

Legal Alert – Limitation period for loans due to borrower default

On September 22nd, 2022, the Uniform Judgment of Jurisprudence no. 6/2022 was published in the Diário da República, establishing that the limitation period of 5 (five) years applies to payments due under a bank loan agreement, in accordance with the terms of paragraph e) of article 310 of the Civil Code.

The Ruling goes further by establishing that the same limitation period applies to the debt in the event of accelerated maturity due to default by the borrower.

The Uniform Judgment of Jurisprudence contradicts some understandings upheld within the doctrine and jurisprudence that the immediate maturity of the agreed instalments is subject to the 20-year limitation period established in Article 309 of the Civil Code.

The Supreme Court of Justice based its understanding on the legislator's intention when, during the preparatory work of the Civil Code, it defended that the 5-year limitation period, established in Article 310, paragraph e) of the Civil Code, aimed at preventing the creditor from perpetuating his claims over time to the extent that the debtor would be excessively burdened with their payment.

Thus, according to the Ruling under analysis, even in the case of early maturity of the instalments, the 5-year statute of limitations is applicable.

For example: in a housing loan contract signed in 2015, for a period of 20 years, under which the borrower failed to pay the instalments in 2016, with the entire debt falling due in advance that same year, it is up to the creditor to bring an action for judicial recovery of the amount due until 2021, under penalty of the debtor being able to invoke the statute of limitations.*

In conclusion, by establishing a 5-year limitation period for the early repayment of capital amortization quotas due to the borrower's default, the Supreme Court of Justice aimed at preventing the bank from prolonging enforced collection in time, perpetuating a process in which it showed no interest, simultaneously hindering the postponement of litigation.

* Important note: this example is purely illustrative and does not contemplate possible periods of interruption/suspension of the limitation period, nor other circumstances that cannot be foreseen at this time.