



REAL ESTATE AND TOURISM

New Rules on the Sale and Purchase of Consumer Goods:

What has changed when buying real property?

Introduction

Decree-Law 84/2021 of 18 October 2021 (the “Decree-Law”) was published on 18 October 2021 to approve important changes to strengthen the guarantees and rights of consumers in the purchase and sale of digital goods, content and services.

The Decree-Law, which will come into force on 1 January 2022, incorporates into Portuguese law Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods. This Directive amended Regulation (EU) 2017/2394 and Directive 2009/22/EC. The Decree-Law also incorporates Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services.

This informative note addresses the main changes and impacts of this new legislation on the sale and purchase of residential property (real estate), whenever the seller is a professional and the buyer is a consumer (as defined in the Decree-Law).

However, the changes the Decree-Law makes to the Portuguese legal system go far beyond just the provisions relating to the sale and purchase of residential property in the context of a consumer relationship. There are also new provisions on the sale and purchase of digital goods, content and services, and a summary of these provisions can be found [here](#).

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Main Changes

Guarantee periods for residential property

This Decree-Law has extended the legal guarantee period during which the seller/professional is responsible to the consumer for defects relating to the structural construction elements of the property sold. The period for these defects is now 10 years and the 5-year guarantee period is maintained for all other defects.

The Decree-Law also provides that when the buyer/consumer invokes a certain "defect" in the property within the applicable guarantee period, this defect will be presumed to have existed at the time of handover of the property, and the burden is on the seller/professional to prove the contrary.

Time limits to submit a complaint

The Decree-Law also eliminates the obligation on the buyer/consumer to report the defect within a certain period of time after becoming aware of it. As such, it has re-established that there are no obstacles to exercising the rights available to the consumer during the applicable guarantee period. Therefore, the buyer/consumer can always and at any time within the validity of the guarantee period, report any defect covered by that period.

Rights of the buyer/consumer and expiry of the right of action

Although there is no specific time limit in the Decree-Law to report defects detected after becoming aware of them, the Decree-Law still imposes a time limit on the exercise of the buyer's/consumer's rights.

In this regard, it is important to clarify that when there is a defect, the buyer/consumer has the right to demand that the seller/professional (i) repair the defect, (ii) replace whatever is defective, (iii) reduce the price proportionally, and (iv) terminate the contract. It is certain that the buyer/consumer can exercise any of the above rights, unless this proves to be impossible or constitutes an abuse of right, under the general terms.

The Decree-Law has maintained the three-year period for the buyer/consumer to exercise their rights. This period runs from the date of the complaint about the defect and if the complaint is not made in that period, the right is lost. However, the three-year period is suspended in two cases: (i) during the period between the communication of the defect and the conclusion of the repair or replacement operations; or (ii) during the period when an attempt is being made to reach an out-of-court settlement of the consumer dispute between the buyer/consumer and the seller/professional.

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Entry into force

The new rules provided for in this Decree-Law regarding property (real estate) sale and purchase contracts, will apply to contracts entered into on or after 1 January 2022, the date on which the Decree-Law comes into force. ■