URÍA MENÉNDEZ

Law 5/2019 of 15 March on real estate credit agreements

March 2019

1. Introduction

Law 5/2019 of 15 March on real estate credit agreements ("**Real Estate Credit Agreements Law**" or the "**Law**") which will come into force on 16 June 2019, was published last Saturday, 16 March. This Law entails a substantial reform of the current regulation of real estate loans or credits (particularly mortgage contracts).

This reform is being introduced in Spain for two main reasons:

- The first, which also affects the rest of the Member States of the European Union, is the transposition of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014, on credit agreements for consumers relating to residential immovable property ("**Directive 2014/17**").
- The second, which only concerns Spain, relates to the modifications of different aspects (transparency and the unfairness of certain clauses: default interest, acceleration, among others) of the current regulation on mortgage credit. These modifications result mainly from the case law of the Court of Justice of the European Union ("**CJEU**") and of the First Chamber of the Spanish Supreme Court, and aim, at least in appearance, to clarify doubts regarding its application and to reduce litigation in this area.

The most relevant features and novelties of the Law are explained below. A table summarising the main changes with respect to the current regulation is also provided at the end.

2. Scope of application and protected subjects

2.1. LOAN CONTRACTS AND TYPE OF CONTRACTING PARTY TO WHICH THE LAW APPLIES

The Law only applies to loan contracts (understood as those in which the lender grants or agrees to grant a loan in the form of deferred payment, credit or other similar payment facility) that meet the following requirements:

(i) the loan is granted by individuals or legal entities that are involved in the financial services market in a business or professional capacity (even if sporadically, provided that its purpose is exclusively investment-related);

(ii) the borrower or guarantor is a natural person (not necessarily a consumer); and

(iii) the purpose of the contract is:

  (a) to grant a mortgage-secured loan or other security right over a residential property (including, for this purpose, storage rooms, garages and any other elements that fulfil a domestic function, that is, that they are used as part of a dwelling); or

  (b) to grant a loan (with or without a security right) to acquire or retain property rights over existing land or buildings or those which are to be built, provided that, in this case, the borrower or guarantor is a consumer.

The Law also applies to intermediation in any of the loan contracts within its scope of application (article 2.2).

2.2. LOAN CONTRACTS TO WHICH THE LAW DOES NOT APPLY

The Law expressly excludes from its scope of application the following loans:

(i) those granted by an employer to its employees, on an ancillary basis and free of interest or which APRC is lower than that of the market, and which are not offered to the general public.

(ii) those granted free of interest and free of costs other than those to cover the costs related to the loan guarantee.

(iii) those granted as an overdraft facility and the repayment of which is due within one month.

(iv) those that result from an agreement reached in court or before an arbitration body or in a conciliation or mediation procedure.

(v) those relating to the deferred payment, without expenses, of an existing debt, provided that it is not a loan contract secured by a mortgage over real estate for residential use.

(vi) reverse mortgages in which the lender (a) pays a fixed lump sum or makes periodic payments or other forms of payment in exchange for an amount derived from the future sale or from a right relating to immovable property for residential use, and (b) does not seek the repayment of the loan until the borrower (or the last of the beneficiaries) dies.

3. Main novelties

3.1. THE REINFORCEMENT OF TRANSPARENCY OBLIGATIONS

A) Advertising and pre-contractual information

The Law contains a detailed regulation of the pre-contractual phase (including advertising) so that the consumer can make a well-informed decision about whether or not to enter into the loan contract.

For this purpose, the basic information that should be included in real estate loan advertisements is regulated (article 6), as is the obligation of the lender or intermediary to offer personalised information (article 10) and, in particular, the documentation and pre-contractual information that must be provided at least ten days before the contract is signed (article 14).

Specifically, this pre-contractual documentation is as follows:

(i) The European Standardised Information Sheet (ESIS), which will be considered a binding offer.

(ii) The Standardised Warnings Sheet, which will inform of the existence of relevant clauses or elements. The Law does not define these relevant clauses (the developing regulations will do so in accordance with Final Provision 15 of the Law). Some elements that must be included in that document are the following: the official reference indexes used to set the interest rate, the existence of minimum limits on the interest rate (which seems to contradict the prohibition of these limits in article 21 of the Law), the possibility of accelerating repayment and the costs arising from doing so, the distribution of the expenses associated with the loan and whether it is a loan in a foreign currency.

(iii) A separate document referring specifically to the periodic instalments to be paid in various scenarios of interest rate changes if it is a variable loan.

(iv) A copy of the draft contract.

(v) The terms of the insurance that the lender may establish as a condition to grant the credit.

(vi) Informing the borrower of the obligation to receive personalised and free advice from the notary of his or her choice.

(vii) Clear and truthful information about the expenses that the lender and borrower each have to pay according to the legally-established distribution explained below (section [E]). In addition, borrowers must sign a statement indicating that they have received the documentation and that it has been explained to them.

In this regard, the Real Estate Credit Agreements Law expands the pre-contractual documentation required by Directive 2014/17 (which provides a harmonisation of minimum requirements, except for the information that must be included in the ESIS and the way in which the APRC should be calculated). The regulation of pre-contractual information in the Law –as established in Additional Provision 5– will apply in the same way throughout the Spanish territory so that the regional laws respect the standardised information models and may not require entities to provide additional documentation that may make it difficult to assess different offers.

Pursuant to the First Transitory Provision, the novelties in the pre-contractual phase will not apply to loan contracts entered into prior to the entry into force of the Law (but will apply to their novation or subrogation).

B) Transparency verification by notaries and its regulatory significance

The Real Estate Credit Agreements Law, ensuring continuity, places the responsibility for the information that must be provided to the borrower (which is now expressly extended to the guarantor of the loan who is a natural person) on the public officers traditionally involved in the contracting of mortgages in Spain (specifically, notaries). This is not common practice in other countries, which rely more on agencies that may or may not be specialised in the financial protection of consumers.

On this occasion, however, Spanish legislature goes a step further by attributing to the notary the role of adviser and guarantor of compliance with the principle of material transparency (article 15). In such capacity, the notary –who is chosen by the borrower (article 15.1)– will record in a free notarial certificate, under his or her own responsibility, the following details: *(i)* the fulfilment of the minimum term of ten days for making the legal documentation available to the borrower; *(ii)* the issues raised by the borrower and the advice provided by the notary; *(iii)* the individualised information and advice on the clauses included in the ESIS and the Standardised Warnings Sheet; and *(iv)* the carrying out of a test to specify the documentation delivered and information provided.

The notarial certificate will be issued the day before the authorisation of the public deed at the latest. If any of the above requirements is not met, the notary must record this fact in the notarial certificate and the public deed of the loan cannot be authorised.

In practice, the most relevant rule on the role of Spanish notaries is found in article 15.6 of the Law. This provision states that, in order to comply with the principle of material transparency, the content of the notarial certificate will be presumed to be true and is considered proof of the provision of the relevant warnings and advice by the notary and of the borrower's statement that he or she understands and accepts the content of the documents described. Additionally, the notary will identify the notarial certificate in the public deed of the loan, in order to meet the requirements established by the Law in this regard.

The legislature tries to meet reasonable demands for legal certainty, especially in view of the courts' disparity of criteria regarding the content and scope of proceedings dealing with material transparency of general conditions in contracts with consumers. It should be noted, however, that the compliance with material transparency –which will continue to depend on the final decision of the courts– will not come solely from that notarial intervention. To this end, the legislature's position must be complemented with a specific interpretation by CJEU case law (not yet fully settled), according to which if the information duties provided for in EU law are deemed fulfilled –in this case, those of Directive 2014/17, especially, as noted, when the content of the ESIS is imposed by a maximum standard (i.e. the Member States cannot alter the regulatory extent of the Directive, even if this favours consumers)– the terms of the contract should be understood to be transparent (CJEU 21.03.2013, Case C-92/11 RWE Vertrieb, paragraphs 45, 52 and 55, in relation to the transparency requirements of Directive 2003/55 CJEU 16.11.2010, Case C-76/10 Pohotovost, paragraphs 71 and 72, in relation to the duty of information of the APRC of Directive 87/102).

3.2. THE DUTY TO ASSESS SOLVENCY AND THE CONSEQUENCES OF NOT DOING SO

Directive 2014/17 calls on the Member States to ensure that lenders only grant credit if the borrower's solvency assessment shows a positive result, in the sense that it is considered probable that the debtor will fulfil its obligations. In this regard, the Real Estate Credit Agreements Law imposes on the lender the duty to carefully assess the solvency of the borrower before granting the loan through

specific internal procedures (article 11). The cost of these procedures cannot be passed on to the potential borrower.

The various consequences of the solvency assessment are also regulated: *(i)* the credit will not be granted if the solvency test is not passed; *(ii)* the lender may not terminate, cancel or modify the contract due to an incorrect assessment –even if caused by the borrower providing incomplete information–, unless the borrower consciously concealed or falsified the information; and *(iii)* the breach of the solvency obligation triggers the application of the sanctioning regime (articles 44 and following in relation to article 11), but no ad hoc civil law remedies (such as the loss or limitation of the right to charge interest) are available for breach of the duty to carry out a solvency assessment, in spite of this being debated in parliament.

3.3. REGULATION OF CERTAIN CONTRACTUAL CLAUSES OR PRACTICES

A) Acceleration clause

Although Directive 2014/17 refers to this point in a very general way (i.e. to adopt measures to encourage lenders to be reasonably tolerant before initiating enforcement proceedings), the Real Estate Credit Agreements Law opts to include a detailed and mandatory regulation of the causes of accelerating repayment due to default by the borrower (article 24).

The reason for this mandatory stance (and, therefore, the exclusion of any margin for contractual freedom on this point) results from the considerable amount of litigation occurring in this area and the lack of clear solutions from the courts, caused in part by the difficulties that they will always face in determining how to balance the regulation of the parties' rights and obligations that the entities must include in their general mortgage loan conditions.

In order to accelerate the repayment of a loan after the Law comes into force (regardless of the date on which the contract was signed), the following requirements must be met:

(i) That the borrower is in default, whether that be in respect of the capital or interest.

(ii) That the lender has requested payment from the borrower and granted him or her a minimum term of one month to pay.

(iii) That the instalments owed correspond to at least:

(a) 3% of the amount of the capital or the non-payment of 12 monthly instalments, if the delay occurred in the first half of the loan period;

(b) 7% of the amount of the capital or the non-payment of 15 monthly instalments, if the delay occurred in the second half of the loan period.

The mandatory nature of this new regulation leaves no scope for unfair terms (Article 1.2 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ["**Directive 93/13**"]).

The new regulation on accelerated repayment applies to loan agreements signed prior to the entry into force of the Law that include an acceleration clause unless *(i)* the debtor claims that applying the clause is more favourable to him or her; or *(ii)* the clause was triggered prior to the entry into force of the Law (regardless of whether or not, as a result, enforcement proceedings were initiated, or whether or not the proceedings are suspended).

B) Tying and bundling practices

The Law generally prohibits tying practices (i.e. offers in which the loan cannot be contracted without contracting another product offered jointly by the lender) except in certain cases. The most significant exception is the possibility of the lender requiring that an insurance policy be taken out to secure the fulfilment of the payment obligations, as well as damage insurance over the mortgaged property. In this case, the lender must accept alternative policies from other providers that offer equivalent conditions and level of benefits. In addition, the cancellation of the loan will entail the termination of the insurance policy (unless the borrower decides otherwise) and the right of the borrower to be reimbursed the part of the premium not used.

On the other hand, bundling practices (i.e. offers in which the loan can be contracted, although at a price that is more expensive for the consumer, if another product offered jointly by the lender is not contracted) are permitted. The products must be clearly offered separately so that the borrower can see the difference between the two offers.

In both cases, the Law establishes specific transparency obligations for these types of practice and provides the specific elements about which the borrower must be informed (that it is a tying or bundling practice, its cost, the benefits and risks of product losses, the effects of not contracting or cancelling the loan and the differences between combined and separate offers).

C) Early repayment

The Law establishes *(i)* the right of the borrower to repay the loan in full or in part *(ii)* a period of prior notice (which may not exceed one month) and *(iii)* the lender's obligation to inform the borrower, who has indicated his or her willingness to repay in advance, of certain details that are important to bear in mind when making this decision.

The lender's compensation for early repayment is also modified. This differs according to the type of loan and may not exceed the following percentages:

(i) In the case of variable rate loans or variable interest tranches, the parties may establish a commission for one of the following mutually exclusive cases:

  (a) During the first five years of the loan, it may not exceed 0.15% of the capital repaid in advance.

  (b) During the first three years of the loan, it may not exceed 0.25% of the capital repaid in advance.

(ii) In cases of novation of the loan or subrogation of the creditor, provided that this involves the conversion from a variable rate loan to a fixed-rate loan:

  (a) During the first three years of the loan, it may not exceed 0.15% of the capital repaid in advance.

  (b) After the first three years of validity of the loan, no compensation may be claimed.

(iii) In fixed-rate loan agreements or in fixed-interest tranches in which the reimbursement occurs:

  (a) During the first ten years of the loan, it may not exceed 2% of the capital repaid in advance.

  (b) After the first ten years of validity, it may not exceed 1.5% of the capital repaid in advance.

D) Variations in the interest rate

Another novelty introduced by the Law is the prohibition to limit the interest rate, that is, the so-called floor clauses (article 21.3). As of the entry into force of the Law, these clauses will cease to be valid in new contracts (regardless of their transparency).

Likewise, the Law expressly sets out that the remunerative interest cannot be negative. This settles the debate that arose about the possibility of the lender having to pay the borrower as a result of the negative values of the reference indices (i.e. the Euribor).

E) Arrangement fee

The Law provides for the possibility of agreeing an arrangement fee, which will be paid only once and will cover all the costs of studying, processing or granting the loan or other similar costs inherent to the activity of the lender and generated by the granting of the loan (art. 14.4). This provision is identical to that contained in the former banking regulations, namely in article 5.2(a) of Law 2/2009 of 31 March on the contracting of mortgage loans or credits with consumers and the brokering of the execution of loan or credit agreements.

Based on these regulations, the Civil Chamber of the Supreme Court sitting in full session has considered that the arrangement fee is, together with the remunerative interest, one of the two main items of the loan price (Judgment 44/2019 of 23 January).

F) Loan expenses

The Law provides a rule for the distribution of the loan expenses (article 14.1 [e]), which differs from the current case law criterion applied by the Supreme Court: *(i)* the borrower will assume the expenses of appraising the property and *(ii)* the creditor will pay the agency fees and the registration and notarial fees (except for the borrower's copies of the documents).

Property transfer tax and stamp duty are to be paid in accordance with the applicable tax regulation (article 29 of the Consolidated Text of Law 1/1993 of 24 September on property transfer tax and stamp duty, approved by Legislative Royal Decree 1/1993), which, at present, considers the lender to be the taxpayer in the mortgage loan deeds.

G) Default interest

The Law includes a mandatory rule on default interest: the applicable rate is the remunerative interest plus 3% (article 25). As in the case of acceleration, as no agreement to the contrary is possible, any eventual (and unnecessary) clause that establishes this default interest cannot be considered unfair because it reproduces a mandatory regulation (Article 1.2 of Directive 93/13).

In this way, the legislature has opted for a default interest rate that is slightly higher than the one that exceeded the Supreme Court's unfairness benchmark (ordinary interest plus 2%), but lower than the rate originally envisaged in the Preliminary Draft and which was the same as that previously provided in article 114 of the Mortgage Law (three times the legal interest).

H) Foreign currency loans

The Law allows loans to be contracted in foreign currencies and recognises the right of borrowers to convert the loan into an alternative currency that may be: *(i)* the currency in which they receive most of their income or has the majority of the assets with which they will repay the loan; or *(ii)* the currency of the Member State in which they reside at the date of contracting or of the conversion request (article 20). This right is inalienable unless the borrower is not a consumer, in which case the parties may agree on mechanisms to limit the risk of a different exchange rate (Article 20.2).

Specific duties to update information on the amount owed in an alternative currency are also included. These duties will be specified and mandatory in accordance with the regulatory development of the Law. Information must be provided in all cases regarding those loans in which the value of the amount owed by the borrower or the periodic fees differ by more than 20% from the amount that would have corresponded if the exchange rate between the currency of the loan contract and the euro on the date of the contract had been applied.

Failure to comply with the duties provided in article 20 of the Law result in the "nullity of the multi-currency clauses", which favours the borrower. In this case, the borrower will be able to request the modification of the contract, in such a way that the loan is considered to have been agreed in the currency in which he or she receives most of his or her income (article 20.6).

3.4. STANDARDS OF CONDUCT WHEN GRANTING LOANS

A) Knowledge and competency requirements applicable to personnel

The Law requires that personnel at the service of the lender, credit intermediary or designated representative have at all times the necessary and up-to-date knowledge and skills on the products they market, and in particular regarding *(i)* the preparation, offering or granting of the loan, *(ii)* the credit intermediation activity *(iii)* the provision of the advisory service and *(iv)* the execution of the loan.

The minimum knowledge and skills requirements will be established by the Ministry of Economy and Business.

These legal and regulatory requirements will also apply to the staff of the lender's branches or the credit intermediaries registered in another Member State. For those who act under the freedom to provide services, the requirements will be established specifically by the Minister of Economy and Business.

B) Remuneration policy

In relation to the remuneration policy of the personnel responsible for the solvency assessment and the granting of the loans, as well as the internal procedures for their application by the lenders, the following aspects should be highlighted:

(i) incentives should not be offered to take risks that exceed the level of risk tolerated by the lender;

(ii) measures to avoid conflicts of interest will be incorporated and, in particular, it will be established that the remuneration does not depend on the amount or proportion of applications; and

(iii) situations in which one of the following is the determining factor should be avoided: a specific type of loan contract, interest rate or accessory services.

The above also applies to the remuneration paid by lenders to intermediaries and by the latter to their related representatives.

3.5. REGULATION OF REAL ESTATE CREDIT INTERMEDIARIES

The Law also regulates: the requirements to access the activity of intermediaries, their supervision, the obligations they must fulfil in relation to transparency and responsibility for their services, as well as issues related to registration (management by the Bank of Spain or by the competent body in each autonomous region, publicity, registration and cancellation procedures).

Operators who wish to carry out the activities of real estate credit intermediaries must be registered in the corresponding public registry and comply with the following requirements: *(i)* have a civil liability insurance or bank guarantee, *(ii)* have procedures in place and the technical and operational capacity for the adequate fulfilment of the requirements to inform the borrowers; *(iii)* follow a training plan covering the knowledge and competences required by law, that is, on the products they commercialise, the provision of advice services and the execution of the contracts, and *(iv)* appoint a representative before the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences.

In addition, the Law has established several obligations or requirements in relation to: *(i)* the information provided to the borrowers (relating to the identification of the intermediary, the scope of the service provided and the cost of that service), *(ii)* the required guarantees, which, as indicated, consist of a civil liability insurance policy or bank guarantee, and *(iii)* the responsibility they have over their designated representatives.

The Bank of Spain or the competent body of the corresponding autonomous region will be responsible for supervising compliance with these obligations and ensuring registration in the registry.

Likewise, the Law regulates in detail the provision of intermediation services in Spain through a branch or under the freedom to provide services through intermediaries authorised in another Member State of the European Union.

3.6. SANCTIONS REGIME

The Law also incorporates a regime of infractions and penalties proportional to the number of people affected by the breach of the Law or the repetition of conduct. To act in the market as an intermediary without being registered with the registry is considered a very serious infringement.

3.7. TRANSITIONAL REGIME

The Law will not generally apply to loan agreements signed prior to its entry into force.

In addition to the specific transitional regimes already described, the Law establishes a specific regulation for enforcement proceedings which were ongoing when Law 1/2013 of 14 May was enacted. Borrowers who did not have the opportunity to oppose the enforcement based on the existence of unfair terms in their loans because they were not personally notified of this possibility will have a new term of ten days to do so as from the moment they are notified. In order for this provision to apply, it will be necessary that:

(i) The enforcement has not concluded with the property being handed over to the creditor.

(ii) The possibility of filing an extraordinary opposition has not been personally notified.

(iii) The unfairness of the clauses has not been examined by a court of its own volition.

(iv) The extraordinary opposition has not been filed.

(v) The party who files the extraordinary opposition based on the judgment of the CJEU of 29 October 2015 has not been granted leave to proceed.

3.8. REGULATORY CHANGES BROUGHT ABOUT BY THE LAW

Given its transversal content, the Law modifies the following laws:

(i) The Mortgage Law:

  (a) Article 12 is modified to include acceleration clauses and other financial clauses in the registry entry, regardless of the identity of the creditor (it was previously limited to the entities set out in article 2 of Law 2/1981 of March 25 on the mortgage market).

  (b) Article 114 is modified to include that default interest, in loans granted to individuals secured by a mortgage over residential real estate, will be the remunerative interest plus three points.

  (c) Article 129.2.a) is modified in order to require, in the event of the extrajudicial sale of the mortgaged property, that the value at auction may not be less than that indicated in the

appraisal (previously it was only required that it should not be less than 75% of that value).

(d) Article 129 bis, which establishes the mandatory regime of accelerated loan repayment in accordance with article 24 of the Law (section 3.3 [A]), is also modified.

(e) Article 258.2 is modified to state that registrars must refuse to register clauses that are contrary to mandatory regulations or are prohibited.

(ii) Article 2 of Law 2/1994 of 30 March on subrogation and mortgage loan modification, establishes the subrogation requirements.

(iii) Law 7/1998 of 13 April on general contract conditions ("**Law 7/1998**") and Royal Legislative Decree 1/2007, of 16 November, approving the revised text of the general law for the defence of consumers and users and other complementary laws ("**RLD 1/2007**"):

(a) Conditions included in a non-transparent manner are expressly declared null (article 5.5 of Law 7/1998 and article 83 of RLD 1/2007).

(b) The obligation to deposit in the General Conditions Register the loan and mortgage loan forms falling within the scope of application of the Law (article 11.2 of Law 7/1998) is included. In addition, final judgments issued in individual actions declaring the nullity of general conditions (article 11.4 of Law 7/1998) must be sent to the Register.

(iv) Law 1/2000 of 7 January on civil procedure ("**Law 1/2000**"):

(a) Article 521.4 includes the registration with Register of General Conditions of final judgments issued in individual actions brought for the nullity of general conditions.

(b) Article 693.2 is modified to adapt the acceleration cause to article 24 of the Law.

(v) Law 44/2002 of 22 November on measures of reform of the financial system to include as a very serious offence the breach of the mandatory pre-contractual information period and to issue the notarial certificate of articles 14 and 15 of the Real Estate Credit Law.

(vi) Law 2/2009 of 31 March on contracting mortgage loans or loans with consumers. This rule now applies to contracts that fall outside the scope of application of the Real Estate Credit Law.

(vii) Law 10/2014 of 26 June on the regulation, supervision and solvency of credit institutions is adapted to the Law (article 5). The autonomous regions may choose the competent bodies that will investigate the sanctions derived from the Law for financial intermediaries or lenders that operate only in that autonomous region.

4. Comparison chart

TOPIC	REGULATION IN FORCE	REAL ESTATE CREDIT AGREEMENTS LAW
PRE-CONTRACTUAL PHASE	Obligation to deliver pre-contractual information, specifically by delivering two files: • Pre-contractual information sheet (*Ficha de información precontractual,* FIPRE) • Personalised information sheet (*Ficha de información personalizada*, FIPER)	The pre-contractual documentation must be delivered a minimum of ten days in advance. Mainly, the following: i. European Standardised Information Sheet (ESIS) ii. Standardised Warning Sheet iii. Copy of the "draft contract" iv. Communication that one may receive personalised and free advice from the notary of one's choice. Reinforced control by notaries that will not allow contracts that include unfair terms.
ROLE OF THE NOTARY	The notary verifies the capacity of the grantors, the fulfilment of the legal provisions and informs the client of its obligations. The client has the right to examine the draft deed project in the notary's office three days in advance. The effectiveness of the generic duty of controlling the legality of notaries has been questioned in courts in terms of the fulfilment of the material transparency requirement.	The notary will receive the pre-contractual documentation together with a statement from the borrower that he or she has received the documentation, has been informed of it and has understood it. The borrower will appear before the notary on different days. The notary will give free advice to the borrower about the conditions of the loan and will put on record, under his or her responsibility, that: i. the borrower has received the documentation;

TOPIC	REGULATION IN FORCE	REAL ESTATE CREDIT AGREEMENTS LAW
		ii. the relevant deadlines have been met; iii. the borrower has been informed of the conditions individually; and iv. a test has been carried out on the documentation and information provided.
LOAN ACCELERATION	The lender has the right to demand payment of the entire outstanding balance if a minimum of three monthly instalments are not paid.	The following must apply: i. The borrower is in default. ii. The lender has requested payment and granted a minimum of one month to pay. iii. The instalments owed correspond to at least: - 3% of the amount of the capital or the non-payment of 12 monthly instalments, if the delay occurred in the first half of the loan period - 7% of the amount of the capital or the non-payment of 15 monthly instalments, if the delay occurred in the second half of the loan period.
TYING AND BUNDLING PRACTICES	Allowed, provided that the borrower is informed.	Prohibited except in certain cases, including contracting insurance to ensure fulfilment. In this case, the lender must accept alternative policies from any provider that offers equivalent conditions and benefits.

TOPIC	REGULATION IN FORCE	REAL ESTATE CREDIT AGREEMENTS LAW
EARLY REPAYMENT	Compensation limited to: • 0.5% of amortised capital for the first five years • 0.25% of the capital amortised in the remaining years Compensation by interest rate: mainly applies to loans with a fixed interest rate for the financial loss or as agreed with the entity (without limitation) on the capital pending disbursement.	The consideration is limited to financial loss provided that it does not exceed the following limits: • In variable rate contracts, a commission may be agreed for one of the following mutually exclusive cases: - 0.15% of the amortised capital for the first five years. - 0.25% of the amortised capital for the first three years. • In the novation or subrogation of the creditor (provided that it involves the conversion from a variable type to a fixed rate): - 0.15% of the capital amortised during the first three years - After the first three years no compensation can be claimed. • In fixed-rate contracts: - 2% of the amortised capital for the first ten years, - 1.5% of the capital amortised after the first ten years.
LIMITATIONS OF THE INTEREST RATE	Valid, but subject to specific formal requirements.	Limitations as to the lowest possible interest rate (floor clauses) are prohibited. Negative remunerative interest is prohibited.

TOPIC	REGULATION IN FORCE	REAL ESTATE CREDIT AGREEMENTS LAW
DEFAULT INTEREST	It cannot be higher than the remunerative interest plus 2% (according to the Supreme Court case law).	It cannot exceed the remunerative interest plus 3%.
FOREIGN CURRENCY LOANS	There is no unilateral right to change the currency in the contract; the inclusion of a multi-currency clause is required to this end.	The borrower can change the loan to the currency: • In which he or she receives most of the income or has most of his or her assets. • Of the Member State in which he or she resides on the date the contract is signed or the currency is converted.
REAL ESTATE CREDIT INTERMEDIARIES	No similar rule regulates this matter fully, although Law 2/2009 of 31 March, regulates some basic aspects.	Its legal regime is regulated in detail.

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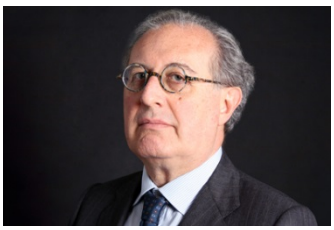
Contact lawyers

Jesús Remón
Partner
+34915864519
jesus.remon@uria.com

Manuel García-Villarrubia
Partner
+34915860356
manuel.garcia-villarrubia@uria.com

Carles Vendrell
Partner
+34915864579
carles.vendrell@uria.com



Fernando Gómez
Counsel
+34915870899
fernando.gomez@uria.com

Raimon Tagliavini
Partner
+34934165539
raimon.tagliavini@uria.com

Isabel Aguilar Alonso
Counsel
+34915860120
isabel.aguilar@uria.com

Antonio José Moya
Counsel
+34915860765
antoniojose.moya@uria.com

BARCELONA
BILBAO
LISBOA
MADRID
PORTO
VALENCIA
BRUXELLES
LONDON
NEW YORK
BOGOTÁ
CIUDAD DE MÉXICO
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