a) Where a mortgagor becomes unemployed or, in the case of a businessperson or professional, suffers a substantive loss of income or a substantial drop in sales[1].

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1 A substantial drop in sales will be considered to have occurred when sales decrease by at least 40%.

b) Where the aggregate income of the members of the family unit[2] in the month preceding the request for a moratorium, does not exceed:

i. In general germs, the limit of three times the Spanish Monthly Public Income Indicator (IPREM)[3].

ii. This limit will be increased by 0.1 times the IPREM for each dependent child in the family unit. The applicable increase for dependent children will be 0.15 times the IPREM for each child in single-parent families.

iii. This limit will be increased by 0.1 times the IPREM for each person over 65 years of age belonging to the family unit.

iv. In the event that any of the members of the family unit has a certified disability of more than 33 per cent, a situation of dependency or illness that renders him/her permanently unable to work, the limit envisaged in subsection i) will be four times the IPREM, notwithstanding cumulative increases for dependent children.

v. In the event the mortgagor is a person with cerebral palsy, a mental illness or intellectual disability, with a certified degree of disability equal to or greater than 33 per cent, or is a person with a certified physical or sensory disability equal to or greater than 65 per cent, as well as in cases of certified serious illness that renders the person or his/her carer unable to work, the limit envisaged in subsection i) will be five times the IPREM.

c) Where the mortgage payments, plus basic expenses and supplies, total 35 per cent or more of the net income earned by the members of the family unit on aggregate.

d) Where, as a result of the health emergency, the family unit has undergone a significant change[4] in its financial circumstances, in terms of the effort required to access housing.

4. HOW CAN ONE APPLY FOR THE MORATORIUM?

The mortgagor seeking to benefit from the moratorium may apply for this measure as from the entry into force of RDL 8/2020 (i.e.18 March 2020) and up to fifteen days after termination thereof.

To apply, the mortgagor must inform the mortgagee and provide documentation[5] proving that it is in a situation of financial vulnerability, as described above.

The mortgagee will have a period of fifteen days in which to grant and implement the moratorium[6].

5. ARE PROVISIONS ESTABLISHED TO DISCOURAGE THE SPURIOUS USE OF THIS MEASURE?

Yes they are. Art. 16 RDL 8/2020 establishes that any mortgagor benefitting from this measure without meeting the prerequisites will be liable for any loss and damage caused, as well as the expenses incurred in applying the moratorium, together with any other liabilities which may derive as a result.

6. WHAT ACCOUNTING IMPACT DOES THIS MEASURE HAVE ON FINANCIAL INSTITUTIONS?

RDL 8/2020 establishes that once the moratorium is granted, financial institutions must notify the Bank of Spain so that the moratorium is not considered, for accounting purposes, in the calculation of provisions for risk.

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[2] The family unit will be considered to consist of the debtor, his or her spouse (not legally separated) or common law partner (where this union has been registered) and their children, regardless of their age, who reside in the same home, including those related through adoption, guardianship or foster care and their (not legally separated) spouse or (registered) common law partner, who also reside in the home.

[3] The monthly IPREM established for 2020 is 537.84 euros.

[4] A significant change in financial circumstances will be considered to exist when the effort represented by the mortgage burden on family income has multiplied by at least 1.3.

[5] Article 11 RDL 8/2020 describes the documents which may be used by the moratorium applicant to prove the situation of financial vulnerability it is experiencing.

[6] Upon presenting its moratorium application, the mortgagor will cease to be in default for all effects and purposes.

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