



OCTOBER 28, 2020 | NEWSLETTER



Covid19 Reform to the Civil Code of Chihuahua for Leases



On October 28, 2020, Decree number LXVI/RFCOD/0780/2020 (the “Decree”) was published in the Official Gazette for the State of Chihuahua, which amended articles 1691-e and 2330 of the Civil Code for the State of Chihuahua (the “CCC”), entering into force on October 29, 2020.

The Decree establishes amendments to the provisions of the CCC regarding leases in the event of a major epidemic or sanitary contingency (the “Contingency”), consisting in classifying such Contingency as a valid case for the applicability of the legal feature known as **“Hardship”**, granting the parties the right to *“agree on the terms of the termination or the modifications of the contract under the principles of equity and good faith, taking into account the extraordinary circumstances during the period they remain in force, or to appear before the competent courts, which shall evaluate the principles and circumstances mentioned above”*.

Likewise, it is provided that in the event of a Contingency, during the time that the measures deriving thereof remain in force, recognized by the competent sanitary authority, which prevent or modify full or partial conditions of use of the leased property for the tenant, **it shall be considered that no default in the payment of rent is incurred, therefore, the landlord could not terminate the lease on such basis.**

It is important to remark that the Third Transitory Article of the Decree, establishes that the **parties with lease agreements in force in 2020, must agree on the corresponding modifications, with retroactive effects as of March 23, 2020**, in order to reestablish conditions of fairness under the current socioeconomic circumstances, while and until normal conditions are reestablished or the end of the Contingency is decreed by competent authority.

Considering the principle of non-retroactivity of the law, in the interest of legal certainty, provided under Article 14 of the Constitution, which states that “no law shall be given retroactive effect in detriment of any person”, the Decree might be challenged by anyone who is affected.

Finally, from our review to the original reform proposal, we noted that the intention was to cover the restaurant industry thereby, however, while being processed by the State of Chihuahua Congress, it was extended to all type of leases and asset classes.

Following a complete transcript of the reform under the Decree:

- **Article 1691-e:** Only those unforeseeable events of general nature, which produce unfair alterations in what was agreed by the parties, such as circumstances that affect national, state or regional economic situation or other related matters, in such a way that if the contracting parties had known them, they would not have agreed in the way and terms they did or would not have contracted, will be considered as extraordinary events.

In case of major epidemics, as recognized by the competent federal or state sanitary authority, the provisions of paragraph 2330 and other applicable provisions of this Code shall be applied.

- **Article 2330:** 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 the impediment lasts more than two months, tenant may request the termination of the contract.
- **If the impediment to use the leased property is due to a major epidemic recognized by competent federal or state sanitary authorities, the provisions of articles 1691-a to 1691-g of this Code shall be applicable. In this case, the parties may agree on the terms of termination or the modifications of the contract under the principles of equity and good faith, taking into account the extraordinary circumstances during the period that they remain in effect, or they may go before the competent judicial authority, which shall evaluate the aforementioned principles and circumstances.**



Regarding leases, in the event of causes derived from epidemics of major character recognized by competent sanitary authority, which prevent or modify the conditions of total or partial use of the leased property, in accordance with the provisions of this article, and other relative of this Code, it shall be considered that there is no default in the payment of rents, during the time that the measures derived from the sanitary contingency remain in effect.

- **Third Transitory Article:** Individuals and/or legal entities with lease agreements in force during the present year 2020, must agree on the modifications of the forms and modalities of the execution of the same, with retroactive effects as of March 23 of said year, in order to reestablish the conditions of equity under the current socioeconomic circumstances, while and until restoration of normal conditions occur or until a decree is issued by legally competent means, establishing the end of the sanitary emergency set forth in the Agreement published that same day in the Official Federal Gazette, by which the SARS-CoV2 virus (COVID-19) epidemic in Mexico is recognized as a disease of serious priority attention, as well as establishing the activities of preparation and response to such epidemic. The recognition of reestablishment to the referred normality, will be equally valid if it is issued by competent state authority.

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