

New Civil Code of Puerto Rico: Obligations

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PRACTICE AREAS

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This is the fifth of eight Alerts on the recently enacted Civil Code of Puerto Rico (the “New Code”), which will repeal the current Civil Code of 1930, as amended (the “Previous Code”). The New Code becomes **effective on November 28, 2020**.

This Alert specifically addresses the most relevant changes between the Previous Code and the New Code regarding the Fourth Book of the New Code, entitled **Obligations**.

These changes are as follows:

A. Joint and Several Obligations

Statutes of Limitations - Article 1095 of the New Code codifies the Puerto Rico Supreme Court holding in *Fraguada Bonilla v. Hospital Auxilio Mutuo*, which states that the timely interruption of the statute of limitations against a co-defendant in torts actions does not apply against the remaining co-defendants. This Article also extended the applicability of the *Fraguada* ruling to several but not joint obligations (“*obligación mancomunada*”). Please note that the *Fraguada* ruling was not extended to pure joint and several obligations, such as contractual obligations, where the timely interruption of the statute of limitations period against a debtor will apply to all remaining joint and several debtors and benefits all creditors.

Payment for Joint and Several Obligations - Under the New Code, the debtor may pay the debt to any of the creditors of the obligation, even if the debtor is sued by only one of the creditors. Under the Previous Code, if a debtor was sued by one of the joint creditors, the debtor could extinguish the debt only by making the payment to the creditor who sued.

Waiver of the Joint and Several Defense - Article 1105 of the New Code codifies the Puerto Rico Supreme Court holding in *U.S. Fire Insurance v. AEE*, which states that the creditor may waive joint and several liability, expressly or tacitly, with respect to one of the joint and several debtors or with respect to all of them. A waiver in respect to one of the joint and several debtors, whether express or tacit, does not extinguish the creditor's action against the other joint

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and several debtors for the remaining payment. However, if the creditor consents to the division of the debt, a waiver will benefit all joint and several debtors.

Debtor's Liability and the Inability to Fulfill an Obligation - Article 1106 of the New Code reiterates the provisions of the Previous Code to the effect that, if the fulfillment of an obligation becomes impossible due to the fault of a joint and several debtor, all debtors are jointly and severally liable for the price of the obligation. However, unlike the Previous Code, under the New Code only the debtor at fault (i.e., the debtor responsible for causing the fulfillment of the obligation to become impossible) will be liable for any damages caused to the creditor.

B. Property not Subject to Garnishment

Article 1157 of the New Code broadens the category of property not subject to garnishment, including the following:

- A debtor's individual retirement account
- Accrued retirement benefits that are regulated by ERISA
- Money, profits, privileges and immunities arising from any debtor's life insurance policy, when the beneficiary is the spouse or heir
- A debtor's motor vehicle, if used as a working tool
 - This exemption will not apply to the collection of debts related to the purchase price, lease or acquisition of the vehicle.

C. Right of Retention

Articles 1223 to 1229 of the New Code establish new rules for the right of retention. The right of retention is the right of a creditor, whose claim is enforceable, to keep the property or asset in his, her or its possession until the debtor pays it or secures payment to the creditor. While the Previous Code recognized the right of retention in some specific instances, the New Code extends the application of the right of retention to all types of obligations.

D. Statutes of Limitations

A statute of limitations is a law that sets the period of time during which legal proceedings must be initiated. If a legal proceeding is not initiated during said period, the claimant will be barred from pursuing the corresponding legal action. Although both the terms of duration and the interpretation developed

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by case law on the subject of statutes of limitations remain mostly unaltered under the New Code, the most relevant provisions, as well as the very few changes, concerning statutes of limitations are discussed below:

- Personal or Contractual Legal Actions: Pursuant to Article 1203 of the New Code, any personal legal action that is not subject to a specific statute of limitations provided by law, including for actions based on breach of contract, will be subject to a statute of limitations of 4 years. Under the Previous Code, these actions were subject to a statute of limitations of 15 years.
- Disciplinary Actions against Lawyers and Other Professionals: Article 1204 of the New Code states that disciplinary actions against lawyers and other professionals for infringing the codes of ethics of their respective professions will be subject to a statute of limitations of 2 years. Under the Previous Code, disciplinary actions against lawyers were subject to a statute of limitations of 3 years. Further, the Previous Code did not provide a statute of limitations for disciplinary actions against other professionals.
- Term to Acquire Property through Adverse Possession: For issues regarding the periods of time necessary to acquire real or personal property through adverse possession, please refer to our **4th Alert regarding Real Property Rights**
- Torts: The statute of limitations for tort suits remained at 1 year from the moment the aggrieved person learned of the existence of the damage and who caused it.
- Mortgage Foreclosures: The statute of limitations for mortgage foreclosure suits also remained at 20 years from the maturity date of the mortgage note or, in the event the mortgage note is due on demand, the date of recordation of the mortgage in the Registry of Property.

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