

Argentina: Trust law

Law 24.441 Housing and Construction Financing

HOUSING AND CONSTRUCTION FINANCING

Law No. 24,441

FEDERAL HOUSING SYSTEM

Law No. 24,464

MISAPPROPRIATION OF REAL PROPERTY

AMENDMENTS TO THE CRIMINAL CODE AND TO THE NATIONAL CODE OF CIVIL AND COMMERCIAL PROCEDURE

Law No. 24,454

MINISTRY OF JUSTICE

SECRETARIAT OF DEEDS REGISTRATION

NATIONAL BOARD OF THE OFFICIAL REGISTRY

Law 24,441 (Published in the Official Gazette of the Argentine Republic on 1/16/95)

Trust. Trustee. Effects of the Trust. Financial Trusts. Share Certificates and Debt Securities. Insufficiency of the Trust Equity in the Financial Trust. Termination of Trust. Lease Agreement. Mortgage Bonds. Mortgage Bonds for Housing. Special Mortgage Foreclosure System. Civil Code Amendments. Brokerage System Amendments. Mutual Funds Act Amendments. Amendments to the National Code of Civil and Commercial Procedure. Registry System Amendments. Criminal Code Amendments. Tax Laws Amendments. Deregulation of Construction Related Issues Within the Scope of the Federal Capital.

Passed: December 22, 1994.

Enacted: January 9, 1995.

The Upper and Lower Houses of the Argentine Congress, duly assembled, do hereby pass the following Law:

TITLE I

On Trusts

SECTION 1: There shall be a trust whenever a person (settlor) transfers the trust property title to another person (trustee), who is bound to manage it for the benefit of whoever is appointed by the contract (beneficiary), and to transfer it upon a

specific period of time or fulfillment of a term to the settlor, the beneficiary, or the trustee.

SECTION 2: The contract shall individualize the beneficiary, who may be an individual or legal entity, existing or not upon the execution of the contract. In the last case, the contract shall contain all the information to enable the future individualization thereof.

More than one beneficiary may be appointed who, unless otherwise specified, shall receive equal benefits. In the event of non-acceptance, waiver, or death, substitute beneficiaries shall be appointed.

If none of the beneficiaries were to accept, all of the beneficiaries die, or none of them exists, the beneficiary shall be the cestui que trust. If the cestui que trust does not exist, resigns, or does not accept, the beneficiary shall be the settlor.

The right of the beneficiary may be transferred inter vivos or upon death, unless the settlor provides otherwise.

SECTION 3: The trust may also be established by will, executed under any of the formalities established by the Civil Code, and shall contain at least some of the statements required by Section 4. Were the trustee appointed by the will not to accept, the provisions of Section 10 hereof shall apply.

CHAPTER II

The Trustee

SECTION 4: The contract shall also contain the following:

- a) Individualization of the property subject matter of the contract. Were this individualization not to be possible upon the execution of the trust, it shall include a detailed description of the requirements and characteristics to be met by the property;
- b) Specification of the way other property may be included in the trust;
- c) Term or condition the trust property is subject to, which shall never exceed thirty (30) years as of the execution thereof, unless the beneficiary is an incapable person. In this event, it may last until the death of such person or the cessation of the incapacity;
- d) Destination of the property upon trust termination;
- e) Rights and duties of the trustee, and method for his substitution in the event of discontinuance.

SECTION 5: The trustee may be an individual or a legal entity. Only financial institutions authorized to operate as such may publicly offer themselves to act as trustees, subject to the provisions of the relevant laws, and any legal entity so authorized by the National Securities Commission, which shall establish the requirements to be met.

SECTION 6: The trustee shall discharge any duty as may be established by law or custom, following the discretion and diligence of the good businessman who acts upon the confidence that has been bequeathed to him.

SECTION 7: The contract shall not excuse the trustee from its reporting duty, which may be requested by the beneficiary under the terms of the contract, or from any fault or tort which the beneficiary or the people under its charge may incur into, or from the prohibition of purchasing for itself the trust property.

In all cases, the trustee shall justify its actions to the beneficiaries on a periodical basis, and the term shall not exceed one (1) year.

SECTION 8: Unless otherwise provided, the trustee shall be entitled to the reimbursement of expenditures and to receive a payment. Were the latter not to have been specified by the contract, the judge shall establish it taking into account the nature of the duties and the importance of the obligations discharged.

SECTION 9: The trustee shall cease acting as such due to:

- a) Judicial removal due to breach of duty, on request by the settlor; or on request by the beneficiary by notice to the settlor;
- b) Death or legally stated incapacity, for individuals;
- c) Dissolution, for legal entities;
- d) Bankruptcy or liquidation;
- e) Resignation when the contract expressly authorizes this reason. The resignation shall be effective after the trust property has been transferred to the substitute trustee.

SECTION 10: Once a cause for cessation of trustee has taken place, it shall be replaced by the substitute so appointed by the contract or in agreement with the method established therein. Were there to be no substitute, or were the substitute not to accept its appointment, in agreement with the provisions of Section 19 the Judge shall appoint one of the authorized institutions as trustee. The trust property shall be transferred to the new trustee.

CHAPTER III

Effects of the Trust

SECTION 11: A trust property is established on the trust assets. This trust property is ruled by the provisions of Title VII, Book III, of the Civil Code, and by the provisions of this Law, for tangible assets, or by those provisions related to the nature of the assets when these are intangible.

SECTION 12: The trust nature of the property shall be effective before third parties upon the fulfillment of the required formalities, according to the nature of the respective assets.

SECTION 13: In the case of property subject to registration, the relevant registration shall specify the trust transfer of the property on behalf of the trustee. When so established by the contract, the trustee shall purchase the trust property of other assets purchased with the gains of the trust property or with the gains of the management thereof, which shall be evidenced in the purchase document and in the relevant records.

SECTION 14: The trust property constitutes an equity separated from that of the trustee and of the settlor. The strict liability of the settlor, as established by Section

1,113 of the Civil Code, is limited to the value of the trust assets whose risk or fault caused the damage, if the prevention thereof was beyond the trustee's possibilities.

SECTION 15: The trust property shall be exempted from any individual or joint action by the trustee's creditors. The settlor's creditors shall not go against the trust property, except in the event of fraud. The beneficiary's creditors may exercise their rights on the trust property gains and may subrogate the rights thereof.

SECTION 16: The trustee's property shall not be liable for any obligation arising from the execution of the trust, which shall only be met by the trust property. The insufficiency of the trust property to meet these obligations shall not lead to the bankruptcy thereof. In said case, and due to lack of other resources provided by the settlor or the beneficiary under the terms of the contract, the liquidation of the trust property shall proceed, which shall be in charge of the trustee. In such case, the trustee shall sell the assets making up said trust property, and shall deliver the produce to the creditors according to the order of privileges established for bankruptcy. In the case of a financial trust, the provisions of Section 24 shall apply.

SECTION 17: The trustee may dispose of or pledge the trust property when so required by the trust, without any need of obtaining the settlor's or beneficiary's consent, unless otherwise agreed.

SECTION 18: The trustee is empowered to take any necessary action for the defense of the trust property, both against the beneficiary and third parties.

The Judge may authorize the settlor or the beneficiary to take actions substituting the beneficiary in the event of inaction by the latter without sufficient cause.

CHAPTER IV

On Financial Trusts

SECTION 19: A financial trust is any trust subject to the previous regulations, whose trustee is a financial institution or a corporation specially authorized by the National Securities Commission to act as a financial trustee, and whose beneficiaries are the holders of share certificates of the trust property or of debt securities guaranteed by the property so transferred.

Said share certificates and debt securities shall be regarded as securities and may be subject to public offering.

The National Securities Commission shall be the enforcement authority regarding financial trusts, and may adopt regulatory provisions.

SECTION 20: The trust contract shall contain the provisions established by Section 4 and the issuing terms of the share certificates or debt securities.

CHAPTER V

On Share Certificates and Debt Securities

SECTION 21: Share certificates shall be issued by the trustee. Debt securities guaranteed by the trust property may be issued by the settlor or by a third party, as applicable. Share certificates or debt securities may be issued to holder or bearer, endorsable or not, or may be book-entry securities in agreement with Section 8 and

companion provisions. of Law 23,576 (as amended by Law 23,962). Certificates shall be issued on the basis of a prospectus specifying the issuing terms and containing any statement as may be necessary for the identification of the trust they belong to, together with a brief description of the rights granted therein.

Global share certificates may be issued for their registration with joint deposit systems. For that purpose, they shall be regarded as final, negotiable and divisible.

SECTION 22: Several classes of share certificates having different rights may be issued. Each class shall grant the same rights. An issue may be divided into series.

CHAPTER VI

On the Insufficiency of the Trust Equity in the Financial Trust.

SECTION 23: In the financial trust of chapter IV, in the event of insufficiency of the trust equity, and if no contract provision exists, the trustee shall call a meeting of debt securities holders by the publication of notices in the Official Gazette and in a major newspaper within the jurisdiction of the trustee. Said meeting shall be held within a term of sixty days as from the last publication, and it shall decide on the property management and liquidation rules.

SECTION 24: The rules provided for by the previous Section may establish:

- a) The transfer of the trust equity as a unit to another corporation having a similar business;
- b) The amendment of the issuing contract, which may include debt exemptions, or changes in the initial terms, methods or conditions;
- c) The continuity of the management of the trust property until the termination of the trust;
- d) The method for selling the assets of the trust equity;
- e) The appointment of the person who shall be in charge of selling the equity as a unit or the assets making up the equity.
- f) Any other matter as the meeting may establish regarding the management or settlement of the separated equity.

The meeting shall be regarded as validly constituted when the holders representing at least two-thirds of the issued and outstanding capital are present; holders may be represented by proxy duly certified by notary public, legal authority or bank; no legalization is required.

Agreements shall be adopted by favorable vote of shareholders representing, at least, the absolute majority of the issued and outstanding capital; except for the issues referred to in paragraph b), when the majority will be two-thirds (2/3) of the issued and outstanding capital.

If there is no quorum on the first call, a new meeting shall be called to be held within the thirty (30) days following the date established for the adjourned meeting. The second meeting shall be regarded valid with any shareholders as may be present. The agreements shall be adopted by the favorable vote of shares representing, at least, the absolute majority of the issued and outstanding capital.

CHAPTER VII

On the Termination of Trust

SECTION 25: The trust shall be terminated by:

- a) The maturity of the term or the fulfillment of the condition it was subject to, or the maturity of the maximum legal term;
- b) The revocation of the trustee, were it to have expressly reserved that power; revocation shall not have retroactive effect;
- c) Any other reason as established by the contract.

SECTION 26: Once the trust is terminated, the trustee shall be compelled to deliver the trust property to the cestui que trust or the successors thereof, granting the pertinent instruments and assisting in the relevant registrations.

TITLE II

Lease Agreement

SECTION 27: There will be a lease agreement whenever a purchase option to be exercised by the payee is added to the rental agreement, and the following requirements are met:

- a) The grantor is a financial institution, or a corporation having as corporate object the execution of this type of contracts;
- b) Its purpose is individualized chattel property specially purchased by the grantor from a third party, or real estate owned by the grantor and leased to the payee;
- c) The rent is established taking into account the amortization of the property value, in accordance with generally accepted accounting standards, within the term of the contract. In this regard, provisions relating to maximum and minimum property rental periods shall not apply.
- d) The payee is entitled to purchase the property paying a price established by the agreement and reflecting the residual value thereof. This power may be exercised as from the moment the payee has paid half of the leasing periods agreed, or before that moment, if so agreed by the parties.

SECTION 28: Lease agreements may also be executed by the manufacturers and importers of chattel property for the equipment of industries, businesses, service providers, agricultural business or professional activities being used by the payee for that sole purpose. The provisions of paragraphs b), c), and d), and of the previous Section, and any other relevant provision of this Title, shall apply to this kind of agreement.

Eviction guarantees and hidden effects shall not apply to this agreement.

SECTION 29: The parties may agree, in addition to the purchase option, the possibility to renew the agreement, replacing the matters constituting its purpose for new ones under the terms agreed.

SECTION 30: For the defense of its rights against third parties, the agreement shall be registered with the relevant Registry. In the case of chattel property not subject

to registration, it shall be registered with the Pledge Credit Registry having jurisdiction over the location thereof.

SECTION 31: The assets of any duly registered agreement shall have rights and be defended from third parties, so that the latter may exercise their powers but may not hinder the fulfillment of the purposes of the agreement. Payee's creditors may subrogate the rights thereof in order to exercise the purchase option.

In the event of bankruptcy of the grantor, the agreement shall remain in full force and effect during the term agreed, and the payee may exercise its purchase option within the specified time period.

In the event of bankruptcy of the payee, within sixty (60) days after having been adjudged, the trustee may choose to continue with the agreement under the agreed terms or to terminate it. Should said period conclude without any of the options having been exercised, the agreement shall be deemed terminated.

SECTION 32: The transfer of property occurs with the exercise of the purchase option, the payment of the residual value under the terms established by the agreement, and the fulfillment of the relevant legal precautions in agreement with the nature of the property in question, to which effect the parties shall provide the necessary documentation.

SECTION 33: The provisions applicable to property rental shall additionally apply to this agreement, as long as they are consistent with its nature and purpose; after the purchase option has been exercised, the provisions of the sales agreement shall apply.

The strict liability of the grantor, as established by Section 1,113 of the Civil Code, is limited to the value of the leased property whose risk or fault caused the damage, if the prevention thereof was beyond the trustee's possibilities, and notwithstanding the payee's liability.

SECTION 34: Whenever the leasing involves real estate, any default in the duty of the payee to pay the rent may cause the following effects:

a) When the debtor has paid less than a quarter (1/4) of the agreed number of rental periods, default shall be automatic, and the grantor may file a complaint for the judicial eviction thereof; the payee shall have five (5) days to submit written evidence showing that the periods claimed have been paid, or to stop the proceedings, only once, through the payment of the rent in default and the interest accrued. Otherwise, the Judge shall provide for the eviction thereof without further proceedings;

b) When the payee has paid more than a quarter (1/4), but less than seventy-five percent (75%) of the agreed number of rental periods, the grantor shall give notice requesting the payment of the period(s) in default. The payee shall have a period of sixty (60) days as from reception of notice to comply. If that period of time elapses and no payment has been made, the grantor may file a complaint for eviction, and the payee shall have five (5) days to submit written evidence showing that the periods claimed have been paid, or to stop the proceedings through the payment of the rent in default and the interest accrued, if this procedure has not been previously used. Otherwise, the Judge shall provide for the eviction thereof without further proceedings;

c) If the default is incurred into after the payee has become empowered to exercise the purchase option, or after the payee has paid more than seventy-five percent (75%) of the number of rental periods established by the contract, the grantor shall serve notice requesting payment, and the payee may choose to pay within a period of ninety (90) days the rent in default plus accrued interest or the residual value resulting from the enforcement of the contract, on the date of default. If this period elapses and no payment has been made, the grantor may file a complaint for eviction, and the payee shall have five (5) days to solve the situation, and shall only be able to stop the proceedings by resorting to any of the options established by this paragraph;

d) Once eviction has taken place, the grantor may claim for the payment of the rent in default up to the eviction, plus interest and any damage resulting from the abnormal deterioration of the property ascribable to the payee.

TITLE III

On Mortgage Bonds

SECTION 35: Mortgage bonds are mortgage secured securities.

SECTION 36: The issuing of mortgage bonds may only be in connection with first-degree mortgages and shall be expressly agreed by the document establishing the mortgage.

SECTION 37: The issuing of mortgage bonds extinguishes by novation the obligation guaranteed by the mortgage.

SECTION 38: The issuing of mortgage bonds does not prevent the debtor from transferring the ownership of the real state; the new owner shall have the rights and duties of a third party who possesses the mortgaged property sold. The rental agreed after the creation of the mortgage shall be ineffective against whoever may acquire any right on the bond or the coupons thereof. The debtor or the third party who possesses the property sold have the duty to insure the property against fire, under the usual terms of the market; default thereof shall entail the lapse of the terms established by the bond.

SECTION 39: Mortgage bonds are issued by the debtor -and reviewed by the Real Estate Registry relevant to the jurisdiction where the mortgaged property is located- in a document drawn in unalterable paper and bearing the signatures of the debtor, the notary public, and an authorized registry officer; the issue thereof is placed on record in the same mortgage entry. Mortgage bonds shall contain the following information:

- a) Name of debtor and, if applicable, name of the owner of the mortgaged property;
- b) Name of creditor;
- c) Amount of the obligation included in the bond, expressed as an amount specified in domestic or foreign currency;
- d) Terms and other provisions regarding payment, with the respective coupons, except for the provisions of section 41 regarding bonds subject to variable repayment;
- e) Place where payments shall be made;

- f) Compensation and penalty interest rates;
- g) Location of the mortgaged property and registry and survey information thereof;
- h) The entry of any payments of equity and interest crediting the payment thereof shall be specified;
- i) The express indication that the holding of equity and interest coupons shall evidence payment thereof, and that the creditor is compelled to grant them and the debtor is compelled to request them;
- j) Any other requirements as may be established by any future regulation.

The bonds shall also state any agreed change regarding the loan, such as any change relating to terms of payment, interest rates, etc.; mortgage bonds may also be book-entry bonds.

SECTION 40: Mortgage bonds are transferred through nominative endorsement to be made on the title, or extension thereof, at the place authorized for such purpose; the title shall state the name of the endorsee, who may transfer the ownership again under similar terms, and the date of the endorsement. No notice to the debtor is required, and the debtor may not oppose against the holder or endorsee any defense it may have had against any former endorsee or bearer of the security, except for the provisions of section 42, in fine. The endorsement of mortgage bonds does not imply any liability for the endorser.

SECTION 41: Mortgage bonds shall have coupons for the implementation of capital or interest installment payment. The payee shall be entitled to obtain the corresponding coupon as the only valid credit document. If the bond is subject to repayment in variable installments, the issuing of coupons may be omitted. In this event, the debtor shall be entitled to have partial payments recorded in the bond itself, although any documented payment that has not been thus recorded shall be valid against any holder in good faith.

SECTION 42: Payment shall be made at the place stated in the bond. The place of payment may be changed within the same city, and shall only be effective upon notice served to the debtor.

SECTION 43: Once the requirements established by the previous section have been fulfilled, arrears shall be automatically incurred into upon maturity, without any need to resort to any judicial order to pay.

SECTION 44: The right over the mortgaged property included in the bond is governed by the provisions of the Civil Code on mortgages.

SECTION 45: The holder of the mortgage bonds or of any of the coupons thereof may foreclose the bond following the special foreclosure procedure established by Title IV of this law, when so agreed in the document creating the mortgage. This must be evidenced both in the bond and in the coupons.

SECTION 46: The rules established by Executive Order 5965/63 for drafts shall also apply to securities as long as they are compatible.

SECTION 47: Shares arising from mortgage bonds shall expire after three (3) years as from the maturity date of each capital or interest installment.

SECTION 48: The cancellation of registration of the bonds issued, and thus of the mortgage, may be performed on request by the debtor by submitting the bonds and

coupons, if applicable, evidencing that all capital and interest payments have been made. The certificate issued by the judge shall have the same value of the bonds and/or coupons to the effect of presentation for settlement of mortgage.

SECTION 49: The persons authorized to make public offering as trustees, or for managing mutual funds, may issue stock certificates backed by mortgage bonds or may establish mutual funds on them, in agreement with any regulatory provision adopted.

TITLE IV

On Mortgage Loans for Housing

SECTION 50: In the case of mortgage loans for housing granted in agreement with the provisions of this law, the expenditures for the notarization of the transfer of ownership and mortgage to be borne by the client –in all respects, excluding taxes, and including professional fees- shall not exceed two percent (2%) of the sale price or the appraisal of the real estate; whenever a mortgage is to be granted, the fee may be freely agreed. The contributions to professional pension systems –if applicable- and other contributions, except for local services fees, shall be proportional to the fees effectively collected by the participating professionals.

SECTION 51: In the case of mortgage loans for housing, the duration is established for the benefit of the debtor, unless otherwise provided. The right of the debtor to settle the loan before its maturity date, when the payment corresponds to all the capital due, shall not be repealed by agreement to the contrary. The agreement may establish a reasonable compensation for the creditor whenever the settlement in advance takes place before a quarter of the total term established has elapsed.

TITLE V

Special Mortgage Foreclosure System

SECTION 52: Mortgages on which mortgage bonds have been issued including the statement established by section 45, and any mortgage which has been expressly agreed to be subject to the provisions of this title, may be foreclosed in accordance with the following provisions:

SECTION 53: In the event of arrears in the repayment or payment of debt interest secured for a sixty (60) day-period, the creditor shall demand through an irrefutable means the settlement of such payment within a term of at least fifteen (15) days, and shall warn the debtor that, should the full payment of the requested amount not be settled, the real estate shall be auctioned through out-of-court procedures. In the same document, the debtor shall be required to report the name and domicile of any privileged creditor, garnishor and occupier of the mortgaged property.

SECTION 54: Once the term of the request has matured and no payment has been made, the creditor may appear before the competent judge presenting the mortgage bond or the required coupons, if any, and a certificate of property ownership of the mortgaged real estate, in order to evidence occupancy of the real estate, and the creditor may obtain, if so required, the possession thereof. The judge shall inform on this presentation during five (5) days to the debtor for the purposes of the exemptions established by Section 64. The judge shall order the verification of the

physical condition and occupancy thereof, appointing for such purpose the notary public proposed by the creditor. If as a result of such proceeding the occupation of the real estate is determined, the eviction thereof within a ten (10) day-period shall be noticed, under penalty of dispossession by police power. The eviction may not be suspended, except as provided by Section 64.

If after that period the eviction has not taken place, the dispossession shall proceed without further proceedings and possession shall be granted to the creditor, up to the provisions established by section 64. For that purposes, the acting notary public may request the support of the police, a search warrant and enter the dwelling without the inhabitant's consent, and place any property found in the dwelling in onerous deposit, to the expense of the debtor. All these proceedings shall proceed inaudita altera pars, and the provisions of the codes of procedure shall also apply.

SECTION 55: The creditor is empowered to directly request to the Real Estate Registry a report on the condition of the ownership and levies affecting the mortgaged real estate, with a detail of credit amounts, holders thereof and domiciles.

SECTION 56: Likewise, the creditor shall:

a) Directly request to the corresponding registry the issuance of a second notarized document on the real estate property title, just by proving his capacity of such and to the expense of the foreclosed party.

b) Request the settlement of any existing debt, such as expenses of the condominium property, taxes, duties and charges levied on the real estate, under penalty of auctioning the property if, within a period of ten (10) working days as from the reception of notice, no payments are made and the property is not free from debt. Any claim deducted by virtue of the enforcement of the provisions herein shall not affect the auctioning of the mortgaged property.

SECTION 57: Once the condition of the real estate has been documented, the creditor may order per se, without resorting to judicial proceedings, the sale in public auction of the secured real estate, by means of the auctioneer it may appoint and under the usual terms of the market. The auction shall be advertised for three (3) days in the official gazette and in two (2) major newspapers, of which at least one shall be distributed in the location of the real estate. The last advertisement shall be published no more than two (2) days prior to the auction date. The notary public shall be present at the auction and shall issue the auction certificate.

SECTION 58: The base price of the auction shall be the amount of the debt on the date of the sale, and the advertisements shall –at least- provide information on the surface and location of the real estate, visiting hours, status of the debt due to fees, taxes, levies, contributions and expenses, and specific day, time and place of the auction.

SECTION 59: The debtor, the owner, and the remaining holders of rights over the mortgaged real estate shall be served written notice of the auction date no less than seven (7) days in advance, not including the auction date.

SECTION 60: Once the auction has taken place, the creditor shall settle the debt in accordance with the relevant contract and prior guidelines, plus any expenditure corresponding to the foreclosure, all of which shall not exceed an amount equal to three percent (3%) of the loan. It shall deposit the remainder to the order of the competent judge along with the documented accountability within the subsequent five (5) days. The judge shall inform the debtor on the above-mentioned presentation by

the creditor, granting it five (5) days for the purposes of challenging or accepting the settlements. In the absence of attachments, restraints or other credits, and upon agreement between the debtor and the concerning the remainder, the latter may directly give said remainder to the former.

SECTION 61: Were the auction to fail due to lack of bidders, a new auction shall be arranged reducing the base-price by twenty-five percent (25%). Were there to be no bidders, the sale without price limitation and to the best bidders shall be ordered. The collection of any fees for the failed auctions shall not apply. If the purchaser is the mortgage creditor, then it shall settle the payment.

SECTION 62: Were the purchaser not to timely pay the total price, a new auction shall take place. The purchaser shall be liable for the real price decrease obtained in the new auction, for the interest accrued and for the expenses incurred into.

SECTION 63: Notwithstanding the provisions of Section 66, the sale shall be perfected once the price has been paid within the specified term and the transfer to the purchaser has been made, and may be valid against third parties once the corresponding registration has been made. The payment shall be directly made to the creditor when the latter is the owner of the total loan.

The remainder shall be deposited within five days following collection.

Were there to be more than one creditor, the payment shall be made to the acting auctioneer, who shall deposit the remainder to the order of the judge so that the latter may summon all creditors for the distribution of the amount obtained.

Were the creditor to possess the auctioned real estate, it may directly transfer it to the purchaser; otherwise, and if no eviction in advance has occurred, the transfer shall be made through the judge, and the corresponding provisions of Section 54 shall be apply. The notarization of the documents shall be made by the notary public appointed by the creditor, without the appearance of the foreclosed party being necessary, and it shall evidence the following:

- a) The request to the debtor under the terms of Section 53;
- b) The notice established by section 59;
- c) The advertisement published;
- d) The auction certificate.

The relevant documents shall be added to the instrument.

The acting judge shall release any attachment and restrain by summoning the judges who issued the precautionary measures, in agreement with the rules of procedure of the relevant jurisdiction.

SECTION 64: The foreclosed party may not file any defense, motion or resource aimed at suspending the eviction established by section 54 or the auction, except when it reasonably evidences any of the following cases:

- a) That it is not in arrears;
- b) That no payment has been requested;
- c) That the method chosen has not been agreed; or
- d) That there are serious defects contained in the advertisement.

In said cases, the competent judge shall order the precautionary suspension of the eviction or auction.

If the creditor challenges the statements of the foreclosed party, the case shall be tried following the most concise proceeding authorized by local laws. Otherwise, if it were to acknowledge the representations of the foreclosed party, the judge shall nullify the proceedings of the creditor and shall order the filing of the proceedings, except in the case of paragraph d), in which case it shall decide on the advertisement to be made before the auction.

SECTION 65: Once the auction has been performed and the foreclosed loan has been settled, the debtor may judicially challenge, through the most concise procedure requested by the debtor:

- a) The lack of agreement among the facts enabling the sale;
- b) The liquidation performed by the creditor;
- c) The non-observance by the execution creditor of the precautions established by this title.

Notwithstanding any applicable criminal and administrative penalties, the creditor shall pay compensation for any damages caused.

SECTION 66: Within thirty (30) calendar days following the out-of-court foreclosure, the debtor may recover the ownership of the real estate upon payment to the purchaser of the price obtained at the auction, plus a three percent (3%) established by Section 60.

SECTION 67: Should the price obtained at the auction not to cover the entire loan secured by the mortgage, the creditor shall submit an assessment to the competent judge drawn according to the most concise fact-finding process established by local laws. The liquidation shall be made with the debtor, who may ask for the equitable reduction of any outstanding balance after the auction, when the price obtained is substantially lower than the market price, taking into account the conditions of occupancy and maintenance of the real estate.

TITLE VI

Civil Code Amendments

SECTION 68: The following text is hereby included as the last paragraph of Section 980 of the Civil Code:

Any private document granted in accordance with the provisions of this code shall be valid and have the same effect throughout all the Argentine Republic, regardless of its execution jurisdiction.

SECTION 69: The following text is hereby included as the last paragraph of Section 997 of the Civil Code:

Whenever a legal document is executed in a territory in order to be effective in another territory, the local laws shall not impose any tax or levy establishing differences, based on the residence of the parties, the place where duties shall be discharged, or the participating officers.

SECTION 70: The provisions of this Section and the provisions of Sections 71 and 72 shall apply whenever rights are assigned as part of a credit portfolio for the purposes of:

- a) Guaranteeing the issue of securities through public offering;
- b) Constituting the assets of a corporation, so that it may issue securities for public offering, whose repayment and interest services are guaranteed by such assets;
- c) Constituting the equity of a credit fund.

SECTION 71: The assignment referred to in the above section may be executed through a single document, individualizing each credit by specifying amount, terms, interest, and guarantees. In such case, it shall be registered with the corresponding registries.

The documents evidencing the assigned rights shall be delivered to the assignee or trustee or, if applicable, to a depository or the depository of the common loan fund.

SECTION 72: In the cases established by Section 70:

- a) No notice to the transferred debtor shall be necessary whenever there is a contract stipulation in that sense. The transfer shall be effective as of the date thereof;
- b) Only the exception based on the nullity of the credit relationship or the documented payment prior to the transfer date shall remain effective against the transferee.
- c) In the event of a financial institution issuing securities backed by a portfolio having bearer securities still deposited in it, the institution shall be the trust owner of the securities. However, under no circumstance the credits shall be part of the equity.

SECTION 73: Section 2662 of the Civil Code is hereby replaced as follows:

Section 2662: Trust property is the property purchased by virtue of a trust created by contract or will, and shall only last until the termination of the trust, for the effects of delivering the property to the one stated in the contract, will, or law.

SECTION 74: The following text is hereby included as the second paragraph of Section 2670 of the Civil Code:

Any act of disposal performed by the trustee in agreement with the provisions of the special regulations is hereby exempted.

SECTION 75: The following text is hereby included as the second paragraph of Section 3936 of the Civil Code:

The local laws shall provide for the procedural system of mortgage security judicial foreclosure in agreement with the following provisions:

- a) The procedure followed shall be that of an executory process;
- b) The information proceeding on the terms of the property and on any tax, duty, levy and expenditure may be handled on an out-of-court basis, and the occupancy may be established by notarial record;
- c) Purchase on commission shall not proceed;

d) Under no circumstance shall the funds obtained from the auction be restricted, although the judge may require sufficient guarantees from the creditor.

e) If so requested by the creditor, the judge shall order the eviction of the real estate before the auction.

SECTION 76: The following text is hereby included as the last paragraph of Section 3876 of the Civil Code:

The rights of the creditor may be agreed to be postponed until the total or partial payment of any present or future debt of the debtor has been settled.

TITLE VII

Brokerage System Amendments

SECTION 77: For the purposes of registration and practice of the broker, it shall not be required to be domiciled at the place of practice.

In the event of real estate brokerage of new dwellings, commission shall only be charged to the commissioning party. In the remaining operations, the commissions to be charged to the purchaser shall not exceed 1 1/2 of the purchased value.

TITLE VIII

Mutual Funds Act Amendment

SECTION 78: Law 24,083 is amended as follows:

a) Two final items are hereby included in Section 1, which shall read as follows:

Section 1: A mutual fund is the equity made up of public offering bearer securities, precious metals, foreign currencies, rights and duties arising from futures and options operations, instruments issued by financial institutions authorized by the Central Bank of the Argentine Republic, and moneys, belonging to several persons, having acknowledged co-ownership rights, represented by book-entry shares or securities. These funds do not constitute corporations and are not incorporated.

Mutual funds established with a maximum number of shares, in agreement with Section 21 of this Law, may have special investment purposes, and the equity thereof may be made up of homogeneous or analogous sets of real estate or personal property, or creditor's rights with or without collateral, in agreement with the provisions of the regulatory authority established by Section 32 of this Law.

Mutual funds may issue several share classes having different rights. Shares may grant co-ownership rights, in agreement with the provisions of item one hereof; issues having a specific standard value and a return estimated on such value, whose payment shall be subject to the return of assets making up the fund assets, may also be issued.

b) Section 2 is hereby replaced as follows:

Section 2: The name mutual fund, as well as any analogous name as the regulation may establish, shall only apply to those funds established in agreement with the provisions of this Law, in addition to a name allowing the differentiation thereof. The

name real estate mutual fund, as well as any analogous name to be established by the regulation, shall only apply to those mutual funds with a maximum number of shares, whose equity is made up of the property established by Item 1, Section 1, of this Law, as well as of rights on real estate, first or ulterior-degree mortgage loans and antichresis rights on real estate in accordance with the provisions of the regulation.

c) Paragraph a) of Section 13 is hereby amended as follows:

Section 13: The Management Rules of Procedure shall specify:

a) Plans adopted for fund equity investment, specifying objectives sought, investment limits by kind of asset and, if any credit is involved, nature thereof and existence or not of coverage against risk of default.

d) Paragraph c) of Section 14 is hereby amended as follows:

c) To safeguard and deposit values and other instruments representing investments, to pay and collect accrued benefits, as well as the produce of the bargain and sale of securities, and any other operation inherent to these activities. Values may be deposited in a savings account opened pursuant to the provisions of Law 20,643.

e) The following text is hereby included as Paragraph 3) of Section 14:

e) Real estate mutual funds:

I. To act as trustee, under the provisions of Section 2662 of the Civil Code, regarding real estate, antichresis rights and mortgage loans, to the benefit of the shareholders and according to the orders of the managing corporation. The latter must expressly consent to any purchase or sale of the above-mentioned assets.

II. With relation to real estate, to perform any management act as may be necessary for the preservation, sale, mortgage or creation of any other guaranty, rental or leasing thereof, in agreement with the orders of the managing corporation. The Management Rules of Procedure may directly assign said task to the managing corporation without need of any additional instrument.

III. To safe keep the remaining assets making up the Mutual Fund.

IV. To keep its own records, or to keep records through a depository established according to Law 20,643, of book-entry shares or registered stock, and to issue the certificates requested by shareholders.

f) Section 17 is hereby superseded as follows:

Section 17: Any non-invested cash money belonging to the fund shall be deposited with financial institutions authorized by the Central Bank of the Argentine Republic and, in the event of deposits or other transactions in foreign currency necessary for mutual funds' operations abroad, in international financial institutions meeting the conditions set forth by the regulation.

g) A final paragraph is hereby included in Section 18, which shall read as follows:

Section 18: Shares issued by the mutual fund shall be represented by bearer or holder co-ownership certificates, which shall evidence the rights of the co-ownership owner, and shall bear the signatures of all the representatives of both fund bodies. Signatures may be stamped by mechanic copying means. Book-entry shares may be issued, and the depository shall be in charge of registering shareholders. The same certificate may represent one or more shares. The issue of shares shall be effected

after payment of the whole underwriting price, and no partial payment shall be accepted.

Closed-end mutual funds shall be entitled to issue global certificates to be deposited in systems for joint deposits.

h) The following text is hereby included as last paragraph of Section 21:

The management rules of procedure may establish that at least one (1) year before maturity of the term for which the Fund was created, a meeting of shareholders shall decide the extension thereof. Any shareholder who disagrees with the decision adopted by the meeting may request the redemption of his/her shares, the interest value of which shall be reimbursed within a maximum period of one (1) year.

The provisions of Law 19,500 (Business Associations Law) related to special meetings shall apply to shareholders' meetings.

i) The following text is hereby included as paragraph 2, 3, and 4 of Section 25 of Law 24,083:

Mutual Fund shares and dividend-right shares shall be subject to the following taxes:

a) Financial profits that may be involved in the issuing, underwriting, placement, transfer and earnings thereof are hereby exempted from the value added tax.

b) Profits derived from the purchase and sale, exchange, barter, conversion and allocation thereof are hereby exempted from the income tax, except in the case of the parties included in Title IV of the Income Tax Law (Consolidated text, 1986, as amended). In the case of the foreign beneficiaries specified in the certificate, the provisions of Section 21 thereof, and of Section 104 of Law 11,683 (Consolidated text, 1978, as amended.) shall apply.

The tax system established by the previous item shall apply whenever the securities referred to are placed for public offering.

Likewise, for the purposes of the value added tax, the incorporation of credits to a mutual fund shall not be a taxable financial service or placement. Whenever the incorporated credit includes a financing interest, the transferor shall remain the tax payer of the services corresponding to such financing, unless the payment were to be made to the transferee or to the person appointed by the transferee, in which case the recipient shall be the tax payer.

TITLE IX

Amendments to the National Code of Civil and Commercial Procedure

SECTION 79: The National Codes of Civil and Commercial Procedure are hereby amended as follows:

Section 598: Once the judicial levy and sale order has been issued, the following procedures shall apply:

1. The judge shall order the verification of the physical condition and occupancy thereof, appointing for such purpose the notary public proposed by the creditor. If as a result of such proceeding the occupation of the real estate is determined, the eviction thereof within a ten (10) day-period shall be noticed, under penalty of dispossession by police power.

If after that period the eviction has not taken place, the dispossession shall proceed without need of any further proceedings, and the possession shall be granted to the creditor until auction approval, with the participation of the notary public referred to above. For that purposes, the acting notary public may request the support of the police, a search warrant and enter the dwelling without the inhabitant's consent, and place any property found in the dwelling in onerous deposit, to the expense of the debtor.

2. The creditor shall be empowered to directly request to the Real Estate Registry a report on the status and taxes affecting the mortgaged real estate, with a detail of credit amounts, holders thereof and domiciles.

3. Likewise, the creditor may request the settlement of any debt existing as expenses of the condominium property, taxes, duties and charges levied on the real estate, under penalty of auctioning the property if, within a term of ten (10) working days as from the reception of notice no payments are made and the property is not free from debt. Any claims deducted by virtue of the enforcement of the provisions herein shall not affect the auction of the mortgaged property.

4. Sale shall be perfected once the price has been paid within the specified period of time and the real estate has been transferred to the purchaser. The payment shall be directly made to the creditor, who shall deposit the remainder within five days after effective collection. If the creditor is the owner of the auctioned property, it may directly transfer such ownership to the purchaser; otherwise, and if the eviction established by Section 1 has not taken place, it shall be transferred with the participation of the judge. Records shall be executed by the notary public appointed by the purchaser, without the appearance of the debtor whose property has been auctioned being necessary.

5. Neither the debtor nor the third party owner of the mortgaged real estate may file any proceeding or recourse, except for the pleas established by Section 64 by virtue of section 54, notwithstanding the fact that the debtor may exercise, by means of an ulterior specially expedite summary proceeding, any right it may have to claim from the creditor. Were any of the interested parties not to have legal defense, the official defense counsel shall be notified so that it may undertake control of the guarantee foreclosure proceeding.

6. Once the action has been performed, and the foreclosed loan has been settled, the debtor may judicially challenge:

- a) The liquidation performed by the creditor, and
- b) The non-observance by the executor of the bonds established herein.

Notwithstanding any applicable criminal and administrative penalties, in every case the creditor shall pay compensations for any damages caused.

7. In the events provided for herein, neither the purchase on commission nor the unavailability of auction funds shall apply. However, the judge may require sufficient guarantees from the creditor.

TITLE X

Registry System Amendments

SECTION 80: When permitted by law, public documents may be registered provided that the signatures of the executors thereof are duly certified by notary public.

SECTION 81: The registration status shall only vary on the request by:

- a) The grantor of the document to be registered, or the legal agent thereof;
- b) Any person having an interest on securing the right to be registered.

TITLE XI

Criminal Code Amendments

SECTION 82: The following paragraphs are hereby included in Section 173 of the Criminal Code:

12. Any trust holder, mutual fund manager or grantor of a lease contract who, to the benefit of a third party, should dispose, mortgage or damage the property and, in this way, should betray the interest of joint contracting parties.

13. Any person duly authorized for the out-of-court foreclosure of a real estate who should foreclose it to the detriment of the debtor, knowing that the latter is not in arrears, or who should maliciously omit taking the necessary steps for the auction through said special procedure.

14. The holder of mortgage bonds who, to the detriment of the debtor or third parties, should omit to state in the bond any payment received.

TITLE XII

Tax Laws Amendments

CHAPTER I

SECTION 83: Debt securities and share certificates issued by trustees in connection with any trust established for asset securitization shall be subject to the following taxes:

a) Financial operations and payments related to issuing, underwriting, placement, transfer, repayment, interest and settlement thereof, as well as those corresponding to the guarantees thereof are hereby exempted from the value added tax.

b) Profits derived from the bargain and sale, exchange, barter, conversion and allocation thereof, as well as any interest, capital discount and adjustment thereof, are hereby exempted from the income tax, except in the case of the individuals specified in Title VI of the Income Tax Law (Consolidated text, 1986, as amended). In the case of the foreign beneficiaries included in Title V of the mentioned Law the provisions of Section 21, and of Section 104 of Law 11,683 (Consolidated text, 1978) as amended, shall not apply.

The tax system established by this Section shall apply whenever the securities referred to are placed for public offering.

SECTION 84: For the purposes of the value added tax, whenever the trust assets are credits, any transference to the trust shall not constitute a financial payment or placement subject to taxation.

Whenever the transferred credit includes a financing interest, the grantor shall remain the tax payer of the services corresponding to such financing, unless the payment were to be made to the transferee or to any person appointed by the transferee, in which case the recipient shall be the tax payer.

SECTION 85: The provisions of this chapter shall be effective on the first day of the month following the publication of this law.

TITLE XIII

Deregulation of Construction Related Issues Within the Scope of the Federal Capital

SECTION 86: The following item is hereby added to Section 2.1.3.7 of the Building Code (Ordinance 33,387 made official by ordinance 33,515 of the Municipality of the City of Buenos Aires):

Upon the submission of the documents required for the execution of construction works requesting authorization, the file number and the registration thereof shall be issued immediately and through the same document, deferring any analysis thereof for the subsequent stage of supervision, based on professional responsibility.

SECTION 87: The following text is hereby included as the last item of paragraph a), section 2.1.2.2 of the Building Code (Ordinance 33,387 made official by ordinance 33,515 of the Municipality of the City of Buenos Aires):

Whenever the delivery of the certificates required for the authorization of construction works were to last more than forty-eight (48) hours, the interested parties shall be authorized to replace said certificates with the relevant application, where the failure to comply with the above-mentioned period of time shall be stated.

SECTION 88: Brokers' registration requirements, established by section 2.5.9.6 of the Building Code (Ordinance 33,387 made official by ordinance 33,515), are hereby repealed.

SECTION 89: The cost of occupancy and use of thoroughfares by workers of private companies to the expense of third parties, as provided by section 26 of the Tariff Ordinance for the year 1994 (47,548), is hereby reduced to the amount of five cents (\$ 0,05).

SECTION 90: The contribution on advertising established by section 65 of the Tariff Ordinance for the year 1994 (47,548) is hereby reduced to five percent (5%) of the annual value of the largest tariff for a single wall advertisement, in agreement with section 13.4.14 of the Advertising Code (Ordinance 41.115), with a single amount for all the Capital City.

SECTION 91: Section 2 and the obligation to collect fees by stages established by chapters II, III, and IV of the tariff adopted by Executive Order 7887/55 are hereby repealed.

SECTION 92: Section 2.1.1.4 of Book two, of the Code of Ethics for Surveying, Architecture and Engineering, approved by Executive Order 1099/84, is hereby repealed.

SECTION 93: The participation of the relevant Professional Association in the issue of the certificate of professional works commissioning, established by subparagraph 4, paragraph a), section 2.1.2.2 of the Building Code (Ordinance 33,387 made official by ordinance 33,515), is hereby repealed.

SECTION 94: The professional surveying, architecture and engineering associations are hereby forbidden to request their members, before the execution of activities in which they undertake professional responsibilities, any kind of authorization certificate and commission registration.

SECTION 95: The Municipal Professional Registry referred to in section 2.5.9.1 et seq. of the Building Code (Ordinance 33,387 made official by ordinance 33,515) is hereby suppressed, and the Registry of Penalized Professionals is hereby created to replace the former, which shall only contain the particulars of those professionals who have been suspended or disqualified for acting within the municipal territory.

Those professionals not included in the Registry of Penalized Professionals referred to above may freely discharge their professional duties within the territory of the Federal Capital, in agreement with the provisions of Executive Order 2293, dated December 2, 1992.

SECTION 96: The legalization by the respective professional organization of the mandatory construction work sign, established by subparagraph 5, paragraph a), section 2.1.2.2. of the Building Code (Ordinance 33,387 made official by ordinance 33,515), is hereby repealed.

SECTION 97: Any legal rule contrary to the contents of this law is hereby repealed.

SECTION 98: Be noticed to the Executive Branch. ALBERTO R. PIERRI. – FAUSTINO MAZZUCCO. – Esther H. Pereyra Arandia de Pérez Pardo. - Edgardo PiuZZi.

PASSED AT THE HOUSE OF THE NATIONAL CONGRESS, IN BUENOS AIRES, ON THIS TWENTY-SECOND DAY OF THE MONTH OF DECEMBER OF THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY-FOUR.

Executive Order 43/95

Buenos Aires, January 1, 1995

THEREFORE:

Be enacted as National Law No. 24,441. Be enforced, noticed, published, referred to the National Board of Official Registration and filed. – MENEM. – Rodolfo C. Barra.