

IMPACT OF THE COVID19 EPIDEMIC ON THE FUNCTIONING OF LAND, BUSINESS AND MOVABLE PROPERTY REGISTRIES OF SPAIN

The incidence of COVID-19 in the sphere of the Registries is profound, as it affects the life of the companies being incorporated and registered at the Business Registers, but also the solvency and proof thereof of Citizens.

Leaving aside material provisions, properly dealt with in other relevant passages of this paper, I will focus on the impact the Declaration of the State of Alarm has made in the functioning of the Registries. To that end we will examine the rules issued to address this situation while it lasts:

- Resolution of Directorate General of Legal Certainty and Public Trust (DGSJFP) of March 13th, passing the Contingency Plan included with the Continuity Plan for Registration Operation, COVID-19, on measures to be adopted in case of epidemics (RDGSJFP March 13th)
- Royal Decree 463/2020, of March 13th, declaring the State of Alarm in order to manage the health crisis created by COVID-19 (RD 463/2020).
- Resolution of Directorate General of Legal Certainty and Public Trust (DGSJFP) of March 15th, establishing new measures after the Declaration of the State of Alarm (RDGSJFP March 15th).
- Royal Decree-Law 8/2020, of March 17th, of Urgent and Extraordinary Measures to face the Economic and Social impact of COVID-19 (RDL 8/2010).

In accordance with these provisions, the changes introduced in the operation of the Registries are the following:

1 *Opening Hours of Registry Offices.*

RDGSJFP of March 15th on its sixth paragraph states:

“For the sake of complying with what the Health Authorities have decreed regarding confinement and social distancing, and in order to facilitate conciliation, during the State of Alarm and until it subsides, the opening hours of the Registry Offices will be the same as during the Summer Season , that is: Monday to Friday from 9AM to 14PM”.

The Registry Offices will remain open to the Public Monday to Friday between 9AM to 14PM. This Opening Hours will be the same with regards to the Log Ledger of the Registry, where documents entering the Registry are recorded to ensure the order of entry.

The Offices are open to any citizen wishing to submit documents to the Registry, who for some reason cannot or do not want to do it by electronic means. In those instances where an Office is closed on sanitary grounds, submission will be diverted to other open Registry Office. Even with a Closed Office the Registry will remain functioning, although public Access may be temporarily restricted. The Office will be closed for advice requests and the issuance of Publicity.

2- Legal Assessment and Dispatch of Documents. Notification of Defects.

The Second Section of RDGSJFP of March 13th amended by RDGSJP of March 15th, states:

“SECOND: In any case the ordinary term for assessing and dispatching documents will be extended in 15 additional days while the submission entry remains valid, in accordance with article 18 of the Mortgage Law, for all documents with a submission entry still valid at the time of the Publication of this Resolution up to the point where a new Resolution is issued by General Directorate of Legal Certainty and Public Trust, once Health Authorities lift the restrictive measures currently in place”.

The term for assessing and dispatching documents is extended to 30 days, in accordance to what is stated in article 18.2 of the Mortgage Law, in relation to documents pending dispatch or submitted starting on March 13th.

Legal Assessment is not suspended, and must be completed within 30 working days. What is suspended are processual aspects such as Defect Validation, Requests for Alternate Assessment or Legal Recourses against the Assessment conducted by the Registrar, according to the third Supplementary Provision of the Royal Decree.

3- Submission of Documents.

Electronic Submission is active and possible at www.registradores.org, in the terms contained thereof.

Regarding the submission, by facsimile, of documents to the Log Ledger, which must be consolidated within the term of ten days, according to article 418 of the Mortgage Regulations, and considering Instruction from Directorate General of Registries and Notaries of June 19th 2019, the following remarks can be made:

- When dealing with Electronic Documents. A distinction must be made depending on the results of CSV (Secure Verification Code) validation. If the CSV check does not return errors, the document will be considered consolidated, as per the aforementioned Instruction.

- If an error were present, the consolidation term for the Submission Entry will be suspended, in accordance with article 41 of the Royal Decree-Law. This suspension can be renounced by the submitter by physically presenting the document, as long as the Registry Office is not Closed as notified to Directorate General of Legal Certainty and Public Trust, resulting in consolidation in the legally foreseen terms.

- -When dealing with non-electronic Documents. The term for consolidation will be suspended according to article 41 of the Royal Decree Law. This suspension can be renounced by the submitter by physically presenting the document, as long as the Registry Office is not Closed as notified to Directorate General of Legal Certainty and Public Trust, resulting in consolidation in the legally foreseen terms.

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4- Attention to Citizens

Section Three of RDGSJFP of March 15th states:

“... for the duration of this situation and while the state of Alarm lasts, daily attention to citizens to be provided by the Registrar and the Staff of the Registry Office, as foreseen in article 5 of Royal Decree 1935/1983 of May 25th, will be carried out exclusively by email or telephone. The email address of each Registry can be found at www.registradores.org”

5- Formal Registry Publicity

Resolution DGSJFP of March 15th 2020, states:

“FIFTH.- The requests for Registry Information Extracts and Certifications will be made exceptionally, as long as Royal Decree 463/2020 of March 14th stands, and its possible extensions, by means of the web portal www.registradores.org, stating the alleged legitimate interest for the request. However, the request of information extracts will be possible by means of Email”.

Assessment of the alleged legitimate interest will be made under the same principals. The identity of the requestor will be proved by supplying a copy of the ID card to the email application.

A special reference is due to Index Information Extracts to be issued for the sake of requesting a Mortgage Moratorium. Royal Decree-Law 8/2020 of March 17th, of Urgent and Extraordinary Measures to face the Economic and Social impact of COVID-19 (RDL 8/2010), states in articles 7 through 16, the ability for debtors to apply for a Mortgage Moratorium. To that end the interested party will need to supply, according to article 11.1.d) an Information Extract issued by the Index service of the Land Registry to all the members of the Family Unit. Details on the procedure to apply for this extract via email, by supplying the ID card of all members of the Household, can be found at www.registradores.org. This information will be, as an exception, free of charge.

6- Expiration of Entries.

Article 42 of RDL 8/2010 states:

“Article 42. Suspension of the expiration term for Registry Entries while the Declaration of Alarm stands.

While the State of Alarm is still in place, including in its case the extensions approved to such State, the following measures will be implemented:

First: The term for the expiration of Submission Entries, Preventive Annotations, quotations, marginal annotations and any other registry entries suitable for cancellation due to the lapse of time will be suspended.

Second. The calculation of terms will be resumed the day after the State of Alarm or, in its case, its extensions is lifted.

This article acts as a safeguard of those cautionary measures contained in Registry Entries subject to expiration after a certain period of time which may expire while the State of Alarm lasts.

In the Sphere of the Business Register it is worth mentioning two specific instances where terms are suspended:

a) Certifications of Reserve of Company Names, issued by the Central Business Register (articles 412 y 414 of the Business Register Regulation).

b) Certifications comprehensive of the complete history of a company, in those instances when a company changes its address to a different province (article 19 of the Business Register Regulation).

In the Sphere of the Land Registry, all Proceedings of Coordination with the Cadastre, as foreseen in article 199 of the Mortgage Law, are suspended.

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Madrid, 26th of March 2020