

REAL ESTATE INFORMATION REPORT



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REAL ESTATE

ADDITION TO OUR TEAM

We are pleased to announce to our clients and partners that Mr. Fábio Castejon joined our team as Head Counsel of the Real Estate area (fcastejon@santosbevilaqua.com.br, (55 11) 5643 1060 – Extension 113).

Among other positions, Mr. Fábio Castejón was General Counsel at Walmart and WTorre.

With this addition, we expect to be even more prepared to meet all our clients' needs.

1) LAND REGULATION - NEW LAW 13465, of 7/12/2017

On 7/12/2017, Law 13465 was enacted; it relaxes the process for legitimization of rural and urban properties of the Federal Government occupied clandestinely, provides for liquidation of credits granted to settlers of the agrarian reform, and land legitimization of Amazônia Legal, and introduces mechanisms to make the disposition of Federal Government's properties more efficient.

In general, the new Law amends eight laws: Real Property Registration Law, Bidding Process Law, Law of Federal Government's Property Management, Law 11977/2009 (public housing program *Minha Casa Minha Vida*), Law on Disposition of Federal Government's Property, Law on Payment in Installments of Debts owed to the Federal Government, Decree-Law 2398/1987 (provides for annual rent, laudemium and property occupancy rates

applicable to Federal Government's properties) and the Civil Code itself, by adding new items to the list of rights in rem (granting of right in rem of use, and right of slab (*direito de laje*), which is the possibility of coexistence of autonomous property units in a same area) and new articles, such as article 1358-A, which finally regulates the legal possibility of co-ownership of lots. It also amends Provisional Measure 2220/2011 (Special Concession for Housing Purposes) and complements the City Statute and the Urban Land Subdivision Law.

Even though the new Law has been criticized by many Architecture and Urbanism entities (issues such as conflict of jurisdiction to collect IPTU and ITBI taxes, form of credit liquidation, irregular settlements and land subdivisions, illegal developments, privatization of public areas, legalization of grabbed land, including land of Amazônia Legal, etc.), in fact the law represents considerable progress, a new milestone in land legitimization because it regulates a fundamental constitutional principle, the right of ownership, in an

orderly, safe and efficient fashion, unifying scattered rules, filling legal gaps, and mainly reducing bureaucracy in the process to obtain title to property by setting new rules.

The beneficiaries of this Law may be subject to the condition of holders of exclusive ownership, and their properties may be freely disposed of and encumbered after they are effectively legitimized. From now on, more complex issues involving properties located in public or private areas may be legally and properly regularized and titled, having individual records.

As a result, "closed" condominiums of buildings, standard urban condominiums and public housing projects without any records, informal urban centers, irregular settlements and land subdivisions now are properly covered by the law and may be legitimized.

For land subject to the emphyteutic regime (occupied land subject to payment of annual rent and laudemium that refer to the time Brazil was colonized, when the

government of Portugal authorized the use of land by individuals), acquisition of full ownership (consolidation of full domain with lessee) will be regulated by the Federal Property Department [*Secretaria do Patrimônio da União - SPU*], and that is an important mechanism to raise revenue not only to the Federal Government, but also to the cities and the Federal District, as they are expected to be transferred 20% of the Federal Government's property revenues, resulting from redemption of legal title, even though poor or low income people are exempted from such payment.

The main innovations are:

A) URBAN LAND REGULARIZATION (REURB) RESOLUTION

The law introduces the concept of informal urban center, which are clandestine or irregular centers, or centers whose occupants were not given title to them upon compliance with the legislation in force at the

time they were developed. Now the city governments may discharge requirements related to percentage and dimension of areas intended for public use or to the size of regularized lots, as well as other urban and building parameters.

The municipalities and the Federal District may admit diversified use of activities as a way to promote social integration and creation of jobs and revenue in the legitimized urban center.

For urban centers fully or partially located in permanent preservation areas, sustainable use conservation units or source water protection areas, legitimization must comply with the Forest Code, and technical studies must be conducted to justify the environmental improvements over the previous situation, also through environmental compensation. The studies must be approved by the cities. If the city governments are not technically capable of approving such studies, they can be approved by the States.

The law creates categories of social interest (Reurb-S), intended for low income population, and specific interest (Reurb-E), intended for informal urban centers occupied by population that is not predominantly of low income.

B) FEDERAL GOVERNMENT AREAS

The Federal Government and its agencies and foundations may transfer to the States, cities and the Federal District federal areas occupied by informal urban centers for them to be legitimized through the Reurb. Low income people that legally occupy Federal Government's properties for housing purposes until December 22, 2016, who are exempted from paying rates (annual rent, occupancy rate), may request directly to the real estate registrar free-of-charge transfer of ownership by presenting a Certificate of Transfer Authorization, issued by the SPU.

To make the transfer, the City Government will issue, by the end of the Reurb procedure, a Land

Legitimization Certificate [*Certidão de Regularização Fundiária* - CRF] that will be accepted by the register of deeds. Once the CRF is registered, a record will be created for each real estate unit that has been legitimized. No permit to occupy a building will be required for approval and registration of public housing projects that are part of Reurb; in the case of Reurb-S, the respective clearance certificated of taxes and social security contributions will not be required.

C) URBAN DEMARCATION

The government may use the urban demarcation procedure, based on a survey of the area to be legitimized and characterization of the informal urban center to be legitimized, and that is not a condition for processing and confirmation of the Reurb.

The domain holders and abutters will be notified so they can challenge the urban demarcation within 30 days, and failure to do so will be deemed agreement with it.

Should the demarcation not be challenged within such period, or if any challenges to it are denied, the notice of urban demarcation will be sent to the register of deeds and entered in the relevant records or, if the properties at issue have no records yet, the corresponding records will be created, without the need to rectify the specifications of the properties or determine the remaining areas – those will be responsibility of the property owner.

D) LEGITIMIZATION

Land legitimization is an original form of acquisition of the right in rem granted by government act, exclusively within the ambit of the Reurb, to anyone that owns an urban real estate unit (in a public or private area) that is part of a consolidated informal center, existing on December 22, 2016.

Only in Reurb-S, land legitimization will be granted only if the beneficiary is not a concessionaire, lessee or owner of urban or rural property, and if they were

not granted possession or land legitimization referring to urban property having the same purpose. For non-residential urban properties, legitimization will depend on acknowledgment of public interest in its occupancy by the government.

In Reurb-E, which concerns public property, there being a consensual solution, the acquisition of rights in rem by the individual will be conditioned to payment of the fair value of the legitimized real estate unit, to be assessed pursuant to an act of the Executive Authority that owns domain. Therefore, the procedures established in the Bidding Process Law are not required, provided that the properties are occupied until December 22, 2016.

Areas owned by the government, registered with the Register of Deeds and which are the subject of lawsuits on their ownership, may be included in the Reurb, provided that a court or out-of-court settlement is reached and is ratified by the Judge.

In addition to residential properties, commercial properties may be legitimized as well. To apply for land legitimization in Reurb-S, the beneficiary cannot be a concessionaire, lessee or owner of urban or rural property, or be the beneficiary of more than one legitimization having the same purpose.

In the cases of subdivision of land, of public housing projects or of informal condominiums developed by individuals, Reurb's conclusion grants right of recourse to those that bear their costs and obligations against the parties responsible for developing informal urban centers.

Application for Reurb by owner of lands, sellers of lots and developers that caused the formation of informal urban centers will not exempt them from administrative, civil or criminal liability.

The Law also allows the government to legitimize the possession to recognize the possession of the property involved in the Reurb, upon the identification

of its occupants, the occupation time and the possession nature. This Law cannot be applied to urban real estate located in an area owned by the government, but it may be transferred in succession or in inter vivos conveyance.

After five years from the possession legitimization, the occupant's title may be turned into property title or title by adverse possession for five years, as provided for in the Constitution, upon request by the interested party to the applicable real estate registry. The holder of the possession title cannot benefit from more than one land legitimization for the same purpose, even if the urban real estate is located in a different urban center.

The possession title may be cancelled by the public authority upon evidence that the established conditions were not met, however no compensation will be due to the party that unlawfully benefited from it.

E) CO-OWNERSHIP OF LOTS

The new law created a new section in the Civil Code titled “Co-ownership of Lots” and introduces article 1358-A “(Lands may have parts named lots that are exclusive ownership and parts that are common ownership of the co-owners”).

Such provision fills a gap of the Brazilian legal system because it makes the co-ownership of lots equal to the co-ownership of a building (condominium), an issue that until now was extremely controversial; such co-ownership was not permitted by several city governments, notary publics and offices of internal affairs of the states, which considered it illegal, and prevented their individualization as an exclusive ownership linked to the part that is common areas of the co-owners.

Now the development of lots allows the developer to regulate the implementation of a ‘condominium’ of lots (which comprises one ideal fraction), whose entire

infrastructure will be implemented by the developer, which will not undertake to erect buildings in the lots, without any conflict of interpretation with the legal definition of parceling (where the lots do not share the co-ownership and have no ideal fraction).

F) RIGHT OF SLAB [POSSIBILITY OF COEXISTENCE OF AUTONOMOUS PROPERTY UNITS IN A SAME AREA]

Especially in regard to the slums, where precarious houses are built on the roof slab of others because of the lack of space, the law created the right of slab. Defined as co-existence of autonomous real estate units of different owners in a same area, such right legalizes the houses on roof slab of the base construction. Each will pay its own taxes. This type of right may be applied only where it is not possible to separate the lots. Therefore, it is possible to have a house below roof slab and a second floor up to the height allowed by each city government.

Both owners will share the expenses to maintain the common areas and equipment, such as roof, structure, and general water, electricity and sewage installations. In the event of sale, the owner of the closer slab or of the base construction will be given priority. If the base construction collapses, the right of slab will be extinguished should the building not be re-erected within five years.

G) DEBT

The Law provides for the acceleration of the real estate debt of the beneficiaries of the “My House, My Life Program” [*Programa Minha Casa, Minha Vida - PMCMV*] should they delay for more than 90 days the payment of the installments, contractual and legal charges, taxes and co-ownership fees. The beneficiaries of the PMCMV transactions carried out with the funds from the payment of the quotas of the Residential Lease Fund [*Fundo de Arrendamento Residencial - FAR*], will have to occupy the purchased properties within 30 days from the execution of the

purchase and sale agreement under penalty of the FAR being automatically authorized to terminate the agreement and sell the property to other beneficiary.

After the delay, the debtor will be notified to pay the total debt within 15 days under penalty of losing the property. A sale under a secret contract and the use of the property for non-residential purposes will also cause the debt acceleration. The rules apply to properties sold under an agreement with fiduciary sale clause and agreement executed with the FAR.

Lawsuits disputing contractual clauses or collection and auction procedures, except requirement for notice to the settlor, will be settled as loss and damage and will not prevent the real estate repossession.

H) FEE

The debtor in the cases of fiduciary sale will pay the creditor, on account of the occupation fee, 1% per month or the fraction of the agreement amount from

the sale at auction of the lost property until the final possession by the creditor is declared.

I) INSURANCE

The users, whether individual or legal entity, that occupy properties of the Federal Government under the occupation with consideration system or those that are high-level federal public servants that occupy government properties because they are not residents of the Federal District, are required to contract a property insurance to be regulated by the Federal Property Department [*Secretaria do Patrimônio da União - SPU*]. Deprived or low-income families may also be required to take out insurance in the cases of settlement projects.

The SPU should use caution to regulate this matter in order not to establish conditions that might make the offer of insurance by insurers difficult, because, in such case, in practice, this requirement would be pointless.

J) VACANT PROPERTIES

As to abandoned private properties, the law allows their transfer to the city or the Federal District governments as vacant properties. The owners' intent of not keeping the property will be presumed where the owner does not pay the related taxes for five years. The property will be transferred to the public authority under an administrative procedure in which the abandonment period and the default on the tax will be evidenced. The interested party will have 30 days to oppose that initiative.

After the property has been incorporated into the public assets, if the owner claims the possession of a property that had been abandoned for 3 years, the Executive Branch will be entitled to prior reimbursement for the expenses, including tax liabilities, incurred during the provisional possession. Those properties may be allocated to housing

programs, for provision of public services, to the Reurb-S [a public benefit program] or the right in rem as to their use may be granted to civil entities for evidenced charitable, assistance, educational, sports and other purposes, according to the interest of the city or the Federal District.

K) LEGAL AMAZON

Concerning the lands out of the Legal Amazon that are owned by the Federal Government, the measure allows their sale, exempted from bidding process, to those that occupy rural lands of the Federal Government and the Brazilian Institute for Colonization and Agrarian Reform [*Instituto Nacional de Colonização e Reforma Agrária* - Incra], including remaining official colonizations occurred prior to October 10, 1985. The price will follow the same criteria set for the lands of the Legal Amazon.

The same rules for direct sale may be also applied to the urban and rural areas of the Superintendence of

the Duty-Free Zone of Manaus [*Superintendência da Zona Franca de Manaus* - Suframa], within or not the Legal Amazon. On the other side, rural areas may be donated to Incra for agrarian reform purposes, and urban and rural areas may be donated to the cities of Manaus and Rio Preto da Eva (State of Amazonas) to legitimize rural areas in the event the occupations were consummated until December 22, 2016.

Those rules were criticized by environmentalists that considered that they were an incentive to the invasion of public lands and would cause an increase in the deforestation.

L) SALE OF PRECARIOUS OCCUPATION

The law permits direct sale of properties enrolled in occupation, which is a governmental authorization for private persons to precariously occupy lands owned by the Federal Government. The minimum value of such properties will be the market value but they will

be appraised according to the region or stretch methodology, provided that they are homogeneous, and according to criteria set in the zoning or pilot plan of the city. The sale may be a cash sale, with a 25% discount, or a credit sale, without discount. The other conditions may be set in an act of the SPU. Those not opting for purchasing the property will remain subject to the occupation regime.

The buyer may use the funds of the Unemployment Savings Fund [*Fundo de Garantia por Tempo de Serviço - FGTS*], provided that the transaction meets the conditions for financing by the Housing Finance System [*Sistema Financeiro da Habitação - SFH*], upon execution of an agreement with the Federal Savings Bank [*Caixa Econômica Federal - CEF*] as financing agent for installment payment agreements. Of the total amount collected, the Federal Government will transfer 20% to the cities and the Federal District depending on where the properties are located.

M) SALE OF ANNUAL RENT

The same appraisal criterion will be used for the sale of lands of the Federal Government currently under the rent of lands regime, whereby an annual rental is paid for the use of the property. In addition to the value of land, any interested party that joined the program will pay the outstanding fees to the SPU. Deprived and low-income persons will not be required to pay for full ownership of the property. The lessee not opting for buying the properties will remain subject to the rent of lands regime.

The payment may also be made in cash, with a 25% discount, or in installments using the deposits into FGTS. Properties managed by the Ministry of Foreign Relations, the Ministry of Defense and the Navy, Army and Air Force Commands, the lands in the border strip and in the Navy safety zone (30 meters from the end of the beach) are not included. Concerning the Navy lands and added lands to be sold, the permanent preservation areas [*áreas de preservação*

permanente - APP], or lands whose parceling is prohibited, are excluded.

Such lands must be located in an established urban area, defined in the pilot plan or a specific municipal law as an area in the urban perimeter or an urban area, with an implemented road system and paved roads; residential, commercial, industrial buildings; and at least three types of urban infrastructures, (rainwater draining, sanitary sewage, drinkable water supply, electricity supply, urban cleaning, and solid waste collection and handling).

Of the amounts collected by the Federal Government, 20% will be transferred to the cities and the Federal District, depending on where the properties are located.

N) PROPERTY PROGRAM

The part corresponding to the sale of lands in the occupation or annual rent regime will be deposited in

the Special Fund for Development and Improvement of the Inspection Activities [*Fundo Especial de Desenvolvimento e Aperfeiçoamento das Atividades de Fiscalização* - Fundaf] to be used in the Program for Management of Real Property of the Federal Government [*Programa de Administração Patrimonial Imobiliária da União* - Proap]. A part corresponding to 2.5% of the annual revenue of the Federal Government deriving from the collection of the occupancy fee, annual rents and laudemium, payment of tax liabilities included in the list of overdue tax liability, leases, rents, assignment and permission of use, fines and other property fees will be allocated to that program. Among the purposes of the program is the management and maintenance of the units of the SPU.

O) OTHER PROVISIONS

As to the security for insurance transactions, the Law establishes that the Brazilian Managing Agency of Guarantee Funds and Guarantees S.A. [*Agência*

Brasileira Gestora de Fundos Garantidores e Garantias S.A. - ABGF], a federal government agency, may give security against commercial risks in foreign trade loan transactions with micro, small and medium companies, and security in the private rural insurance market, as supplementary coverage in the lines of rural, livestock, aquaculture, forest and rural pledge insurance.

The date of December 29, 2017 was established as the deadline for the inclusion of rural tax liabilities in the list of overdue federal tax liabilities as a parameter for discounts upon the settlement of rural credit debts contracted within the ambit of the Lands and Agrarian Reform Fund - Banco da Terra [*Fundo de Terras e da Reforma Agrária – Banco da Terra*].