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REAL ESTATE, PLANNING AND TOURISM

Coronavirus: Buying and selling property in times of social distancing

We are facing a Coronavirus (Covid-19) pandemic and, as a result, administrative solutions have been adopted and a state of emergency has been declared. All this has had an impact on the whole of the economy and it has also had serious adverse effects on property (real estate) transactions, which are subject to specific formalities under the law.

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There is expected to be a natural **slowdown in the completion of real estate transactions in the coming weeks/months**. The more immediate effects of the current situation, and of the administrative measures that continue to be adopted to control the pandemic, are especially reflected in relationships that have already been established. This is particularly so in transactions that are in the final phase of negotiation, or where contracts for sale and purchase have already actually been signed.

The greatest obstacles that we have to overcome at this moment and in this context are (i) the **reduced availability of entities qualified to formalise notarial acts** – in-person recognition of signatures, authentication of private documents and/or deeds; and (ii) the **unavailability of the parties** themselves because they are in self-isolation or because they cannot travel due to the limitations on air and other forms of travel.

As a result, it is most important to take measures proactively and according to each specific situation, even if only provisionally, to ensure that any agreements already reached are maintained and to avoid any deadlock situations due to the potential breach of contractual deadlines.

o At the **pre-contractual level**, it is necessary to safeguard against the impact this situation may have over time on agreements reached but not yet formalised in the meantime. This will have to happen until things go back to normal in terms of the movement of people and the operations of institutions. At this stage, it is still impossible to estimate when this will happen.

In fact, in some cases, negotiations have been concluded but a contract has not been signed, and it is not possible to sign the contract in compliance with all the formalities. In these cases, the parties will have to consider alternative solutions that allow them to set the conditions of the transaction and the terms on which they undertake to comply with the legal formalities.

In promissory contracts for the sale and purchase of properties (real estate), the law requires that the signatures of the parties must be recognised in person before an entity with powers to do so. Therefore, if it is not possible for the parties to appear before these entities and sign the contract in person, and for their signatures to be recognised formally, they could, for example:

- i) Sign the promissory contract for sale and purchase electronically;
- ii) Exchange versions of the contract signed by each of the parties in PDF format;

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The option to use either of the above solutions should be set out expressly in the contract, in a separate clause, together with an undertaking by the parties to comply with the legal formalities for this type of contract as soon as this is viable.

The parties could also consider using a memorandum of understanding, or a reservation or exclusivity agreement, etc. None of these agreements require any special formalities, but they would allow the parties to set the terms of the agreement reached by them and to establish the conditions for the subsequent formalisation of the transaction.

- o On the **contractual level**, the impact the constraints imposed by the current situation may have on meeting previously assumed obligations should be assessed on a case-by-case basis.

The main impact will necessarily be on the ability to **meet deadlines**. If deeds or other notarial acts have been scheduled under contracts already signed, or if the contractual deadlines to do these acts are approaching, the parties should consider the **need to extend these deadlines**. If appropriate, they should also begin the processes of notification between the parties for this purpose. In particular, they need to address the question of signing **addendums**, which they could consider doing remotely, as mentioned above.

"On the contractual level, the impact the constraints imposed by the current situation may have on meeting previously assumed obligations should be assessed on a case-by-case basis."

If is not possible to reach an agreement, the parties will have to consider whether it is necessary to terminate or suspend the contract. Of course, this would require a case-by-case assessment of the terms and conditions, the current situation (that is, any factors outside the control of the parties factors that make it impossible to comply with the contract), and the legal and contractual grounds that can be invoked for this purpose.

Regardless of the above, it is essential for individuals and companies to examine any contracts they have made proactively to identify any situations that **need to be addressed urgently**. **These include periods that are running which, in the current situation, could lead to breaches of obligations or loss of rights.**

Finally, this text provides general information and does not dispense with need to seek specific advice from a lawyer. Each case will always require a careful analysis of the contract in question, the validity of its clauses, and whether it can be demonstrated that the COVID-19 pandemic is a direct cause of the fact it is impossible to perform the contractual obligations. We also advise prospective buyers and sellers to record and document the negotiations that take place between them. ■