

Legal Alert: New real estate co-ownership law



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On January 26, 2022, the Senate sent to the President of the Republic, the text already approved by the National Congress of the bill on the New Real Estate Co-ownership Law (Bulletin No. 11,540-14), hereinafter referred to as the "Bill".

The following is a summary of some of the main modifications contemplated in the Bill, which will introduce important changes in the conformation of condominiums in urban and rural areas:

New definition of the concept of real estate co-ownership, and of the condominium typologies (A and B).

The option of locating condominiums in rural areas is established in the case of housing projects whose construction has been previously authorized in accordance with Article 55 of the General Law of Urbanism and Construction, hereinafter referred to as "LGUC". In addition, it is expressly prohibited for rural properties divided in accordance with Decree Law No. 3,516 of 1980 to be eligible for the real estate co-ownership regime.

Condominiums must have direct access to a national asset of public use, and the option of accessing the land on which they are located by means of transit easements is eliminated. With respect to the units and/or collective buildings contemplated by the condominium, such access may be direct or through circulations of common domain whose length does not exceed 400 meters of pedestrian route, measured from any access to the condominium.

A new Title X on "Urban and Construction Requirements" is incorporated. New condominiums must respect the road network established in the respective Territorial Planning Instrument, hereinafter referred to as "IPT". In the event that the IPT has not been adapted to the provisions of Article 28 quater of the LGUC, supplementary rules are established, depending on the type and/or location of the project, to guarantee the continuity of the public space and road connectivity of the sector.

The absolute nullity of the provisions of the co-ownership regulations that do not conform to the legal norms and the regulations of the co-ownership law, or to the characteristics of the condominium itself, is established.

The minimum quorums for the constitution of ordinary and extraordinary and reinforced majority assemblies, and for the adoption of resolutions in the same, are modified.

Creation of a National Registry of Condominium Administrators, in which all natural or juridical persons exercising the activity of condominium administrators, whether free of charge or onerous, must be previously registered.

Creation of an Executive Secretariat of Condominiums, under the MINVU, which will give instructions on the application of the law of real estate co-ownership, among other functions established in the same law.

The possibility is established that the co-ownership regulations of a condominium may agree to participate in the meetings virtually, provided that requirements and conditions are established to ensure effective and simultaneous participation and voting.

The matters that may be agreed upon by means of written consultation are expanded.

With respect to the assignments of exclusive use that are not included in the co-ownership regulations and are related to common land and property, the obligation to register them in the registry of mortgages and encumbrances of the respective Real Estate Registry is established.

A limit of 160 housing units in social housing condominiums is established as from the date of publication of the Law, with certain exceptions, which depend on the status of the project as of the same date.

The co-ownership regulations may not prohibit the keeping of pets and companion animals, without prejudice to the power to restrict the use of the common property of the respective condominium by such animals.

The "Initial Operation Fund" is created to cover start-up expenses of the condominium.

Establishes the obligation of the first selling owner to deliver a material and digital copy of the first co-ownership regulation, at the time of the purchase-sale or promise.

Establishes the obligation of the administrator to deliver an annual documented account of his management.

The co-ownership regulations of each condominium must ensure that the use of housing units as temporary lodging, tourist lodging, apart-hotel and other similar, does not produce nuisances that affect the quality of life of the permanent inhabitants of the condominium nor affect the use of the common goods and services by them.

It establishes that only one service may be cut off for default in the condominium's economic obligations.

It establishes a procedure for challenging the regulations, allowing the Local Police Court to propose alternative solutions to the silence of the assembly. Likewise, mediation powers are specified for the SEREMIS, Local Police Courts and Municipalities.

For the promulgation and publication of the Bill, the pronouncement of the Executive Branch is still pending, and in case the latter approves it without observations, the final review by the Constitutional Court.

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