

### Law 19/2015 on Administrative Reform Measures concerning the Justice System and the Civil Registry

Law 19/2015, of July 13, 2015, on Administrative Reform Measures concerning the Justice System and the Civil Registry was published in the Official State Gazette on July 14, 2015. This Law sets out the new legislative measures needed to implement the e-auction system through a single auction portal at the State Agency for the Official State Gazette, used for court and notarial auctions alike, and electronic registration procedures for births and deaths at healthcare institutions.

The Law comprises two parts: (i) the first part concerns e-auctions and the reform mainly affects Civil Procedure Law 1/2000, particularly – in respect of almost the entire auction process, for both movable property and immovable property, whether mortgaged or not – in order to adapt auctions to the electronic system, with the principles of publicity, certainty and availability underpinning the amendments; (ii) the second part amends Civil Registry Law 20/2011, of July 21, 2011, the Civil Code and Law 14/2006, of May 26, 2006, on assisted human reproduction techniques, so that newborns can be registered directly at healthcare institutions, thereby obviating the need to appear in person at a Civil Registry Office, and to put in place e-medical certificates so that births and deaths occurring in normal circumstances can be registered at healthcare institutions.

#### 1. E-auctions and the amendments to Civil Procedure Law 1/2000, of January 7, 2000 (Article 1)

Various provisions of the Civil Procedure Law are amended (Articles 551, 636, 644, 645, 646, 647, 648, 649, 650, 652, 653, 656, 657, 660, 661, 667, 668, 669, 670, 673, 674, 682, 683, 685, 686, 688, 691 and 693) in order to adapt auctions of both movable property and immovable property, whether mortgaged or not, to the electronic system, a system for which court clerks will be responsible through the Auctions Portal of the State Agency for the Official State Gazette.

Court clerks are required to consult the Public Insolvency Registry for the purposes set out in paragraph 4 of Article 5 *bis* of the Insolvency Law before issuing an order for enforcement, and are also required to notify that Registry of the existence of such order and the completion of proceedings.

##### 1.1 Auctions of movable property:

- The amendments made include changes to the rules governing calls and notices of auctions, under which they must be published in the Official State Gazette and, for information purposes, on the Justice System Portal. The Law also allows greater publicity to be given to auctions, where this is reasonable, using the public or private media best suited to the nature and value of the property. The costs of any such additional publicity will be borne by the person requesting it.

- As regards the bidding requirements, bidders must deposit 5% of the value of the property. This deposit must be made electronically using the remote services of the State Tax Agency, which will receive the proceeds through the authorized depository institutions. The rules on the procedure for formalizing the online deposit system must be enacted not later than three months from publication of the Law (Final Provision Six).
- Bidders must be registered on the system as users by means of secure identification mechanisms and electronic signatures, in accordance with Electronic Signature Law 59/2003, of December 19, 2003.
- Articles 649, 650, 652 and 653 are also amended to adapt them to the new e-auction system in matters relating to the conduct of auctions, approval of the successful bid, completion of auctions, payment and the award of property.

### **1.2 Auctions of immovable property:**

- The same rules that apply to auctions of person property will apply to auctions of immovable property, subject to the special provisions set out in Section 6 concerning specific immovable property or movable property subject to similar rules on disclosure by registration.
- An amendment is made to Article 656 relating to certificates of ownership and encumbrances, which must be issued in electronic form with structured contents. Registrars must inform court clerks and the Auctions Portal, also by electronic means, of the filing of ownership instruments which affect or alter the information for auction notices. In relation to information on encumbrances which have been removed or reduced, as provided for in Article 657, its paragraph 3 is amended to shorten, from twenty days to ten from the date of the demand served on the party subject to enforcement and the creditors, the period after which, if there is no reply, the encumbrance – for enforcement purposes – must be deemed to be updated on the terms set out in the prevailing instrument.
- As regards notifications to holders of prior and subsequent encumbrances, holders are allowed to include on the register the addresses in Spain at which they wish to be notified in the event of enforcement. They may also add an e-mail address so that notifications can also be sent by e-mail in addition, rather than as an alternative, to personal addresses. It is also provided that, if notification is not possible, the registrar will issue a fresh communication by way of a public notice to be inserted in the Official State Gazette rather than on the registry notice board.
- As regards the notification of enforcement to lessees and *de facto* occupiers, the Law is amended so as to include the option of notification by the court procedural representative of the enforcing party where the court clerk so requests or orders.
- The appropriate changes are also made in relation to notices publicizing auctions on the Auctions Portal and the information that they must contain.
- There are new provisions on calls, notices and publicity of auctions of immovable property in Articles 667 and 668, which generally refer back to the rules on auctions of movable property subject to certain special provisions. These include the mandatory flow of information between the Auctions Portal and the relevant registry, enabling the latter to issue electronic registration information concerning the property, information which must be continuously updated until completion of the auction, and the rules on electronic public notices on the Auctions Portal, which must contain information identifying the property,

the registration particulars, the cadastral reference number, if one exists, other relevant information, an appraisal, the reduction of preferential encumbrances, information on possession if available, and the option of visiting the property if applicable. It also provides for the option to consult, on the Auctions Portal, the registration certificate, updated registration information, the cadastral reference number, and any image-based information, zoning information or environmental information, that exists and is associated with the property.

- The Law inserts a new paragraph 3 into Article 669, which entitles any interested party so that, during the bidding period, they may inspect the property subject to enforcement, on giving notice thereof to the party with possession, who must give his consent. In these cases, insofar as the party with possession properly cooperates with the courts, the debtor – if he is the party with possession or if the party with possession has acted at the debtor’s request– may apply to the court for a reduction of the debt amounting to up to 2% of the value for which the property would have been awarded. The court will examine that application in light of the circumstances and will decide whether to order a potential reduction of the debt within the maximum deductible amount.
- The time limit for the successful bidder to place the deposit is lengthened to forty days (Article 670). Article 673, which referred to simultaneous auctions, is deleted and in its place provisions are added on the ownership instrument for registration, previously set out in Article 674. Article 674 governs matters relating to the removal of encumbrances and the option of sending, by electronic means, official copies of the award decree and the order cancelling encumbrances to the relevant Property Registry, on the request of a party.

### **1.3 Enforcement of mortgaged or pledged property:**

- As regards the enforcement of mortgaged or pledged property, Articles 682 and 683 are amended in relation to the rules on notifications and demands, to include e-mail addresses and the need to evidence the notification to the creditor of changes of address by authenticated means.
- As regards enforcement applications and the required accompanying documents (Article 685), a new paragraph is inserted which provides that, for the purposes of paragraph 1 of Article 579 of the Civil Procedure Law, it will be necessary to serve (on the appropriate persons) the initial application. Service may be effected by the court procedural representative of the enforcing party (when the enforcing party so requests or when ordered by the court clerk in view of the circumstances). Furthermore, the amount claimed will be used as the basis for ordering enforcement against sureties and guarantors. That amount may not be increased by any late-payment interest which may have accrued during the conduct of the initial enforcement proceeding.
- Especially worth noting is the amendment to Article 686, concerning payment demands, paragraph 2 of which now provides that extrajudicial demands will be made by notaries, in accordance with the legislation on notaries, and contains detailed rules on how such demands should be made. Furthermore, before public notices are published under Article 164 of the Civil Procedure Law, the new wording of paragraph 3 of Article 686 requires that the office of the court must also have made the relevant inquiries to determine the debtor’s address.
- As regards certificates of ownership and encumbrances, changes are made to Article 688, which now provides that the registrar will be required, in addition to the existing requirements in the previous wording, to insert a literal copy of the registration of the

mortgage to be enforced. It is also provided that paragraph 3 of Article 656 – on the option for the court procedural representative of the enforcing party to apply for a certificate of ownership and encumbrances, upon authorization from the court clerk and after noting of the attachment – will apply in all cases.

- New provisions are inserted on calls, and public notices of auctions of this kind of mortgaged property, including: the period that must elapse between the demand for payment and the notifications and the auction is reduced from thirty days to twenty; the announcement and public notice of the auction must be effected in the manner laid down in Articles 667 and 668 of the Civil Procedure Law; and the court clerk will suspend an auction (even if already initiated) on becoming aware of the existence of an insolvency order against the debtor – provisions have been included on when the proceeding is to be resumed and on the notification that the property registrar must send to the office of the court in these circumstances.
- Lastly, with respect to claims restricted to part of the capital or interest to be paid within different time limits and the early maturity of installment debts, Article 693 – which already required notaries to record in the deed of establishment any matter concerning the debtor not having performed his payment obligation on the maturity of, at least, three monthly installments, or the maturity of a number of installments from which it may be assumed that the debtor has not performed his payment obligation for a period equivalent to at least three months – now requires that this matter must also be recorded by the registrar in the appropriate registration entry, and it is necessary for it to appear in both the deed of establishment and the relevant entry. In addition, the option for the debtor to release the property by placing a deposit is extended until the auction is closed.

## **2. On the amendments to Civil Registry Law 20/2011, of July 21, 2011, concerning, principally, the electronic registration procedures for births and deaths**

The amendments in this second part of this Law are mainly to the Civil Registry Law, and accordingly, the following legal instruments, among others, are also amended: (i) the Civil Code; (ii) Law 14/2006, of May 26, 2006, on assisted human reproduction techniques; (iii) Law 41/2002, of November 14, 2002, on patient independence and the rights and obligations concerning clinical documents and information; and (iv) Law 18/2014, of October 15, 2014, approving urgent measures to increase growth, competitiveness and efficiency.

The primary aim of these amendments is to incorporate and adapt the current legislation to the procedure for registering births and deaths remotely, and to put in place for that purpose the appropriate safeguards concerning both deaths involving any suggestion of violence or circumstances by reason of which a burial permit should not be issued, and as regards the parentage and identity of babies and the tests to be carried out to that end, as well as the checks required in the event of death of babies at healthcare institutions after the first six months of pregnancy.

Articles 44 to 47 and 49 of the Civil Registry Law are amended as regards births and parentage. Articles 64, 66 and 67 are also amended as regards the notification of deaths.

Additional Provision Nine is added to the Civil Registry Law to enable census data to be obtained from the National Statistics Institute to facilitate remote registration procedures at Civil Registries. Final Provision Ten on the entry into force of Civil Registry Law 20/2011 is amended to provide that Law 20/2011 will enter into force on June 30, 2017, except for Additional Provisions Seven and Eight and Final Provisions Three and Six, which will come into

force on the day after publication in the Official State Gazette. It is noted that in addition to the above, the Articles amended by Law 19/2015, of July 13, 2015, which we have mentioned, will enter into force on October 15, 2015.

### 3. Other amendments made by Law 19/2015

The amendments made to the Civil Registry Law by Law 19/2015 have also entailed, albeit to a lesser extent, amendments to other legal instruments. In particular:

- Under the Sole Repealing Provision of Law 19/2015, a number of additional provisions of Law 18/2014, of October 15, 2014, approving urgent measures to increase growth, competitiveness and efficiency, are repealed, including Additional Provision Twenty (which set July 15, 2015, as the date of entry into force of the Civil Registry Law); Additional Provision Twenty-one (on the management of the Civil Registry by registrars); Additional Provision Twenty-three (on other amendments to the Civil Registry Law needed to adapt it to the management of the Civil Registry by registrars); Additional Provision Twenty-four (on the uniformity of IT systems and applications at the offices of the Civil Registry); and Additional Provision Twenty-five (on the functions of the courts where these functions are not taken on by registrars).
- Article 120 of the Civil Code on the legal determination of parentage of children born outside marriage is amended to insert, as number 1, the provision that the parentage of children born outside marriage must be legally determined "*when the birth is registered, by a statement to that effect made by the father on the relevant official form referred to in legislation on the Civil Registry*" (Final Provision Two of Law 19/2015).
- Amendments are made to Law 41/2002, of November 14, 2002, containing the basic legislation on patient independence and on rights and obligations concerning clinical documents and information, in relation to (i) the contents of the medical records of each patient; and (ii) the storage of clinical documents. (Final Provision Four of Law 19/2015).
- Amendments are made to Law 14/2006, of May 26, 2006, on assisted human reproduction techniques, in relation to (i) the parentage of children born by the use of these techniques; (ii) the legal determination of parentage; and (iii) the death of the husband before birth. (Final Provision Five of Law 19/2015).

Amendments are also made affecting other legislative instruments.

- A new paragraph 5 is added to Article 17 of the Commercial Code, concerning the interconnection that the Commercial Registry must ensure exists with the European central platform, on the terms set out in EU legislation and its implementing regulations. Thus, interested parties may obtain information on the name, legal form of the company, registered office, State of registration and registration number (Final Provision One).
- The Law makes an adjustment to Article 129 of the Mortgage Law, specifically the wording of letters (a) and (f) of paragraph 2 in that Article, on extrajudicial sales before a notary (Final Provision Three).
- New provisions are added on the procedure for obtaining Spanish nationality. In particular, Final Provision Seven provides that the grant of Spanish nationality on the ground of residence will be governed by the Civil Code, by that statutory provision and by its implementing regulation, which will include special provisions for army personnel.

The procedure will be an electronic procedure, conducted by the Directorate-General of Registers and the Notarial Profession. In addition to the requirements set out in the Civil Code – the fulfillment of which must be proved by means of the documents and evidence laid down in the law and in regulations – a list is made of the elements (managed by Instituto Cervantes, on the terms and conditions determined by secondary legislation) which may be used as evidence to demonstrate a sufficient degree of integration into Spanish society, namely: (i) basic knowledge of the Spanish language (level A2 or above), except for nationals of territories or countries where Spanish is the official language; and (ii) knowledge of the Spanish Constitution and of the social and cultural reality in Spain. Minors under 18 years of age and persons whose capacity has been altered by a court will be exempt from the above requirements.

This procedure is subject to payment of a €100 fee, which will be managed by the Ministry of Justice.

#### 4. Entry into force and transitional provisions

The Law will come into force on October 15, 2015, with the exception of certain provisions (paragraph 10 of Article 2, and paragraph 1 of the Sole Repealing Provision of the Law), which will enter into force on the day following the Law's publication in the Official State Gazette, as provided in Final Provision Ten thereof.

The Law also contains various transitional provisions. Auction procedures that have already been initiated and in respect of which publication was ordered before the entry into force of the Law will continue to be conducted under the procedural rules in force on the filing date of the application (Transitional Provision One).

Transitional arrangements are also made in relation to amendments pertaining to the functioning of the Civil Registry; until Civil Registry Law 20/2011, of July 21, 2011, has fully come into force, the provisions of Article 2 of Law 19/2015 will apply to the Civil Registries governed by the Civil Registry Law of June 8, 1957 (Transitional Provision Two). In addition, the medical staff referred to in Articles 46 and 64 of the Civil Registry Law may sign in writing if they are not in possession of electronic signature certificates, although documents may be sent electronically (Transitional Provision Three).

#### More information:

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