

COVID19 REFORMS

TO THE CIVIL CODE OF NUEVO LEON FOR RETAIL LEASES

On October 2, 2020, Decrees 357 and 358 were published in the Official Gazette for the State of Nuevo León, which amended articles 2005 and 2326 of the Civil Code for the State of Nuevo León ("CCNL"), entering into force on October 3, 2020, pursuant to the following:

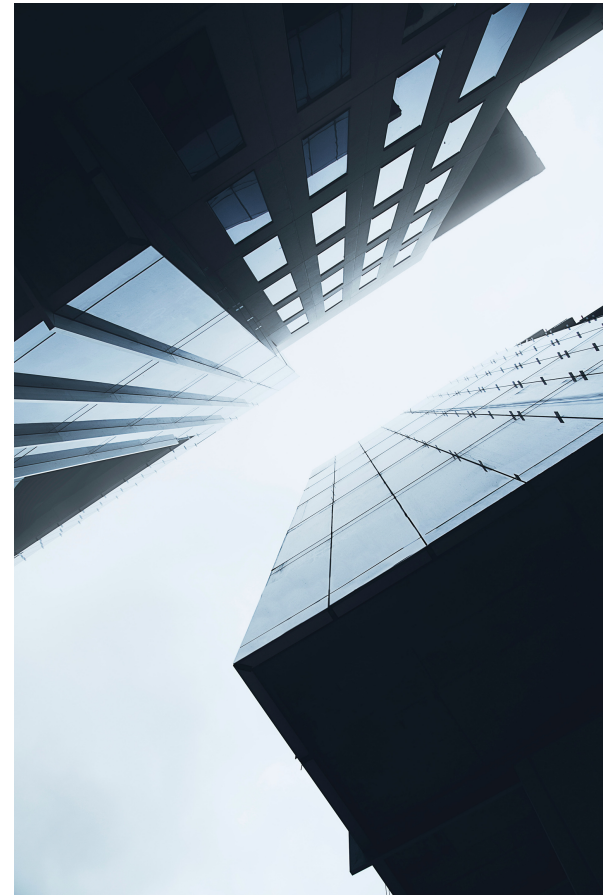
- **Article 2005:** No one is obliged to acts of God or **force majeure**, except when given caused or contributed thereto, when expressly accepted such responsibility, or when mandated by law.
- **Article 2326:** If the use of the property is impeded only in part, the tenant may request a partial reduction in rent, based on the opinion of experts, unless the parties elect to terminate the contract, provided the impediment lasts for the period of time set forth in the preceding article.
Tenants of real properties conducting commercial activities that are disturbed in their enjoyment as a result of a declaration of civil protection or sanitary emergency issued by competent authority, which orders the suspension of their commercial activities, may be entitled to a reduction in rent for the duration of the emergency declaration and prohibition for opening their business on the jurisdiction where the property is located, according to the terms agreed to by and between landlord and tenant, or in the absence of an agreement, as defined by competent authority.

Likewise, it is important to remark that article 2327 of the CCNL establishes that articles 2326 and 2325 are non-waivable, the latter in turn providing that: *"If by act of God or force majeure the tenant is completely prevented from using the leased property, no rent shall be accrued while the impediment lasts, and if it lasts more than two months, tenant may request the termination of the contract."*

On the other hand, it is important to consider that unlike article 2325 of the CCNL where the existence of an act of God or force majeure is conditioned to an absolute impediment as a result of a wide variety of concepts, the reformed article 2326 of the CCNL specifically conditions the temporary reduction of the rent to the following circumstances:

- Leases over a real estate property where commercial or retail activities are carried out (not applicable then to residential or industrial leases).
- Declaration of civil protection or sanitary emergency issued by competent authority, ordering the suspension of commercial activities.
- Such declaration resulting in the disturbance to enjoy the leased property by the tenant.

Since new article 2326 establishes that the tenant shall have the right to a reduction in the rent amount, which will be subject in first instance to the agreement between the parties and, in the event of not reaching an agreement, the competent authority will be in charge to determine the applicable temporary reduction, it is advisable to prevent this type of eventualities in new lease contracts for commercial real estate facilities located in Nuevo León, by including a specific and balanced provisions regarding the agreement of the parties on a temporary reduction in rent that may become applicable in terms of such article 2326 of the CCNL.



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