

Property Warranty Term is extended to 10 years - for Professionals

The **Decree n.º 84/2021 of 18 October**, has regulated consumer rights in buying and selling goods, digital contents and services, transposing EU **Directives 2019/771 and 2019/770**. This diploma has established the Principle of Conformity of goods, so the professional is obliged to deliver goods that meet all the requirements mentioned, under penalty of the goods not be in conformity.

As for real estate, the regime of the Diploma will be applied, when the purchase and sale of real estate shows lack of conformity and the same has been delivered by a **Professional** ("one individual person or corporate, public or private, acting, including through any other person in its name or on its behalf, for purposes relating to his commercial, industrial, handicraft or professional activity, with regard to contracts covered by this Decree-Law").

By this way, it falls upon the professional the duty to deliver the immovable property to the consumer, according to the contract of sale or the building contract or the contract for the provision of services entered into. The new diploma, stipulates the cases in which the real estate is presumed to be non-compliant, either taking into account the specific characteristics of the goods, or the advertising made around it, namely when:

- 1) when they are not in conformity with the description given by the professional or do not possess the qualities mentioned by him;
- 2) when the real estate property is not appropriate for the use which the consumer intended;
- 3) are not suitable for the normal use of real estate property of the same type and;
- 4) When the goods do not have the qualities and performance expected with goods of the same type which consumer can reasonably expect.

The real estate is presumed not to be in conformity with the contract if any of the following facts occur:

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- a) do not comply with the description given by the professional or misses the qualities of the goods which the trader has presented to the consumer as a sample or model;
- b) are not fit for the particular purpose for which the consumer intended them, provided that the professional was informed of and agreed to such use at the time of signing the contract;
- c) they are not fit for the purposes for which goods of the same type are normally used;
- d) they do not show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the professional, the producer or his representative, particularly in advertising.

It should be noted that the characteristics of the property must be included in the Habitation Technical File (“Ficha Técnica de Habitação”), to be delivered by the professional, compulsorily at the time of the deed of sale. This presumption of lack of conformity can be ruled out, if the consumer was aware of this lack of conformity at the time of the contract, or could not reasonably ignore it.

The professional shall be liable for any lack of conformity existing at the moment of delivery of the property, **which becomes apparent within a period of 10 years in relation to the lack of conformity concerning the structural construction elements, and within a period of 5 years in relation to the other lacks of conformity.** This responsibility extends to the substitute property, in case of replacement of the real estate property. The time limit is suspended from the date of communication of the lack of conformity by the consumer.

The consumer can also exercise his rights to have the good repaired or replaced, or to a proportionate reduction in price; or to have the contract rescinded in the event of lack of conformity directly by the producer, as well as having the right to litigate against a person at an earlier stage in the contractual chain where that person is liable for a lack of conformity.

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In cases where the lack of conformity becomes apparent within 30 days of delivery of the good, the consumer may request the immediate replacement of the good or rescission of the contract.

The Consumer's rights expire three years after the date of communication of the lack of conformity, but this period may be suspended, namely from the date of communication until the conclusion of the repair or replacement operations, and during the period during which an attempt is made to settle the consumer dispute out of court.

All these provisions are applicable to Real Estate Purchase and Sale contracts entered into after the **1st of January 2022**.

Please feel free to contact, in case you want to know more.

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22/03/2023

(Lawyer and post-graduated in Taxation)

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