
INSTITUTIONAL ASPECTS OF REAL ESTATE MARKET – RECENT LEGISLATIVE REFORM AND OPENING TO FOREIGN INVESTORS

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The Brazilian real estate market never before had proved so favorable to foreign investments. For 2010, it is estimated a growth of 10% to 15% of this market considering new releases and sales¹.

Until 1964, the Brazilian real estate market was fully deregulated, and by that time the purchaser had no guarantees with respect to sales or acquisitions of real estate. In December, 1964, it was enacted the Federal Law n. 4.591, which established new regulation of real estate and condominium.

The main instrument of regulation for the market at that time was the institution of the "Incorporation Brief," which had the intent to concentrate all the information concerning the future development as well as legal and accounting information of the developer and its shareholders. This instrument was capable, over decades, to make the relationship of buying and selling more stable.

With the real estate market disciplined, the Brazilian regulators became interested in creating funding mechanisms for the incentive of the sector, which resulted in the creation of the Financial Housing System, created by Law 4380/64, in the context of reforms of banking and capital markets, which became the central authority, guiding and disciplining the real estate market in Brazil.

Then, Law 5107/66 created the Severance Pay Fund (FGTS). The system provided fund raising, loan to purchase real estate, the return of this loan and the reinvestment of that money.

This was a period of development for the real estate market, once the production reached all the social classes and funded in large scale.

In 1986, the SFH has undergone a major restructuring with the publication of Decree-Law No. 2.291/86, which extinguished the BNH and distributed its powers between the then Ministry of Urban Development and Environment (MDU), the National Monetary Council (CMN), the Central Bank of Brazil (Central Bank) and the Federal Savings Bank (CEF).

The MDU was responsible to formulate proposals for housing policy and urban development; The CMN should act as a system's central authority, directing, disciplining and controlling the SFH; it was transferred to the Central Bank the supervision activities of the financial institutions that integrated the SFH, and the development of standards regulations with respect to the savings deposits and, it was attributed to CEF the administration of liabilities, assets, staff and real estate and assets of BNH, as well as the management of FGTS.

The SFH has, since its creation, as a source of major funds, the savings from

¹ Housing Union of São Paulo (SECOVI – SP).

the voluntary savings deposits from the denominated Brazilian System of Savings and Loan (SBPE), constituted by the institutions that capture this type of financial investment, with guidelines targeting resources established by the CMN and monitored by the Central Bank.

There is also a compulsory savings from the FGTS, governed in accordance to regulations and guidelines established by a Board of Trustees, with management of the application made by the Ministry of Planning, Budget and Management (MPOG), being CEF the operator agent.

After 1986, the real estate sector in Brazil decreased, disorganized and needed to find proper mechanisms to deal with such scenario, being the appropriate solution for that time the direct financing to buyers.

In the period between approximately 1990 and 2003, there were almost no sources of official and private resources for production and real estate financing.

It is true that in that period, builders distorted their role, which should be to produce real estate, replacing banks in funding their clients.

Banks demobilized their structures, because they had no interest in that market, as the high interest rates not favored long-term financing.

Brokers have directed their efforts to direct sales (more agile, without bureaucracy) and the buyers agreed on the new method.

For the real estate market, it would be wonderful if the population retained enough income to pay the real estate within the period the plans direct were initiated (from 36 to 40 months).

However, these delays were becoming even more elastic and the return of these investments began to derail the business, because as this modality established interest rates over floating-rate plus correction, the longer financing (80 months), which started with a payable installment payable, quickly became unpayable.

From the evidence of the impracticability of long direct funding, the market began to look for different ways of doing business.

The legal environment came to be reformulated with the issuing of the New Civil Code and with the promulgation of the by Law n. 10,931, in August 2004, that created rules for a new Regulatory Framework.

The new legislation has created important rules to encourage and give confidence to the market, we can highlight the chapters that deal with the Fiduciary Alienation, which is a guarantee for the builder and the Patrimony of Affectation, which is a guarantee for the buyer.

The enactment of Law was an important fact in the resumption of bank funding, creating a balanced legal environment, which allowed financial agents, builders and buyers all legal certainty the Brazilian real estate market needed.

We can also mention that the creation of Patrimony of Affectation within the mentioned Law is of relevant importance because it separates the book keeping of a real estate development from the rest of its business.

Furthermore, it is mandatory that the financial agents implement the resources of savings account and the growth of the Brazilian economy, with low inflation and interest rate failing, brought to the market volume of resources and has created

healthy bidding among banks which see the possibility of customer's loyalty homebuyers for a long period.

Today, the celebration of financing agreements with banks are totally different from the previous period, since the rules are clear, among them, there is no residual amount at the end of the amortization period, and in some modalities the customer may choose an agreement with a pre-defined installments in 20 years, which is a sign of the vitality of our economy.

Given the importance of the Brazilian Real Estate Sector in the current economic environment and its capacity for generating new business, Almeida Advogados has a specialized team with expertise on rendering services and legal advice on foreign investors on the real estate market, and is available for any further clarifications deemed necessary in connection with the matter discussed herein.