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LEGAL FLASH

LAW 31 OF JUNE 18, 2010
WHICH ESTABLISHES THE HORIZONTAL PROPERTY REGIME

Real Estate and Property Practice Area

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Panama, July 2010. On June 18, 2010, the National Assembly approved Law 31, which establishes the Horizontal Property Regime. This new law replaces the previous law regulating horizontal properties, Law 13 of 1993, as amended by Law 39 of 2002. Below is a summary of the most relevant changes to the law:

- Within the concept of Real Estate Units (*unidad inmobiliaria*), the new law now includes subdivisions of lots (*lotificación*), subdivisions of parcels (*parcelación*) and housing developments (*urbanización*), as well as existing housing developments that are managed as non-profit associations, which can all now be incorporated into the Regime. These are defined as follows (Article 5):
    - Subdivision of lots: Division of land of 1,000 square meters or less, with a common pattern in terms of the area and dimensions of the lots.
    - Subdivision of parcels: Division of land of a least one hectare, without a repetitive pattern in terms of the area and dimensions of the parcels.
    - Housing development: Project on a piece of land which includes the provision of roads, public services, social facilities, areas for public and private use, and lots suitable for building on.

- The concept of Real Estate Complexes (*conjunto inmobiliario*) has been expanded in the new law to include a group of real estate units planned or built on one or more pieces of land, which may include buildings and lots with separate ownership regulations. The law also includes the concept of a "Horizontal Property Administration Committee", which is a new administrative body made up of representatives from each horizontal property that shares common areas within a complex that is incorporated into the Horizontal Property Regime (Article 5).

- The law also contemplates Horizontal Properties for Tourism (*Propiedad Horizontal Turística*), which allows property owners to register with both the Horizontal Property Regime and the Tourism Registry and designate any of their units as tourism accommodations.

- Within the Joint Ownership Regulations, a property can now be defined as "multi-use", provided that the applicable zoning laws in the area where the property is located permit it. If a property is to be designated as multi-use, the areas or floors affected should be clearly defined. However, designation as residential use excludes the possibility of using the property for anything other than the habitual residence of persons (Article 5).

- The process for incorporating a property into the Horizontal Property Regime under the new law is substantially similar as under the old law, with the following additions (Article 36):
  - If the project is being constructed in stages, the establishing title must specify the area already built, with the corresponding value of the land and improvements, as well as the remaining areas and their corresponding values.
  - For a real estate complex, the title must specify if one or various Horizontal Property Regimes are being established over the area contemplated.
  - For a tourism property, the title must include proof of registration with the Tourism Registry, and details and technical specifications regarding the kind of accommodations to be developed.
  - Where a building is less than 20 years old, it can be incorporated into the Regime with the approval of only 51% of the occupants (Article 40).
  - For subdivisions or housing developments whose improvements will be constructed at a later date by each purchaser, the promoter must submit an application to the Ministry of Housing and Land Use, together with a payment of 0.2 of 1% of the declared value of the infrastructure. The acquirer of each lot must later make a payment of 0.2 of 1% of the declared construction value once the improvements to the land are completed (Article 42).

- Under the new law, the sale, transfer, donation, barter or any other disposition of parking spaces or annexes is prohibited in the following circumstances: (1) when it would be detrimental to the owners of the real estate units; (2) when the real estate unit owners are excluded from the rights or benefits of those goods; or (3) when the disposition of such goods would leave the units with fewer than the number of parking spaces required by Ministry of Housing and Land Use's regulations (Article 14).

- Once a property has been incorporated into the Horizontal Property Regime, the promoter is required to specifically assign the parking spaces and annexes that correspond to the real estate unit. In the past, promoters were permitted to simply indicate the number of parking spaces and annexes that were allocated to each unit (Article 14).

- In the case of the sale of parking spaces, the deed of sale should include the certification from the Ministry of Housing and Land Use which declares that the seller is not left with fewer parking spaces than is permitted under the land use regulations. The new law also establishes that annexes may not form separate properties from the real estate unit to which they are attached (Article 11).

- In addition to the functions listed in the previous law, the Horizontal Property Administration (previously known as the Horizontal Property Department) is empowered to validate sessions, acts and resolutions of the Property Owners' Assembly and the Board of Directors, hear and address complaints with respect to the administration of horizontal properties, issue resolutions with respect to removal from the Regime, and penalize violations with fines ranging from B./ 50.00 to B./ 1,000.00 (Article 83).

- The Property Owners' Assembly may now acquire a private good previously offered by its owner such that it may be used as a communal good, with the approval of 66% of the total number of real estate units (Article 18).

- The owners' fees for communal expenses can only be increased with the approval of 51% of all of the real estate units, and only if it corresponds to a proven necessity for the functioning of the horizontal property (Article 20). To change the participation rate of the communal fees or charge an extraordinary fee, the approval of 66% of the property owners who are up to date with their financial obligations to the property is required. If it is not possible to reach this level of approval due to lack of attendance at the Property Owners' Assembly, the change may be approved at a second meeting with the approval of 33% of the property owners who are up to date with their financial obligations to the property (Article 32).

- Under the new law, the Purchase and Sale Agreement should include the promoter's reserves on adjacent areas such that the developer may carry out future development plans, provided that rules for urban development are complied with. The Purchase and Sale Agreement may also provide for a charge covering the period between delivery of the property and the constitution of title to the property, which may not be more than 1% of the outstanding balance of the agreed price and may not be for more than three months. This charge may only be included if the occupation permit has been obtained and the unit has been delivered (Article 95). These charges were also permitted under the previous law, but the limit of 1% of the outstanding balance is new.

- The reserves made by the promoter should be included in the Joint Ownership Regulations. Under the new law, these reserves will only be valid for a maximum of 10 years, and any stipulation to the contrary will be void (Article 43).

- According to the new law, the promoter must pay all of the communal expenses of the horizontal property from the time of the issuance of the occupancy permit until the sale of the unit is registered in the Public Registry or the unit is delivered to the new owner. If, for a reason attributable to the promoter, the unit is not delivered to the new owner upon registration in the Public Registry, the promoter must continue to pay the corresponding communal expenses until the unit is delivered. In the case of a project that is being constructed in phases, the promoter must cover all of the communal fees for each phase (Article 24).

- The new law specifies that property owners who are not up to date with their payment of maintenance or other fees may not vote in the Property Owners' Assembly (Article 45).

- In the event that a third of the property owners who are up to date with their financial obligations conclude that one or more of the articles in the Joint Ownership Regulations include clauses which are unfair or contrary to the Horizontal Property Regime, or that one or more clauses benefit only the promoter to the detriment of the other property owners, the property owners may request that changes be made to the clauses by the Horizontal Property Administration. This article is valid for one year, dated from the entry into force of the new law (Article 93).

Additional changes:
Property Owners' Assembly

- The Property Owners' Assembly must meet at least once each year, and the law outlines rules with respect to the required participation at these meetings (Article 50).
- Legal persons who are property owners must be represented at the Assembly by a natural person, who need not be a legal representative of the legal person (Article 51).
- Resolutions of the Property Owners' Assembly must be issued within 3 calendar days from the date of the meeting (Article 53).
- The act of the Property Owners' Assembly in which the Board of Directors and the Administrator are chosen must include their personal identification numbers, if the persons selected are natural persons, or information regarding their registration in the Public Registry, if they are legal persons (Article 54).

Board of Directors

- The number of persons on the Board of Directors has been reduced from four to three. In addition, a Board of Directors may be composed of just two members if the property is made up of only two real estate units (Article 55).
- The new law outlines the role of the Board of Directors in carrying out the decisions of the Property Owners' Assembly (Article 62), including the roles of the president, vice-president, treasurer, secretary and at-large member (Chapter IV).
- Where there are various buildings within a residential or commercial complex, administrative committees may be set up for each building; each committee should consist of at least a coordinator and a secretary, and one member of each committee should sit on the Board of Directors (Article 70).

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Administration

- Where there are fewer than 10 units in a property, a member of the Board of Directors may carry out the functions of an administrator (Article 71).
- The administration must report to mortgage institutions, in writing and on a monthly basis, those real estate units that are four months behind on the payment of their communal fees in order that the mortgagee be responsible for their payment upon an auction sale of the property. The previous law stipulated that properties that were two months behind in their payments had to be reported to credit institutions (Article 89).

The new law will enter into force on July 18, 2010.