
New protection measures for mortgage debtors in Spain

Royal Decree-Law 19/2022 reinforces the protection of vulnerable mortgage debtors, to prevent financial difficulties as a result of the rise in interest rates.

Spain - Legal flash

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Key aspects

The regulation adopts, among others, the following measures:

- It proposes a new Code of Good Practice on a transitional basis for the restructuring of the mortgage debt of middle-class mortgagors at risk of vulnerability due to rising interest rates.
- It amends the existing Code of Good Practice under Royal Decree-Law 6/2012 (“**RDL 6/2012**”).
- It adopts other measures to make subrogation easier for any consumer, or to convert variable rate loans to fixed rate, as well as to encourage competition in the mortgage loan market and promote financial education in this context.



The regulation

Royal Decree-Law 19/2022 of November 22, 2022 (“**RDL 19/2022**”) came into force on November 24, 2022.

This regulation includes, among others, a set of measures to reinforce the protection of vulnerable mortgage debtors, anticipating the situations of financial difficulty that may result from the rise in interest rates, also considering the generalized increase in the cost of basic goods and services.

The new Code of Good Practice

RDL 19/2022 proposes a new Code of Good Practice for consumer mortgage debt restructuring.

A resolution of the Council of Ministers of November 24 established the terms of this new Code, including the eligibility conditions.

The following are the most relevant aspects of the new Code:

- It is temporary (two-year validity).
- It is voluntary and open to credit institutions and other entities or individuals engaged, in a professional manner, in the granting of loans or credits.

There is a one-month period to adhere, after which the list of participating entities will be published.
- Participating entities will incorporate it to their entire contract portfolio as of their adherence. Therefore, debtors who have not benefited from the measures of the Code may request them during its validity period. In the event of credit assignment, entities must adopt the necessary measures to safeguard the rights of the assigned debtors—which is established as a regulatory and discipline obligation.
- The period for requesting the novation of the mortgage loan will begin with the publication of the list of participating entities and will last until December 31, 2024.
- The measures will apply to individual debtors of mortgage loans granted before December 31, 2022, and secured by their principal residence (or that of the non-debtor mortgagor), provided that its purchase price does not exceed EUR 300,000. Debtors must meet the following income requirements:



- Household income must not exceed 3.5 times the annual 14-payment IPREM (Public Income Index). This limit is increased in certain cases (disability, dependency, mental or serious illness, among others).
 - In the 4 years prior to the request, the mortgage burden on household income must have multiplied by at least 1.2, or any of the special vulnerability situations detailed in the Resolution of November 23 must have arisen.
 - Monthly mortgage payment must exceed 30% of household net income.
- The Code includes the following optional mortgage loan modifications:
- Extension of the repayment term up to seven years, with the option of total grace period or temporary fixed installments for 12 months. The outstanding principal will accrue interest at a rate representing a reduction of 0.5% of the net present value of the loan. This extension cannot result in a reduction of mortgage payments below what was being paid on June 1, 2022, nor may the total term of the loan exceed 40 years.
 - Conversion of variable rate loans to fixed rate.
- Upon registration in the Land Registry, novation deeds will be fully effective, if applicable, against registered intermediate creditors, even without their consent. Besides, it will not imply a loss of ranking for the creditor.
- Participating entities must inform all mortgage loan customers individually of the existence of the Code and the possibility of taking advantage of it. This information must be provided within the month following adherence to the Code—which is established as a regulatory and discipline obligation.
- The monitoring committee created by RDL 6/2012 will oversee the implementation of the Code. The participating entities must provide this committee with Code-related information on a monthly basis. This is also established as a regulatory and discipline obligation.
- Novation deeds are exempted from stamp duty and will benefit from significant reductions in notary and registration fees.
- Participating entities must provide debtors with simplified information on the measures available to novate the loan. Once the debtor has firmly opted for one of them, the relevant entity will deliver a novation proposal.
- Novation transactions under this Code cannot modify the interest rate unless provided for under the Code. Likewise, novations must not result in expenses or fees, nor can they be marketed together with linked or combined products, nor require additional guarantees.



- > Formalization of the novation of the loan agreement will not be subject to the pre-contractual formalities under Act 5/2019 on real estate credit agreements (*Ley reguladora de los contratos de crédito inmobiliario* or “LCCI”).
- > As mentioned above, RDL 19/2022 establishes certain regulatory and discipline obligations in the sense of the Spanish Act on the regulation, supervision and solvency of credit institutions, and their violation will be considered a serious infringement.

Revision of the current Code of Good Practice

RDL 19/2022 revises the current Code of Good Practice under RDL 6/2012. These are the main modifications:

- > An increase in the mortgage burden on household income will be considered a significant change in the economic situation, thus making debtors eligible for the exclusion threshold. In other words, the requirement of (at least) a 1.5-times increase in the mortgage burden on household income is no longer applicable.
- > RDL 19/2022 modifies some of the measures the debtor may propose within the framework of a restructuring plan:
 - Treatment of the grace period and extension of the repayment term are graded, establishing shorter terms for non-significant increases in the mortgage burden on household income and in the absence of special vulnerability.
 - The interest rate applicable during the grace period is significantly reduced from EURIBOR plus 0.5% to EURIBOR minus 0.10%, with certain exceptions for non-significant increases in the mortgage burden on household income and in the absence of special vulnerability. In fixed rate loans, the fixed rate is applied.
- > Upon expiration of the grace period under the first restructuring plan, debtors may request a second restructuring plan with a grace period of up to five years, at the same reduced rate applicable during the first grace period.
- > The period for requesting transfer of property in lieu of payment where restructuring is not viable, or where debtors fail to meet payments two years after the restructuring request, is extended from one to two years.
- > The period for requesting property rental in the event of foreclosure suspension is extended from six months to one year. This period will begin to run from the entry into force of RDL 19/2022, on November 24, 2022, for debtors whose foreclosure has been suspended, and from the suspension if it occurs later. These periods are not subject to the minimum rental terms under the Spanish Urban Lease Act.



Other amendments are intended to align the terms and conditions of the previous Code with those of the new Code under RDL 19/2022:

- Participating entities will also incorporate the Code of Good Practice under RDL 6/2012 to their entire contract portfolio as of their adherence, in the same terms as the new Code. This is also established as a regulatory and discipline obligation.
- Likewise, formalization of the novation of the loan agreement will not be subject to the pre-contractual formalities under the LCCI.
- Novation deeds will be exempted from stamp duty and will benefit from the notary and registration fee reductions provided for in the new Code, which are higher than before the entry into force of RDL 19/2022.
- Participating entities must inform all mortgage loan customers individually of the existence of the Code and the possibility of taking advantage of it. This information must be provided within the month following the two-week period from the entry into force of RDL 19/2022 given to participating entities to request their exclusion. In addition, information on the measures must appear in a prominent place on the website and through the branch network.
- Monthly reporting to the Code monitoring committee is established as a regulatory and discipline obligation.
- The same sanctioning regime applies, also subject to regulatory and discipline legislation.

Other measures

RDL 19/2022 establishes other measures to make creditor subrogation easier for any consumer, or to convert variable rate loans to fixed rate, as well as to encourage competition in the mortgage loan market and promote financial education in this context.

The following measures deserve particular attention:

- Creditor subrogation under the special regime of the Spanish Act on the subrogation and modification of mortgage loans is now available to any natural or legal person engaged, in a professional manner, in the granting of loans within the scope of the LCCI.
- Debtor protection is strengthened where lending institutions intend to prevent subrogation or fail to cooperate for this purpose. Within the subrogation term (15 days from delivery of the debt certificate), creditors willing to prevent subrogation must formalize the novation of the loan. Furthermore, in the absence of a debt certificate or refusal to receive payment, subrogation may be carried out based on the calculation made by the subrogated creditor under its responsibility.



- > The upper limit of early repayment fees is reduced from 0.15% to 0.05% for conversions from variable to fixed rate loans, within the framework of interest rate novation or creditor subrogation. Also, novation without capital repayment will not be subject to fees.
- > Accrual of early repayment fees under the LCCI is suspended until December 31, 2023. In addition, no fees will accrue during this period for the conversion of variable rate loans to fixed rate.

Finally, the Bank of Spain is expected to publish the “Guidelines for mortgage debtors in difficulty” in the first quarter of 2023. These should include the content related to the aforementioned Codes of Good Practice and the mechanisms for individual exemption from liability under insolvency legislation.

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