

# Recent initiatives to promote real estate market development

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*In the last years, we witnessed the implementation of different measures tending to boost the development of the real estate market, always dependent on the economic activity. From the PROCREAR plan, in its different versions and value adaptations, to the promotion of mortgage loans called "UVA", which had a brief peak until early 2018 when they were affected by a strong devaluation of local currency and the growing inflation, among other reasons.*

The delicate current situation of mortgage loans drives the end consumer (i.e. single family units) even further away from the goal of homeownership, considering that end consumers usually have limited savings and need the extended term that these traditional mortgage lines tend to offer to be able to face the purchase of real estate, especially under the current economic conditions.

In addition, our experience shows that, in new projects, when a real property is ready to be mortgaged by a financial institution, that means that several steps have already been taken since its planning, approvals, construction and subdivisions that, in general, are translated into price increases of the units as a result of the intervention of different actors in said stages, turning the access to homeownership even more illusory.

In relation to this situation in particular, here we highlight some regulatory changes aimed at facilitating the financing of real estate projects in their initial or "pre-construction" stages.

We make reference, on the one hand, to the recent changes implemented to the "Preferred B" guarantee classes included in the **LISOL —Liquidity and Solvency— Regulations** issued by the Central Bank of Argentine Republic (BCRA) and, on the other hand, to the recent announcement related to the "registrable digital bill of sale" and the amendment of certain registration rules, currently only applicable in the City of Buenos Aires.

**1. Changes to the BCRA – LISOL Regulations:** As regards the BCRA Regulations that establish the Liquidity and Solvency rules that financial institutions under its control should observe, we highlight that the successive reforms recently implemented have incorporated the following concepts to the classification of "Preferred B Guarantees":

. Consideration, for the purposes of said regulation, of collection rights with the highest preference as regards the remaining creditors and established in favor of the lender

financial entity in the trust agreement that contains, within its assets, the real property on which the project shall be developed, as equivalent to a first mortgage loan;

. Incorporation of security trusts<sup>1</sup> as Preferred B Guarantee, provided they are created to guarantee the payment of the financing granted by a financial entity for the construction of real property, and all requirements established therein are complied with;

. Incorporation of trust assignments of bills of sale on future units to be constructed or under construction, regarding which it is not possible to grant possession, provided the bill of sale is registered in the relevant Registry according to the provisions established in Section 1170 of the Argentine Civil and Commercial Code<sup>2</sup>; and

. Incorporation of the pledge or collateral of rights on real estate developments implemented by means of trusts or construction companies, subject to compliance with certain requirements.

The reforms to these regulations are relevant because they have a large impact on the debtor classification regime imposed by the BCRA Regulations, and the resulting minimum provisions for bad debt risk that the lender financial institutions must make, given that financings covered by preferred guarantees (including "Preferred B Guarantees") demand lower provisions for bad debt risk, and, therefore, the negative impact of non-recovery of credits on the net worth of financial entities is reduced.

<sup>1</sup> Created according to Section 1666 and following Sections of the Argentine Civil and Commercial Code.

<sup>2</sup> SECTION 1170: Real Property Bill of Sale. The good faith purchaser's right has priority over the right of any third parties that have initiated preliminary injunctions on the sold real property if: [...]; d) the acquisition of title has sufficient publicity, whether registral or possessory.

**2. The “Registrable Digital Bill of Sale”:** Although it has been recently launched in the media, the initial kickoff of this tool was the passing of Executive Order No. 962 issued by the National Executive Branch on October 26, 2018, which amended the Regulations of the Real Property Registration Law for the City of Buenos Aires<sup>3</sup>. Said rule was issued based on two elements: (i) the publicity of the acquisition, a key factor for the provisions established in the aforementioned Section 1170 of the Argentine Civil and Commercial Code, when it is impossible to give said publicity because of the possession, as we are talking about not yet existing units; and (ii) the judicial efficacy of digital documents and electronic and digital signatures, together with the goal of the National Government to promote the massive use of said tools, within the framework of Law No. 25,506.

Next, we highlight the aspects we consider most relevant about the registrable digital bill of sale:

From the approval of the project and the submission of certain documents related thereto, the digital bills of sale executed by purchasers of future units will be registrable, and this will turn said documents into an acceptable guarantee to request bank financings directly for the end purchaser, who shall be able to access to loans similar to the current traditional mortgage loans;

These instruments will be processed by means of digital signatures and the Remote Proceedings Platform, thus avoiding intermediaries and the existent costs; and In contrast to the reforms to the BCRA Regulations, the main purpose of which is the bank financing of “pre-construction” projects as a whole (more oriented to investors and developers), this instrument is initially designed so that every end purchaser, individually, may access to bank financing with the initial documents received at this early stage of construction of the project, and this allows not only to avoid costly intermediaries, but also to access to, in general, substantially lower prices than those existent in the market, given that the purchaser, by means of its incorporation into this stage, assumes the own risks of the work.

From the time being, this initiative is only available in the City of Buenos Aires, but it will probably be well-received by other jurisdictions.

The real estate market in general, and the construction market in particular, is not indifferent to the current economic situation and is suffering a marked fall. The creation of policies and tools that serve as basis to favor the development and recovery of an industry extremely

important for the economy of a country is crucial at this time, and said policies and tools should always be carried out based on clear and —especially— long-lasting rules in order to avoid the constant change of legal scenarios, so that said tools continue being useful also in times of greater activity.

<sup>3</sup> Executive Order No. 2080/80, restated in 1999, approved as Annex I by Section 4 of Executive Order No. 466/99.

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