

## Informative Note

# New measures on leases, mortgage debts and consumer protection measures in relation to COVID-19 adopted by Royal Decree Law 11/2020

1<sup>st</sup> April 2020

Royal Decree-Law 11/2020, of 31 March, adopting additional urgent measures in the social and economic field to deal with COVID-19

Royal Decree Law 11/2020 of 31 March adopting urgent supplementary measures in the social and economic field to deal with COVID-19, which comes into force the day after its publication in the Official State Gazette on 1 April 2020, contains a series of measures that complement those already adopted previously by the executive and, specifically, those included in Royal Decree Law 8/2020 of 17th March, some of which it profoundly modifies.

The one that adopts urgent complementary measures in the social and economic field to confront the COVID-19, which enters into force the day after its publication in the Official State Bulletin on 1st April 2020, contains a battery of complementary measures to those already adopted previously by the executive and, specifically, to those included in Royal Decree Law 8/2020 of 17th March, some of which it deeply modifies.

### 1. Measures adopted in the area of leases by RDL 11/2020

#### 1.1. Extension of the lease of the main residence

Art. 2 RDL 11/2020 includes the possibility of extending the rental contract for the habitual residence within the period from the entry into force of RDL 11/2020 - that is, on April 2, 2020 - until the day on which two months have passed since the end of the alarm condition, the extension of the contracts, may be extended for a maximum of six additional months, at the request of the tenant. In these cases, the lessor is obliged to accept such extension unless other terms or conditions are fixed by agreement between the parties.

#### 1.2. Moratorium on the payment of rental income

Articles 3 to 9 RDL 11/2020 regulate the moratorium on the payment of rent from which the tenant can benefit, in a situation of vulnerability, while the state of alert lasts or the conditions of vulnerability are maintained. This moratorium will only apply to rental contracts for primary residences, which means that second homes or holiday homes are not eligible.

In cases in which the **lessor owns more than ten properties or a built area of more than 1,500m<sup>2</sup>, or in the case of the Social Housing Fund**, the lessee may request temporary and extraordinary postponement in the payment of the rent, provided that said postponement or remission has not already occurred voluntarily between the parties. If the parties do not reach an agreement, the tenant may apply:



- (i) A 50% reduction in the rental income for the duration of the state of alarm decreed by the Government and the following monthly payments if that period is insufficient in relation to the situation of vulnerability caused by the COVID-19, with a maximum of 4 months in any case.
- (ii) A moratorium on the payment of rental income that will be applied automatically and will affect the period of time that the state of alert decreed by the Government lasts and the following monthly payments, which may be extended one by one if that period is insufficient in relation to the situation of vulnerability caused by the COVID-19, with a maximum of 4 months in any case.
- (iii) If no agreement is reached, the lessee shall have access to a programme of transitional financing aid at zero cost with a State guarantee.

In cases where the **lessor is a natural person other than the above**, the lessee who is in a situation of vulnerability may request, from 02/04/2020 to 02/05/2020, a temporary and extraordinary postponement in the payment of the rent, or total or partial remission.

The landlord will have seven working days to accept the conditions, but if he does not accept the postponement or remission (because, for example, he could not afford it either), the vulnerable tenant will have access to the programme of financial aid regulated in the Royal Decree, such as direct aid or a micro-credit from the ICO (official credit institute). **The moratorium is therefore an option for the small landlord.**

### **1.3. Vulnerable tenant status: assumptions**

**Tenants who are in any of the following situations** will be considered to be in a vulnerable situation:

- (i) Have been dismissed, received an ERTE or suffered a reduction in working hours, or "similar situation" involving substantial loss of income.
- (ii) That the income of the family unit does not exceed the limit of three times the Public Indicator of Multiple Effects Income per month (hereinafter IPREM). The cut off shall be four times the IPREM if there is a person in the family unit with a disability greater than 33 percent; five if said disability is 65 percent, and there is a situation of serious illness that incapacitates the person or his/her caregiver, among other provisions. This limit is increased according to other circumstances, such as the number of children or dependents over 65.
- (iii) The applicant's income plus basic expenses and supplies must be greater than or equal to 35 percent of the net income received by all members of the family unit. Expenses include gas, water, Internet, telephone line and community fees.
- (iv) The applicant cannot be the owner or usufructuary of any other property in Spain, unless it is unavailable due to divorce or separation or for reasons of adaptability to a disability.

The documentation that must be presented to accredit said condition is regulated in art. 6 of RDL 11/2020, of 31st March, which adopts urgent complementary measures in the social and economic sphere to deal with the COVID-19.

#### **1.4. Consequences of applying for a moratorium on rental debt in cases where you are not a vulnerable tenant**

**The person or persons who have benefited from a moratorium on the rental debt of their habitual residence and/or public aid without meeting the requirements will be responsible for any damages that may have occurred.** The amount of these damages may not be less than the benefit unduly obtained by the tenant through the application of the rule.

#### **1.5. Approval of an ICO guarantee line**

Finally, it regulates the approval of a line of ICO guarantees to cover financing on behalf of the State for tenants in a situation of social and economic vulnerability as a result of the expansion of COVID-19. In this regard, the Ministry of Transport, Mobility and the Urban Agenda is authorised, by agreement with the Official Credit Institute, to develop a line of guarantees with full State coverage for a period of up to 14 years, so that banks can offer transitional financing assistance to people in a situation of vulnerability, with a repayment period of up to 6 years, exceptionally extendable for a further 4 years and in no case accruing any costs or interest for the applicant.

### **2. Measures adopted in the area of evictions by RDL 11/2020**

RDL 11/2020 allows for the suspension of launches for vulnerable homes without alternative housing, as well as the suspension of the eviction procedure in general. This measure will operate once the general suspension of all the terms and procedural deadlines entailed by the State of Alarm is lifted.

Specifically, it is foreseen that in eviction procedures in which the tenant accredits being in a situation of supervening social or economic vulnerability as a consequence of the expansion of the COVID-19, and that this vulnerability makes it impossible for him/her to find a housing alternative, the act of launching or the procedure itself may be suspended in an extraordinary manner (in case the launching is not yet indicated) for a maximum period of 6 months from the entry into force of RDL 11/2020.

Likewise, in order to facilitate an immediate housing solution for vulnerable groups, Article 11 replaces the "*Programme of assistance to persons in a situation of eviction or launch of their habitual residence*" with the new "*Programme of assistance to victims of gender violence, persons subject to eviction from their habitual residence, homeless persons and other particularly vulnerable persons*".

### **3. Definition of economic vulnerability to the effects of the mortgage moratorium**

The definition of economic vulnerability to the effects of the mortgage moratorium and non-mortgage financing credit is found in Article 16 RDL 11/2020. Those citizens who find themselves in any of the following situations will have this condition:

- (i) Unemployed or in a situation of substantial loss of income.
- (ii) The total income of the family unit does not exceed the limit established in article 16.1.b) RD L11/2020.
- (iii) That the total of the mortgage payments, as well as the basic expenses and supplies, exceed 35% of the joint income of the family unit.
- (iv) Finally, that because of the health emergency, the family unit has suffered a significant alteration in its economic circumstances in terms of the effort required to access housing.

In order to prove this condition constituting economic vulnerability, the documents detailed in article 17 RDL 11/2020 must be submitted.

Finally, Art. 18 RDL 11/2020 indicates that in order to be able to access the acquisition of the condition of economic vulnerability, it will be necessary to meet a series of additional requirements with respect to credit contracts without mortgage guarantees:

- (i) If the beneficiary is also a beneficiary of the moratorium of Art. 7 RD 8/2020, its application will not be considered for the purposes of calculating the last two requirements listed in Art. 16 RDL 11/2020
- (ii) If the beneficiary is obliged to make periodic payments, not of a mortgage, but of a rental income or of any type of financing, the amount of the mortgage payment shall be replaced by that of the said periodic amount, and the documentation accrediting this shall be provided.

### **3.3. Adjustments to the mortgage debt moratorium under RD 8/2020**

It is specified that the mortgage debt or mortgage loans referred to in the mortgage moratorium of RD 8/2020, will be those originating from the acquisition of

- (i) Regular housing.
- (ii) Properties used for the economic activity of entrepreneurs in a condition of vulnerability.
- (iii) Other housing in a rental situation and for which the mortgagor has ceased to receive rental income since the entry into force of the alarm state, or up to one month after it ends.

## **4. On the suspension adopted by RDL 11/2020 of the obligations arising from non-mortgage credit agreements**

Through RDL 11/2020, it was agreed to temporarily suspend the contractual obligations derived from the subscription of loans or credits without a mortgage guarantee, when it had been contracted by a natural person in the situation of economic vulnerability already described. This suspension may be requested up to one month after the end of the state of alert.

The effectiveness of such suspension will not require agreement between the parties, nor any contractual novation; and will take effect from the debtor's request (accompanied by the documentation of article 17 RDL 11/2020). However, if the credit is guaranteed by a registrable right other than a mortgage, or if it has been registered in the Register of the Sale of Goods and Chattels by Instalment, the registration of the extension of the term will be necessary (although the impossibility of formalizing public deeds should not affect the effectiveness of the suspension).

The creditor will be obliged to notify the Bank of Spain of the suspension and its duration. Specifically, this suspension will have a duration of three months from the time when the debtor submits the request.

The foregoing in relation to the suspension measure also extends to the guarantors and sureties of the economically vulnerable debtor, provided that they also fulfil the conditions of Article 16. Similarly, these guarantors or sureties may in all cases require the creditor to exhaust the assets of the principal debtor before claiming them, even if this possibility has been waived in the contract signed between the parties.

Finally, the above-mentioned suspension shall have the following effects:

- (i) the creditor may not demand payment of the instalment;
- (ii) no interest of any kind will be due;
- (iii) the expiry date of the contract will be extended by the duration of the suspension; and,
- (iv) this suspension is limited to debtors or contracts regulated in RDL 11/2020.

Finally, the debtor who benefits in fraud from this measure of suspension will be responsible for the damages that it could have produced, as well as for all the expenses caused. The debtor who, voluntarily and deliberately, seeks to place or maintain himself in the cases of economic vulnerability in order to benefit from these measures will also incur this responsibility.

## **5. Of the measures taken in the field of consumer protection**

Article 36 RDL 11/2020 regulates the right of consumers and users to terminate certain contracts without any penalty.

Contracts signed by consumers and users, whether for the sale of goods or the provision of services, including those of a successive nature, are impossible to fulfil, and the consumer and user will have the right to terminate the contract for a period of 14 days. The claim for termination can only be considered when it is not possible to obtain from the proposal or proposals for revision offered by each of the parties, on the basis of good faith, a solution that restores the reciprocity of interests of the contract. In these cases, the employer is obliged to return the sums paid by the consumer or user, except for expenses incurred, duly itemized and provided to the consumer, in the same way as payment was made within a maximum of 14 days.

With regard to contracts for the provision of services of a successive nature, the service provider may offer options for the recovery of the service a posteriori and only if the consumer is unable or does not accept such recovery then the amounts already paid will be refunded in the part corresponding to the period of the service not provided for that reason or, with the consumer's acceptance, reduce the amount resulting from future fees to be charged for the provision of the service.

In the case of combined travel contracts that have been cancelled as a result of the COVID19, the organizer or, where appropriate, the retailer, may give the consumer or user a voucher to be used within one year from the end of the validity of the state of alarm and its extensions, for an amount equal to the refund that would have corresponded. Once the period of validity of the voucher has elapsed without it having been used, the consumer may request a full refund of any payment made.

## **6. Of the measures of procedural expediency**

The Nineteenth Additional Provision of RDL 11/2020 announces that, once the state of alarm is over, an Action Plan will be approved within 15 days to speed up judicial activity in the area of, among others, the Commercial Courts, all with the aim of contributing to the rapid economic recovery from this crisis.

We hope that these comments will be useful and, in any case, the tax team at [Andersen Tax & Legal](#), is at your disposal to clarify any doubts you may have in this regard.

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