



# The New Civil Code for Everyone

## LIMITATION (LAPSE OF TIME)

- This institution suffered certain changes through the Civil Code;
- It is regulated in articles 2.500-2.544, which represent the general jurisdiction in matters of limitation.

### GENERAL PROVISIONS

- *The object of limitation* - that which extinguishes by limitation, if not exerted within the period established by law, is the material right to an action;
- *Right to action* = the right to constrain a person, by using the public force, to perform a certain operation, to observe a certain legal situation or to bear any other civil penalty, as the case may be.

#### Subjection to limitation of the right to action

Are subject to limitation:

- Rights to an action *with a patrimonial object*, except for the case when the law provides otherwise;
- Other rights to action, regardless of their object, in cases specially provided by law.

#### Imprescriptibility of the right to action

The right to action is imprescriptible in the following cases:

1. in cases provided by law;
2. whenever by the nature or object of the protected right exercised by an individual, its exertion cannot be limited in time;
3. the rights concerning:
  - the action on the defense of a non/property right, except for the case when the law provides otherwise;
  - declaratory action on the existence or non existence of a right;
  - declaratory action on the incurable nullity of a legal document;
  - declaratory action on the incurable nullity of the certificate of inheritance, if its object is represented either by the establishment of the extent of the estate, or the inheritance partition, subject to the condition of acceptance of the inheritance within the period provided by law.

#### Limitation of the right of action regarding ancillary rights

- once the rights of action related to a main right are extinguished, the right of action regarding ancillary rights is also extinguished, *except in cases where the law provides otherwise*;
- in case a debtor is obliged to successive services, the right to action on each of these services is extinguished by a special limitation, even if the debtor continues to execute one or the other of the due services;
- nevertheless, these last provisions are not enforceable in case the successive services form an integer, by their finality, as resulting from the law or convention.

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Limitation of the right to action regarding the secured debt

- the limitation of the right to action regarding the main debt does not also involve the extinguishing of the right to mortgage action, the mortgagee being allowed to pursue, according to the law, only the mortgaged movable or immovable assets, but only within the limit of the value of these assets;
- these provisions do not apply to the limitation of the right to action for the payment of interests and other accessories of the mortgage debt, which, except for the capital, cannot be covered after the completion of limitation from the forced sale of the mortgaged asset.

Compensation and lien

Limitation prevents neither the extinguishing by compensation of the reciprocal debts, nor the exertion of the lien, if the right to action was not limited at the moment when it could have been opposed by compensation or lien, as the case may be.

Effects of completed limitation

- limitation does not operate as of right, it must be invoked;
- after the reaching of the limitation term, the obliged person may refuse to perform the service;
- the person who has performed *freely* the obligation after the reaching of the limitation term is not entitled to request the recovery of the performance, even if at the date of the performance he/she did not know that the term for limitation had been reached;
- the acknowledgement of the right, made by a written document, as well as the establishing of a lien to the profit of the holder of the right of which the action is prescriptible, are valid, even if the person who made them was not aware that the limitation term had been reached, in these cases the rules of the limitation waiver apply.

Waiver of Limitation

- one cannot waive the limitation as long as it has not yet started running;
- one can waive the reached limitation, as well as the benefit of the elapsed period for the started and uncompleted limitation.
  - o Types of limitation waiver
  - *Express*;
  - *Tacit* – in this case, it must be unequivocal indisputable, as it can result only from unequivocal manifestations.
  - o Persons who cannot waive the limitation
  - The person lacking the legal ability to alienate or, as the case may be, to assume an undertaking.
  - o Effects of the waiver to limitation
  - After the waiver, a new limitation of the same kind starts to run;
  - If the entitled party waives the benefit of the lapsed period until that date, the provisions will apply on the interruption of limitation by acknowledgment of the right.
  - o Extension of the waiver to limitation
  - The waiver generates effects only in relation to the person who did this;
  - It cannot be invoked against co-debtors *in solidum* or of an indivisible obligation or against fidejussors.

Persons who may invoke limitation

1. *the one in the interest of whom it runs*;
  - the limitation can be opposed in person or by representative, without the person being obliged to produce any contrary title or to have acted on good faith;
  - the competent jurisdiction authority *cannot apply limitation ex officio*, even if the invocation of limitation would be in the interest of the state or of its administrative-territorial divisions.
2. *co-debtors of an in solidum or indivisible obligation and the fidejussors*;

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- they can invoke limitation, even if one of the debtors neglected to do it or waived it;
- 3. *the creditors of the interested person, as well as any other interested person.*

The moment until when limitation can be invoked

- o limitation can be opposed *only in lower court*, by lodging a defense or, in absence of invocation, at the latest at the first hearing to which the parties have been legally summoned.

Rules applicable to limitation

- o limitation is regulated by law;
- o any clause is *forbidden* by which either directly, or indirectly an action would be declared imprescriptible, although, according to the law, this is prescriptible, or the other way round, an action declared by the law imprescriptible would be considered prescriptible;
- nevertheless, within the limits and conditions provided by the law, the parties with full capacity of exercise can, by express consent, modify the duration of the limitation periods or modify the course of limitation by establishing its beginning or by modifying the legal causes for its suspension or interruption, as the case may be. An exception are the rights to an action of which the parties cannot dispose and neither to actions derived from agreements of membership, insurance and the ones subject to the legislation on consumer protection.
  - o The limitation periods can be reduced or increased, by express consent of the parties, however their new duration cannot be under one year nor longer than 10 years, *except for* limitation deadlines of more than 10 years or longer, which can be prolonged up to 20 years;
    - these provisions *don not apply* in the case of the rights to action of which the parties cannot dispose care and neither to actions derived from agreements of membership, insurance and the ones subject to the legislation on consumer protection;
  - o Any convention or clause contrary to the provisions of the present article becomes absolutely null and void.

! The limitation of the right to obtain the forced execution of a judicial or arbitral decree or of another executive title is subject to the provisions of the Code of Civil Procedure, except for the case when the latter would not be sufficient.

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