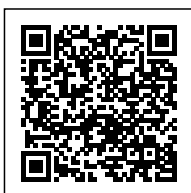


REAL ESTATE RULES SCARE OFF PROSPECTIVE INVESTORS

Posted on 20/05/2013



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An EU decision to protect consumers impedes the Government's attempts to kick-start the real estate market and the economy

A recent move by the European Union Court of Justice (ECJ) could lead to a wave of indebted Spanish borrowers attempting to renegotiate the terms of their mortgages and costly consequences for investors and the Spanish economy.

The ECJ has handed Spanish customers new protections against foreclosure, as they deemed existing rules as "unfair" in relation to residential mortgages. Until now, Spanish judges were not allowed to stop eviction proceedings while reviewing the terms of a mortgage during enforcement. "Judges currently do not intervene in foreclosures and, if a borrower defaults, a lender can apply for enforcement without the Court voicing an opinion," says Jesús Varela, Real Estate Partner at Dentons in Madrid. "Investors could face long and costly enforcement processes."

There is concern that this could end up harming the wider economic recovery, say lawyers. Spanish banks have huge exposure to non-performing mortgage loan books that they are attempting to

offload them by grouping them in portfolios. And a number of new funds have bought these portfolios on a 'loan to hold' model (where the funds buy the loans at a cheap rate as an attempt to get the loans performing to make a return on equity) or a 'loan to own' basis (where they enforce the foreclosure of non-performing loans in order to take hold of the assets, in this case the real estate). "Spanish banks are trying to sell portfolios of residential mortgages to investors and these are bought on the basis that they can be enforced if they default," Varela adds. "While it is important to protect home-owners, any moves that make it harder to enforce foreclosures are likely to dissuade investors from buying assets. This could cause even more problems for liquidity."

Venture funds could, therefore, be scared off from buying the portfolios, preventing the banks from improving their balance sheets and providing the liquidity to lend to the next wave of mortgage buyers. Lawyers also warn that the exact rules – yet to be finalised – need to be concluded quickly. "Any new mortgage rules could impact on funds and investors," explains Isidro del Moral, Real Estate Partner at Broseta. "There can be good and bad laws, but the key is that there is a clear scenario. The problem is that we don't know what the rules will look like or how foreclosures can be executed. The Government needs to do something as investors want certainty on how rules work." The Spanish Government will once again have to balance the needs of microeconomics with the macro economy.