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LEGAL BULLETIN

CHANGES TO THE LAW REGULATING HORIZONTAL PROPERTY

On February 14, 2022, Law No. 284 of February 14, 2022 came into force, which regulates the horizontal property (condominium) regime and replaces Law No. 31 of June 18, 2010, which previously regulated this matter.

The main changes to the horizontal property regime under the new Law 284 are the following:

- Article 2 defines the guiding principles that govern the horizontal property regime, such as peaceful coexistence and social solidarity, right to due process, right to petition, confidentiality, respect for decisions, respect for human dignity and sustainability and social function.

- Real estate "given in concession" is excluded from buildings or projects that may be incorporated under the horizontal property regime.

- Article 6 introduces new terms, such as *“Management”, “Sumptuous Goods”, “Biosafety”, “Support Committee”, “Horizontal Property Management Support Committee”, “Component Committee”, “Transition Committee”, “Components”, “Extraordinary Disbursements”, “Emergency Fund”, “Property”, “Good Standing Certificate”, “Voting Power”, “Owner Up-to-date”, “Initial Owner”, “Surcharge”, “Reserve”, “Construction Reserve”, “Common Property Reserve”, and “Constitutive Title”.* It should be noted that the law also introduces new concepts where under the old law there was a legal vacuum, such as *"Primary Condominium"*, and *"Sub Condominium".* The definition of *"In Arrears"* eliminates the previous 2-month grace period, and now provides that the term may be established in the Coownership Regulations, and, if not defined in the Regulations, the last day of the month shall be considered as the payment deadline.

- The new law includes additional details to as to what are considered common assets, and reduces to 51% the percentage of the Homeowners’ Association that is require to approve certain decisions, such as: (i) that some common assets be assigned exclusively for the use of one or more owners; (ii) the acquisition by the Homeowners’ Association of a private asset offered by its owner to be used as a common asset; (iii) the modification of the ownership percentage of each owner in the common assets; and (iv) the establishment of parameters for payment arrangements, incentives for advance payments, and other actions that promote the payment of common fees. Previously, for the approval of the issues detailed in numerals (i) and (iii), an approval of 66% of the Homeowners’ Association was required.

- Article 28 details a series of measures that can be applied to owners in arrears in the payment of common expenses, including a surcharge of up to 20% on unpaid fees.

- The new law establishes that in order to determine the economic amount and the origin of the damage caused to common or private property attributable to any unit and its owner, the administrator must have the opinion of a qualified expert, and the report on damages must be prepared with the participation of the administrator and the affected owners, who may also contract the services of experts in the matter.

- Fines of $500 to $1,000 may be applied in case of repeat violations of the law.

- The new law establishes that 51% of all of the units that are up to date in their common fees may approve the modification of the common fees or approve extraordinary fees. Previously a threshold of 66% was required. In addition, the minimum quorum required in the second call for a meeting (where quorum is not reached in the first call) is reduced to 30%, instead of 33% as required under the old law. The favorable vote to approve the construction of additional improvements that will be part of the horizontal property was also reduced to 51% of all the units that are up to date in the payment of the common fees. Previously, 66% approval was required.

• The developer must pay a fee for the ancillary assets (such as parking spaces and storage deposits) that are reserved by the developer and that have not been assigned to a particular unit, once the sale of all units is registered. The amount of this fee must be determined in the Coownership Regulations.

• Under the new law, once 51% of the units in the horizontal property have been sold, the owners will have the right to elect a new board of directors to replace the directors appointed by the Promoter.

• The law includes new provisions to regulate the Contingency Fund, the figure of the Promoter, the Owners and Committees.

• The law now permits owners to grant powers of attorney electronically for their representation in the Homeowners' Association meetings, as well through public and private documents, and allows meetings to be held remotely.

• The law establishes that with the favorable vote of 51% of all the units that are up to date in the payment of fees, the Homeowners' Association can order the Board of Directors to appoint a new administrator, if it is considered urgent or necessary. The law allows those horizontal properties with less than 20 units to operate without an administrator, in which case the work of the administrator may be carried out by the officers designated by the Board of Directors (previously this exception was limited to horizontal properties with less than 10 units).

• The functions of the administrator now include the obligation to notify mortgage creditors of the units that are four months behind in the payment of their common fees.

• The penalties that the Horizontal Property Department can apply to those who fail to comply with the provisions of the law and the regulations have been modified, from US$500.00 to a maximum of US$5,000.00. Before, the maximum was US$1,000.00.

• The new law now enables owners to submit disputes to arbitration processes for resolution, and the Judicial Branch is empowered to create specialized courts to hear exclusively horizontal property matters.

• Actions against decisions of the Homeowners' Association, the Board of Directors and the Administrator, prescribe in 3 months counted from the publication, delivery to the owners, or registration in the Public Registry of such decisions, as applicable.

• Under the new law, mortgage creditors or trustees may include the payment of common fees in the monthly installments they collect, which must subsequently be sent to the horizontal property administration.

We hope you will find this information useful, and we are available in case you have any questions.

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