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Declaration of invalidity of clauses in lease agreements

The negotiation of the obligations of the parties to a lease agreement is important for their recognition and subsequent enforceability in the event of default. Although the payment of conventional penalties and default interest may be established in the event of default by the lessor, the clauses establishing their regulation should not be excessive or disproportionate.

During the first negotiations between the lessor and the lessee, it is important to consider the obligations and the grounds for breach that either party may require for the termination of the lease. In general terms, the parties may negotiate and be subject to the obligations that they agree upon, however, these terms must not be contrary to the law or be against the principles that regulate Mexican law.

One of the most important principles is that of contractual equity, which establishes that contracts must be fair and equitable for both parties, and therefore the obligations of the parties must be reasonable and proportional to the nature of the contract and the character of each party.

In this regard, the Mexican Supreme Court of Justice has issued a jurisprudence that establishes that judicial bodies may analyze the conventionality of lease clauses in order to evaluate whether they are disproportionate or excessive for any of the parties.

In practice, it is common for the parties to establish grounds or assumptions in which one of them is considered to be in breach of the contract. In the event that one of the parties fails to comply with its obligations, the affected party may demand the forced performance or the early termination of the contract due to such breach (termination). Landlords or real estate companies usually establish clauses of conventional penalties or default interest in case the tenant fails to comply with any of its obligations.

However, these clauses cannot oblige the excessive payment of a disproportionate amount or rate of interest in case of default by the lessee. For these reasons, judges may analyze lease agreements to identify an exploitation assumption, provided that an excess or disproportion in the economic benefits and considerations in which dignity is affected is noticed, i.e., that the penalties or interest represent abuse or excess.

In order to prevent the declaration of invalidity of any pecuniary clause, it is advisable to take into account the following:

- Determine the causes or non-compliance which each party may incur and its justification for the affectation in the use of the leased property.
- Establish an amount or interest rate that is proportional to non-compliance, taking as a reference the amount of the rent or maintenance fee.
- Include mechanisms to cure the default prior to the obligation to pay penalties.

The breach of the contract and the request for early termination leads to the analysis and initiation of a judicial process aimed at demanding the eviction, collection of overdue rents or even damages in favor of the affected party. Therefore, it is essential to have specialized legal advice prior to the execution of the contract in order to avoid the declaration of invalidity of the contract in case of its enforceability due to the breach of any of the parties.

At ECIJA Mexico, we provide comprehensive advice to landlords, tenants and real estate intermediaries for the analysis, identification and prevention of possible risks derived from a conflict in a lease contract.

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