



# PanaManagement Corporation

445 Park Avenue, 9th Floor  
New York, NY 10022

World Trade Center, Calle 53, Marbella  
Panamá City, Panamá Republic

---

**SUMMARY OF SELECTED PROVISIONS  
DEALING WITH THE NEW CONSTRUCTION INCLUDED  
IN  
THE NEW CONSUMER PROTECTION LAW No. 45 OF OCTOBER 31, 2007.**

The Government of Panamá has enacted a new comprehensive consumer protection law, containing antimonopoly regulations, consumer protection for goods and services as well as intellectual property provisions, published as Law 45 of October 31, 2007. The new Law repeals the Law 29 of February 1, 1996 and replaces the Consumer Protection and Trade Commission (Comisión de Libre Competencia y Asuntos del Consumidor) with the new Consumer Protection and Trade Authority (Autoridad de Protección al Consumidor y Defensa de la Competencia) (the “Authority”).

This brief summary specifically focuses only on the provisions of Article 79 of this new Law 45 dealing with new residential construction, a summary of other provisions will be provided in a separate document.

Article 79 of the Law 45 of 2007 establishes the requirements applicable to the promotion and sales of residential new construction to the general public. The requirements are two-fold: (i) limitations on promotional and advertising activities and (ii) inclusion of certain terms and guarantees in the sales contracts. The Law also indirectly prohibits certain pre-construction sales activities by amending Article 37 of Law 6 of February 1, 2006, as discussed below.

Firstly, Article 79 specifically states that (i) contracts for residential new construction must contain clear provisions, specifying the dates of completion of construction and delivery of residential units and (ii) provides for certain rights of the consumer if the delivery date is not met, such as the right to terminate the contract and receive full refund of all payments made pursuant to such contract without any penalties. In case of nonperformance for causes not attributable to the provider or developer, such as *force majeure* circumstances, it must be so specifically stated in the contract, listing such potential circumstances. There are customary clauses usually included in sales contracts, stating that the construction will be completed as soon as *force majeure* circumstances cease or a full refund will be provided to the consumer.

Secondly, Article 79 specifically states that any claims, descriptions of properties or amenities and other details contained in any advertising materials must be true and if publicly disclosed will become an integral part of the contract of sale for such project signed with the consumer. Thus,

---

*New York Office:*  
*Telephone: 212-541-3909*  
*Facsimile: 212-541-3907*

*Panamá City Office:*  
*Telephone: +507-260-0060*  
*Facsimile: +507-260-0062*

*E-mail: [info@panamanagement.com](mailto:info@panamanagement.com)*

false and misleading advertising is specifically addressed by imposing on the developer or promoter the burden to live-up to its publicly-made claims regarding each project.

Thirdly, the contracts will have to expressly state (i) all amounts of all payments due from the consumer, (ii) under which circumstances adjustments in the purchase price may be made by the developer or builder and (iii) what kind of construction defects guarantees and exceptions, if any, are included in the contract. Specifically, in case of increase in the costs of construction materials, such increases have to be stated in the contract and the new Authority is changed with the function to establish the parameters and the technical procedures to verify the adjustments claimed by developers. The consumer will also be able to demand proportional reductions in the price of the new construction, if final specifications have changed substantially from the original price stated previously in the contract.

Fourthly, and very importantly, Article 204 of the Law 45 contains a modification to Subsections (2) and (5) of Article 37 of the Law 6, which regulates urban development (**QUE REGLAMENTA EL ORDENAMIENTO TERRITORIAL PARA EL DESARROLLO URBANO Y DICTA OTRAS DISPOSICIONES**). Article 37 of Law 6, as amended, establishes that it is unlawful to advertise for sale and to sell any buildings if the construction plans have not been approved by the appropriate urban development authority. The term "provider" as used in Law 45 is defined very broadly, as follows:

*"Industrialist, merchant, professional or any other economic agent that, for good and valuable consideration or with a commercial end, provides to another person goods or services in a professional and habitual way."*

Therefore, it would apply to promoters, developers, builders, sales agents, real estate brokers, and other professionals involved in the chain of real estate development, regardless of whether the services are provided for their own account or only as agents.

The sanctions contained in the Law 6 of 2006, range from preliminary warnings to subsequent issuance of fines from the minimum of FIFTY DOLLARS (US\$ 50.00) and up to ONE HUNDRED THOUSAND DOLLARS (US\$ 100,000.00).

The regulations, outlining specific procedures for enforcement of provisions of Law 6 are contained in the Executive Decree 23 of May 16, 2007 and specifically authorize the Urban-Planning Municipal Authority to implement it. The notices and fines imposed pursuant to Law 6 and Law 45 are subject to administrative hearing procedures, outlined in Article 22 of the Executive Decree 23. The procedures include a hearing before the Technical Legal Secretary, issuance of the decision and subsequent appeal to the legal department of the Office of the Mayor of each District. After exhausting all administrative remedies and appeals, the case can be filed with the Supreme Court of Panamá, 3rd Chamber, for the final adjudication.

---

*New York Office:*  
*Telephone: 212-541-3909*  
*Facsimile: 212-541-3907*

*Panamá City Office:*  
*Telephone: +507-260-0060*  
*Facsimile: +507-260-0062*  
*E-mail: [info@panamanagement.com](mailto:info@panamanagement.com)*

Article 24 of the Executive Decree 23 lists aggravating factors to be considered in imposing fines for violations, such as (i) including false information in any of the documents filed in the process of obtaining pre-approvals and subsequent permits for each construction project; (ii) engaging in any advertising of the project before required approvals are issued; (iii) executing purchase contracts before preliminary approvals are issued and (iv) failing to obtain approvals for any modifications of previously approved plans. Sanctions for such violations can be increased up to 1% of the total value of the project (but not more than the cap of \$100,000 contained in the Law 6) and all previously issued approvals and permits may be suspended and/or revoked until the matter is resolved and fines are paid. Specific fines are listed in Article 38, as stated above, as well as in the table adopted by the Urban-Planning Authority.

While, many provisions contained in the new Law 45 are rather vague, and hopefully will be clarified in the forthcoming regulations, covering all procedural matters raised by the new Law, the focus of it is quite clear and timely: *developers beware – false claims and unreasonable changes in prices will not be tolerated*. It remains to be seen if this regulatory effort will affect the market positively, mostly depending on how procedural aspects will be handled by the Authority on one hand or as giving the government an opportunity to second-guess commercial decisions by bureaucratic procedures, thus hampering the function of the free market economy, on the other hand. To conclude, the regulatory environment created by these laws for the protection of the consumer in residential development in Panama is quite comprehensive, but it remains to be seen whether it can be enforced efficiently, without undue detriment to the market and the flow of foreign investment to Panama's residential real estate sector.

© 2008 *Juliette Passer, Esq. & Ramón Valdés, Esq.*  
[www.panamanagement.com](http://www.panamanagement.com)

---

*New York Office:*  
*Telephone: 212-541-3909*  
*Facsimile: 212-541-3907*

*Panamá City Office:*  
*Telephone: +507-260-0060*  
*Facsimile: +507-260-0062*

*E-mail: [info@panamanagement.com](mailto:info@panamanagement.com)*