

LAW 2/1994 OF MARCH 30TH, CONCERNING MORTGAGE LOANS SUBROGATION AND MODIFICATION

The generalised fall in rates experienced during the last months has naturally had repercussions on mortgage rates and it seems reasonable and fitting that the people who applied and obtained loans before the fall in rates took place, should profit from the advantages brought by this fall. On the other hand, these borrowers' situation gets worse as it is not economically feasible to change the mortgage loan due to a double circumstance: the high commission that credit institutions demand for early repayment at the time they grant a loan and the duplication of expenses that a mortgage redemption and granting of a new loan implies. Also, this Law complies with a Parliament's Order that, in its motion of November 2nd, 1993, approved unanimously, urged the Government to provide the necessary mechanisms so that debtors, according to articles 1.211 and in compliance with the Civil Code, could subrogate their mortgage loans to another creditor.

This situation repeated historically, can be adequately solved through the conventional subrogation provided by the Civil Code in its article 1.211, where it appears as a facultative-voluntary action of the debtor. Nevertheless, the concise regulations

existing are not enough to solve the problems arisen from this situation, as the first creditor and the one that subrogates are some of the financial institutions referred by the Mortgage Market Law . From this we can deduce that it is adequate to lay down specific regulations referred to the contents of article 1, to facilitate its development and to reduce costs. Article 2 establishes the subrogation requirements, making possible for the debtor to exercise this faculty in case the first creditor does not cooperate appropriately. The procedure, which is analogous to that foreseen by article 153, 5th paragraph of the Mortgage Law, is identically founded though enhanced by the fact that it is a settlement to be effected between two financial institutions and it should be logical to expect the necessary reciprocal commercial loyalty from them.

Article 3 limits the amount to be received by the lending institution as a commission for early repayment of the loan, in those loans subjected to variable interest rate. The reason for this is that in this kind of loans, contrary to fixed interest rate loans, there is little financial risk for the creditor and the commission for redemption is considered more like a penalty for abandonment. As penalties can be fairly reduced by the Courts, according to Article 1.154 of the Civil Code, we can logically conclude that this reduction can be effected also by Law, specially in economic crisis

times and in what refers to a great number of long time contracts executed successively in which the borrower has accepted a contract predesigned by the credit institution. And we cannot object that this limitation means that the Government is trying to interfere with the free functioning of the market as it is only trying to improve the juridical-institutional system so as to adequate the market regulations to the present time needs. In agreement with the above said, the economic repercussions that the early repayment has for the credit institution are taken into account adjusting such repercussions by fixing a significative percentage in variable interest rate loans. To this end, variable interest rate loan means a loan in which the interest rate is modified during the course of the redemption period.

Articles 4, 5 and 6 regulate several aspects of the subrogation deed, the Register's and mortgage execution. And articles 7 and 8 introduce a significative reduction on fiscal costs and on preventive protection of juridical private security.

Finally, it is considered beneficial both for creditors and debtors, to improve the above mentioned costs, in the case of the modifying novation of mortgage loan between creditor and debtor. Such transaction will be very profitable for the debtor as it bears little expenses and quite

stimulating for the creditor as it means he doesn't lose his own client.

Article 1. Scope

1. The financial institutions referred to in article 2 of Law 2/1981 of March 25th about Mortgage Market, can be subrogated by the debtor in those mortgage loans granted by analogous institutions, in accordance with the provisions of such Law.
2. The subrogation referred to in point 1 above, shall apply to mortgage loan contracts, whichever the date the contracts are put into proper form and even though they do not contain the possibility of early repayment .

Article 2. Subrogation requirements

The debtor shall be able to subrogate with another financial institution than those mentioned in the previous article, without the creditor's consent, when, in order to pay the debt, he previously has borrowed the money from said financial institution, through a public deed, stating his intentions according to the provisions of article 1.211 of the Civil Code.

The institution ready to accept the subrogation shall submit a binding offer to the debtor in which the financial conditions of the new mortgage loan shall be stated. The debtor's acceptance of the offer will imply his authorisation in behalf of the

offering institution to notify the creditor, as well as to request him a certification where the outstanding amount of the debtor's mortgage loan to be subrogated shall be stated, which should be granted in a maximum term of seven calendar days.

Once the certification is given, the creditor will have the right to enervate the subrogation if, in a maximum term of fifteen calendar days from the day the certification is given, he makes, with the debtor, a modifying novation of the mortgage loan. Otherwise, so that the subrogation comes into effect, it will be enough that the subrogated institution should declare, in the same deed, it has paid the creditor the amount due for outstanding capital plus interest and commission accrued. A receipt of the banking transaction made for that purpose will be attached to the deed.

Nevertheless, if the payment was not effected yet because the creditor had not informed about the outstanding amount, or because the creditor, for any reason, had refused to accept the payment, it would be enough for the subrogated institution to calculate the amount under its own responsibility and assuming the consequences of any error, which would not have any repercussions on the debtor, and, after stating that, to deposit said amount at the disposal of the creditor, with the Notary that effected the deed. The

Notary shall notify the creditor officially, by sending him an authorised copy of the subrogation deed and, in the same way, the creditor shall be able to claim error within the eight following days.

In this case and without prejudice to the subrogation taking effect, the competent Judge that shall execute the proceeding, at the request of the creditor or of the subrogated institution, will summon them, within the eight following days, to appear, and once he hears them, will admit the documentation presented, and in three days will pronounce himself accordingly. The Judge's dictate will be appealable to one effect and the resource will be substantiated through the related appeal proceedings.

Article 3. Early repayment commission

In accordance with article 1 of this Law, in subrogations of variable interest rate mortgage loans, the amount to be received by the creditor as a commission for the early repayment of the loan, will be calculated taking into account the outstanding capital, according to the following rules:

1. When an early repayment is agreed without a commission having been fixed, there will not be any right to receive any amount for this matter.

2. If the commission agreed for early repayment is equal or less than 0.50%, the commission to be received will be the one previously agreed.

3. In the other cases, the creditor will only be able to receive 0.50%, as a commission for early repayment, whichever the commission agreed. However, if the creditor should demonstrate the existence of an economical damage which would not only mean a profit loss, and proceeding directly from early repayment, said creditor would be able to claim such damage. The creditor's damage claim shall not stop the subrogation if circumstances covered by this Law are met, and it will only give place, in due time, to the indemnity of the amount relative to the damage caused.

Article 4. Deed

In the subrogation deed only the modification of interest rate conditions shall be agreed, both ordinary interest or default interest, initially agreed or in force, the extension of the mortgage term, or both.

Article 5. Registry

The fact of subrogation will not have any effect on a third party unless it is established in the Registry by means of a marginal note where the following circumstances will be stated:

1. The legal person subrogated in the creditor's rights.

2. The conditions newly agreed on interest rate, on the term or both.

3. The deed with the marginal note, its date and the authorising Notary.

4. The date of presentation of the deed in the Registry, as well as the date of the marginal note.

5. The Registrant's signature which shall imply the note is in accordance with the deed where it was taken from.

So that the Registrant registers the subrogation, it will be enough for the deed to be in agreement with everything provided in article 2 of this Law, even though the first creditor has not been notified yet. The mortgage loan registered clauses which are not to be modified shall not be subject to a new valuation. The Registrant shall not be allowed to request the loan agreement presentation.

Article 6. Execution

To execute the deed, the subrogated institution, besides the first copy of the subrogation deed, shall have to present the loan agreement, made according to the requirements of Civil Procedure Law. If it is not possible to present the registered loan agreement, together with the copy of the subrogation deed, it will have to present a Registry certification supporting the registration and existence of the mortgage loan.

The execution of the mortgage loan shall adjust to the contents of the Civil Procedure Law and Mortgage Law.

Article 7. Tax benefits

The deed documenting the subrogation transaction in the gradual mode of "Documented Legal Proceedings" about notarial documents, shall be exempt.

Article 8. Notary and Registry fees

To calculate the Notary and Registry fees, the amount pending of payment at the time of the subrogation will be taken as a basis and it will be understood that the authorized document contains a unique item.

Article 9. Tax benefits and Notary and Registry fees in the modifying novation of mortgage loans

In the gradual mode of "Documented Legal Proceedings", the deeds for mortgage loans modifying novation agreed by common consent between creditor and debtor shall be exempt, provided that the creditor is one of the institutions contained in article 1 of this Law and the modification refers to the interest conditions modification with respect to conditions initially agreed or in force, or to the modification of the loan term, or both.-

To calculate the Notary and Registration fees of this kind of deeds, the basis to be

taken into consideration will be that resulting from applying to the amount of outstanding mortgage, the differential between the interest of the loan to be modified and the new interest. In case of modifying novation of the mortgage exclusively regarding to the modification of the loan term, the basis to be considered is 1 per 1000 of the outstanding mortgage loan at the moment of novation.

Article 10. Commission for extension of the mortgage term

In the modifying novations referred to the extension of the loan term, the creditor will not be able to receive in respect of such condition modifications more than 0.1 per 100 of the outstanding mortgage loan.

First Additional Provision

In the mortgage loans at variable interest, referred to in article 1 of this Law, the creditor shall not have to receive, as a commission for early repayment of a loan not subrogated, more than 1% of the paid off capital even though a bigger commission should be agreed.

Second Additional Provision

1. Law 26/1988 of July 29th is modified, by the addition of the following paragraphs to article 48.2 about Discipline and Intervention of Credit Institutions:

e) To publish, by themselves, or through the Bank of Spain, on a regular and official basis, certain reference interest rates or indexes, that could be applied to variable interest rate loans, specially mortgage loans, by Credit Institutions.

Without prejudice to the freedom to contract, the Ministry of Finances shall establish special requirements regarding the information contained in contracts clauses where interest rates are defined and regarding the information to be given to debtors about each period applicable rate, for those variable interest rate loans contracts where it is agreed to use reference interest rates or indexes different than the official ones included in the previous paragraph.

f) To extend the application scope of the preceding sections provisions to any contracts or transactions of the nature provided in them, even though the performing institution is not a credit institution.

2. The regulations provided in the preceding paragraphs of this additional provision, shall apply to loans and transactions arranged after they come into force.

Third Additional Provision

A new paragraph is incorporated to article 45 k) of Royal Decree Law 1/1993 of September 20th, by which the adapted text of the Estate Tax and Documented Legal

Proceedings is approved. This paragraph states as follows:

23rd Law 2/1994 of March 30th, about subrogation and modification of mortgage loans.

Fourth Additional Provision

The Government is authorised to dictate as many Provisions as are necessary for the appropriate application of this Law.

Unique Final Provision

This Law shall come into force the same day it is published in the Spanish Official Gazette.

So I command to all Spanish people, individuals and authorities to observe this Law and have it observed.

Madrid, May 30th 1994.