

depuis 1617

INFORMATION LETTER

6th of April 2020

Following the Court order of the 25th of March 2020 about adapting the legal statutory deadlines during the National Health Emergency.

Here are a few practical effects on the ongoing dossiers.

Whether you are a private client or a professional real estate agent, you must be wondering about the consequences of the current Sanitary Crisis on your ongoing dossiers, and especially about its consequences in matters of delays.

The purpose of our very first information letter was already to inform you that signing deeds at our firm was still possible, using powers of attorney thanks to the technology at hand and to our dedicated teleworking team.

However, to achieve this, your dossier must be ready to sign and all the administrative requirements up to date. This may prove a challenge as many of our partners are affected by the crisis, which bears consequences on processing official requests (administrative services, tax office, land registry, town hall services...).

The court order number 2020-306 of the 25th of March 2020 has been issued in order to clarify the situation for the "*delays and measures that have expired or are to expire between the 12th of March 2020 up to a one calendar month deadline from the end of the Health Emergency Status*" by planning their "*extension*".

Please take notice that this court order only concerns the statutory deadlines, not the contractual deadlines.

While this court order may seem difficult to understand, although it might hopefully be followed by clearer orders, we, at the Etude Benedetti Office, wished to

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give you an overview of the consequences of this order that are relevant to your dossiers :

The 10 days withdrawal option of the non-professional buyer for a dwelling house.

Is the 10 days withdrawal option of the BUYER, that has not yet expired before the 12 of March 2020, starting date of the Health Emergency Crisis, on hold until the end of the State of Emergency Period plus one month ?

It might be, depending on one's reading of the article 2 of the Court Order. However, with the written consent of the Buyer in appendix of the deed, it will not be necessary to grant an additional 10 days withdrawal option to the BUYER who may renounce that option.

The mortgage deadlines, as agreed in the preliminary sale agreement.

The deadline to receive an official mortgage offer materialising a successful application, as planned by the provisions of the article L. 313 41 of the Consumer's Code, is not a mandatory deadline. The provisions of this article only imply a minimum duration, which is often extended to a maximum of two months in the preliminary sale agreement.

Thus, those provisions are not concerned by the Article 2 of the Court Order, and therefore are neither on hold nor postponed.

If a BUYER expresses concerns at to their mortgage offer being late, he should come to an agreement with his VENDOR and extend this delay, and the maximum signature sale date of the final Deed of Sale as a consequence.

Preemption Rights (SAFER, Town Rules...)

All renunciations (implicit or in writing) to any preemption right (for the benefit of the SAFER, to the town, ...) formulated before the 12th of March 2020 are definitely granted.

However, some may wonder about :

- For all notices sent out before the 12 of March 2020, the delay of preemption of which may still be running to this day : the preemption delay is on hold from the

12th of March and will only run again at the end of the State of Emergency plus one month, for the days that remained.

For example : A sale was notified to the Town Hall with an official notification request that was received on the 1st of March 2020. The 2 months delay is on hold from the 12th of March 2020. The remaining 48 days will only run from the 1st of June, if the State of Emergency ends on the 30th of April. The end of the preemption delay and the implicit renunciation term shall be the 18th of July 2020.

- For all notices sent since the 12th of March 2020 : the starting date of the preemption right is pushed back to the ending date of the Emergency State plus one month.

Example : A sale was notified to the Town Hall on the 10th of April 2020. The 2 months delay shall only run from the 1st of June if the State of Emergency ends on the 30th of April 2020. The end of the preemption delay and the implicit renunciation term shall be the 1st of August 2020.

However The beneficiary of the preemption right may still renounce their right in writing even before the end of the emergency state. In that case, the sale can be completed.

Official delays in order to give notice to a tenant, to use a preemption right after notice was given, to end a lease.

If the various delays in terms of lease, and especially the delay in order to give notice, to renew and agreement, are expiring in the State of Emergency Period, they are automatically extended according to the provisions of the article 5 of the Court Order, for an additional 2 months period from the end of the Emergency State Period plus one month.

For example : A clearance to sell to the tenant of a dwelling house must be granted before the last 6 months of the Three-Year lease term. If the last possible day to grant this leave should happen during the State of Emergency Period, it would be extended to an additional 2 months after the end of the State of Emergency plus one month, so until the 1st of August 2020 if the State of Emergency ends on the 30th of April.

The Court Order does not stipulate whether the ending dates of leases must also be extended. Logically, one would assume that they would be, as the tenant could not move out and leave the premises.

A tenant who was given a notice that would also grant the benefit of a preemption right to him. The last day of his preemption right falls during the State of Emergency period. Can they benefit from an extended delay and use their preemption right during the 2 months following the end of the State of Emergency period ? One would assume that the answer is no. But there again, caution must be used where the Court Order appears silent.

The Maximum Deadline for the signature of an authentic Deed as planned in the preliminary sale agreement.

This deadline is a conventional deadline therefore, it is not part of the provisions of the Court Order. What has been stated in the preliminary sale agreement stands.

As a general rule, an agreed term is not extinctive but suspensive. If the deadline is passed, no penalty or sanction is automatically put in place, and the agreement isn't either void, unless a formal notice has been served to one party by the other.

It is strongly advised that BUYERS and VENDORS should come to an agreement on any additional delay, in the form of a letter bearing all signatures and addressed to the Notarial Office.

It is best to ask for a personalised advice in this matter !

In conclusion :

Each dossier is different and has it's own specific terms. Requesting our expert personalised advice is always the best course of action.

While our Office is closed to the public, we are still working and dedicated to answering your questions and to give you our support.

Unprecedented means have been put in place in order to allow our team to continue their work on your dossiers while teleworking.

If you wish to contact us, emails are best sent at etude.benedetti@notaires.fr

Take care of yourselves and of your loved ones !

The notaries at Etude Benedetti.