Chapter 7
Recent Developments in Mortgage Loans in Spain and the Effects of the Subsequent Legislative Reforms

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ABSTRACT

This chapter analyses the evolution of the mortgage loan in Spain during the present century. The economic development of Spain is described with its great connection to mortgages. The text centres on the new conditions incorporated in the loans in the years before the crisis, which were subsequently demonstrated to be unfair terms and caused serious problems for consumers and a lack of confidence in the financial sector. This provoked the reaction of legislators. This chapter studies the effectiveness of the subsequent mortgage laws in their intention to minimize the asymmetrical positions that the lender and the borrower occupy in the contractual relationship. Among the conclusions of the chapter, the authors highlight how each law is more precise but its effectiveness is lacking if the banking culture is not changed in terms of the relationship between to clients.
INTRODUCTION

The financial system of a country is a very important element in the functioning of any economy and this importance is increased in the case of Spain by a strong tendency for companies to be financed with bank loans. The growing volume of banking business, together with regulation that gave the sector a great freedom of action, contributed to the growth of the Spanish banking sector throughout the 20th century, making it one of the sectors with the greatest profits and strongest representation in the Ibex 35.

With the arrival of the 21st century, the financial system brings to light a set of problems that had been brewing for years and that causes this more or less amicable relationship between banking and society to end, giving way to a climate of confrontation that does not benefit either of the parties. These problems are a consequence of the serious asymmetry of information between the knowledge base of the bank and the client (company or individual).

To this we must add, on the one hand, the investment policy focused on the real estate sector that banks have followed since the nineties and, on the other hand, the design and massive sale of new financial products, as well as the incorporation of new contractual conditions to the mortgage loans (ML) that turned out to be enormously unfavourable to citizens.

With the outbreak of the crisis in 2008, society reacted and began to file lawsuits against banks. The number of consumers who initiate legal proceedings would gradually increase until a flood of cases was brought to court. This makes the abuse that the bank had been committing a major issue in the media and on the street, but it also represents a first step toward balancing the power of the bank and the client.

The situation becomes so evident and complicated that successive governments in Spain during the last ten years have been forced to act. With the aim of protecting the consumer, and trying to reestablish a relationship of trust between banks and citizens, new laws, in number and importance not seen until now, have been passed that regulate banking activity. These new rules mean important changes for the consumer and also have great implications for banking.

The main objective of this chapter is to analyse the conditions that were incorporated in the mortgages in Spain, the serious risks and damages that such conditions implied and the effectiveness of the legislative changes promulgated to resolve the problem.

This chapter addresses these issues by structuring the topic as follows:

The Background section describes the recent economic development of Spain and its connection to financial activity. Economic growth is based on the real estate sector and for its development the role of banking is fundamental, both by lending to construction companies and to home buyers. It shows the huge growth of the mortgage market in a short time, and in addition, great transformation of banking
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