

## *Chapter IV*

# *LEGAL FRAMEWORK*

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Chapter IV gives an overview of the legislation that regulates the housing sector. In addition to analysing the most important laws which have influenced Armenia's housing sector in recent years, such as the Law on Condominiums, the Law on Multi-unit Building Management or the Law on Local Self-government, the chapter also provides an overview of the legislation inherited from the former regime, which provided the basis for the legal framework after independence.

### **A. Evolution of the constitutional framework since independence**

Since independence the Government of Armenia has made significant steps to establish a legal and regulatory environment which addresses the significant changes that have taken place in Armenia's housing sector, in particular the withdrawal of the State from its dominant position as provider of housing. The transition from a centrally planned to a free market economy made it necessary to draw up new legislation to support the emerging housing and real estate market but also to regulate the new relationships between "housing consumers" and "housing producers". The Government has succeeded in drawing up basic legislation that contributes to the establishment of a well-performing housing sector. This has helped to create an enabling environment for those who buy, lease, finance, construct and invest in housing. Experience shows that improvements in the regulatory frameworks contribute greatly to the building of confidence among all participants in the housing sector.

The transfer of a vast housing stock from public to private ownership led to new rights and responsibilities for citizens. Their new rights to own and dispose of housing and land had to be regulated by new laws or complementary regulations to existing laws. The privatization was followed by the transfer of responsibilities for the management and maintenance of the privatized housing stock, which in turn created the need for a new set of basic laws. Residents and homeowners' associations or condominiums were assigned responsibilities and obligations that required additional legislation and normative acts. New market mechanisms have also evolved with manifold implications for the population, in particular for those living in the large multi-unit building stock. Regulations for property valuation, brokerage, property registration and contractual arrangements for the use, disposal and alienation of housing and other real estate also had to be drawn up from scratch.

The possibility of owning land and using it to build housing has opened up new opportunities for single-family housing production. This has helped to strengthen individual housing construction, but has also attracted various actors, and required regulations on the relationships between landowners, builders, housing consumers, etc.

The fundamental shift in policy and the institutional reforms pursued by the Government in the housing sector had to be accompanied by a new legal framework to create a conducive environment for all participants in the housing sector.

Since 1991 the Government has adopted a number of important laws and decisions directly affecting the housing sector, for instance:

- The Law on Multi-unit Building Management (2002);
- The new Law on Condominiums (2002);
- The Law on Local Self-government (amended in 2002);
- The Law on the Legalization of Unauthorized Buildings and Land Occupation (2003);
- The new Land Code (2001);
- The Law on the Gratis Privatization of Apartments in the State Housing Stock (2000);
- The Law on the Registration of Property Rights (1999);
- The Civil Code (1998);
- The Law on Condominiums (1996, amended in 1998);
- The Law on Real Estate (1995);
- The Law on Real Estate Taxation (1995);
- The Law on Land Taxation (1994);
- The Law on the Privatization of State and Public Housing (1993);
- The Land Code (1991);
- The Law on Property (1990).

The transition to a market economy required new legislation. However, there were already laws to safeguard housing rights. There were also laws imposing obligations on citizens regarding the use, maintenance and disposal of housing. Thus Armenia entered into a process of regulatory reform with a set of legislation inherited from its Soviet period.

### **B. Impact of the former Soviet legal system**

During the Soviet period the housing stock was regarded as a national asset and its management was entirely in the hands of the State. Despite this State control, every Armenian citizen was allowed to “own” a house or part of it. The size allowed was stipulated in the Housing Code. The concept of ownership was, however, not understood in the same way as in market economies. Citizens were not allowed to commercialize the property or make use of it to generate additional income, e.g. through renting or subletting. In addition to the possibility of “ownership” of individual houses, housing rights were granted to citizens through the allocation of units from the State housing stock or the stock produced by building societies. Housing was allocated to citizens for an indefinite period of use on the basis of a “housing space quota,” which was set at 9 m<sup>2</sup> per person.<sup>1</sup> The Civil Code of the Soviet period further specified that citizens could not own a housing unit that exceeded 60 m<sup>2</sup> of living space plus 30 m<sup>2</sup> of service space, i.e. kitchen, corridor, toilets, etc.

During the Soviet period housing was considered to be a social good rather than a market commodity. The right to receive housing in a multi-unit building was protected by the Constitution. The State was expected to provide housing to the population. Evictions were foreseen but no one could be evicted without a court order.

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<sup>1</sup> Tigran Janoyan, Marine Janoyan and Vazik Martirosyan, *Transformation of the Housing Right in Armenia: 1988-2002. A survey of legislation and practice* (Office of the United Nations High Commissioner for Refugees in Erevan, 2002).

The Housing Code further classified the housing stock into four major categories: State housing, public housing (owned by State farms, associations, trade unions, etc.), building cooperative housing and individual housing. In the case of housing built by building cooperatives, the rights of the members of the cooperative were defined by its charter. The building cooperative was responsible for obtaining a loan, mobilizing resources and ensuring that the construction was carried out according to the time schedule and the agreed budget. The cooperative would become the legal owner of the building after the State loan was repaid with every member holding a share in that ownership. In the case of individual housing, citizens were regarded as legal owners and enjoyed a significant right to use, possess and dispose of their property, but homeowners were not allowed to rent it or make use of it to generate additional income. Thus homeownership was meant to “satisfy the basic needs” of an individual citizen and his family rather than a commodity to generate capital (and profit).

Although land was State property and therefore not subject to any kind of commercialization, the Constitution of Soviet Armenia had provisions to grant individuals some rights to land allocated for residential purposes. Parcels of land could be allocated to individuals for the construction of individual houses through a notarized agreement. Thus citizens were allowed to make use of land for housing construction but they could not dispose of it. The size of land parcels allocated to individual housing construction was further defined in legislation and limited to 300 to 600 m<sup>2</sup> in urban areas and 700 to 1200 m<sup>2</sup> in rural areas. Individuals were obliged to complete the construction within three years after obtaining the building permit. This was later extended to five years.

The Civil Code enforced during the Soviet period had clear provisions for individual ownership of housing, including provisions for the sale, donation, exchange and inheritance of housing. Individual families could only own one house but were allowed to buy an additional holiday home or cottage. According to the Civil Code of Soviet Armenia, owners were allowed to sell a house only after three years. Armenians were allowed to rent out their house or rooms in it provided that it was not meant to earn unofficial income. Informal lease or sales transactions for the purpose of generating “unofficial” income led to confiscation. Rents were predefined by a designated council. The rights of tenants and landlords were further defined in the Civil Code.<sup>2</sup>

### C. Legislation in response to natural disasters

The devastating earthquake of December 1988 led to the adoption of a series of government decisions laying down the principle of compensation for the families who had lost their homes. The Government committed itself legally to developing a comprehensive programme to resolve the critical housing needs. The subsequent enactment of legislation also helped to define an earthquake zone which was later transformed into a “rehabilitation zone,” for which the Government adopted special policies and legal instruments to account for the exceptional circumstances. One of these policies extended the free privatization of the housing stock until December 2003. Another concerned the housing voucher programme. Another

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<sup>2</sup> Janoyan et al, 2002.

significant legal act adopted at the end of the 1980s addressed the housing rights of refugees from regional conflicts. All these initial legal measures to deal with resettlement and homelessness are still valid and enforced.

#### **D. Privatization**

On 13 June 1989 the Government adopted resolution No. 272, approving the sale of State-owned apartments and other apartments of the public housing stock. From then onwards their sitting tenants were able to obtain full ownership of the housing units. In other words, they gained the right to use, sell and dispose of that property. In order to obtain full ownership, individuals were expected to fill in applications on the basis of one housing unit per household. Town executive committees were responsible for valuation and price setting. However, not many applications for privatization were filed, probably because the tenants thought that the prices were too high. Consequently, only 12% of the State-owned stock was transferred to private ownership during the first four years of privatization.<sup>3</sup> Subsequently new legislation was passed to accelerate the process.

In 1993 the Law on the Privatization of State and Public Housing was introduced. It overturned Resolution No. 272 and provided for voluntary privatization free of charge. This has indeed remarkably accelerated the pace of privatization. From then on only a processing and administration fee, equivalent to one month's minimum wage, had to be paid.

These laws led to a mass transfer of ownership of apartments from the State to households and individuals. This required new legislation to stipulate the rights and obligations of the different actors, in particular regarding the maintenance and management of common property in the privatized multi-unit buildings, including common spaces such as staircases, lifts, entrances, roofs, surrounding land, etc. As in most other former Soviet republics, legislation on these matters was enacted only after privatization had started. This left the buildings and their inhabitants with a temporary gap or a grey area with no specific laws to guarantee proper maintenance and management of common areas.

#### **E. Housing management and maintenance**

Traditionally, households were responsible only for the maintenance of their own apartments; any work which needed to be done in the common areas of the property was handled by the State housing management companies. With the large-scale privatization, the need for new legal mechanisms to regulate the management of the jointly owned property became apparent. The Government therefore adopted a set of decisions which concerned the establishment of condominium ownership of housing. The first piece of legislation on condominiums was adopted in May 1995 (government decision No. 295). It directed local governments to support the formation of condominiums as a means of providing for the management of multi-family housing in buildings where at least 50% of the units were privately

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<sup>3</sup> Peter A. Tatian, *Framework for Housing Policy in the Armenia Earthquake Zone* (Washington, DC, Urban Institute, 2002).

owned. The response varied widely, but on the whole few condominium associations were formed.<sup>4</sup> The Law on Condominiums was adopted in 1996 and amended in 1998. It further clarified the legal framework for condominium development, in particular the legal rights and obligations of condominium associations. It specified that the condominium members shared ownership of common areas of the property and were responsible for their upkeep. It also allowed condominium associations to be formed for multiple buildings. A new Law on Condominiums came into effect in 2002. It further defines the legal status of condominium associations, the procedure for their foundation, operation and dissolution, and their relationship to State and local government organizations. The Law defines a condominium as “a non-profit and non-commercial cooperative entity based on the membership of the apartment owners and established for the purpose of managing the common property of the apartment building”.

The legislation on condominiums was complemented by the Law on Multi-unit Building Management. It aims to address the management vacuum that existed in many buildings due to the lack of condominium formation by further regulating the responsibilities for the management of common spaces in multi-family apartment buildings. The Law provides three options for managing the jointly owned property. Apart from forming a condominium association, these are the designation of an authorized manager or the delegation of authority to a trustee manager. If a building does not choose any of these three management options, the municipality takes responsibility for the management of the property. The Law also assigns obligations to unit owners regarding their participation in property management, payment of fees, maintenance regulations and responsibilities for common property. Although the language of the Law is not always very clear, it does provide a framework for settling possible disputes between homeowners in multi-unit buildings.

The different laws and decisions on condominiums as well as the Law on Multi-unit Building Management are cornerstones for the establishment of property management systems for the privatized multi-unit buildings. Implementation is still limited, however. As indicated in the previous chapters, few condominiums have been set up in accordance with this Law. Nationwide, there are only about 600 condominium associations covering around 40% of the multi-unit building stock and results from a recent survey indicate that only 20% of these are active (see chap. II).<sup>5</sup>

It should also be noted that the legislation on condominiums opens up the possibility that one condominium association may be responsible for the management of more than one building. Consequently, many condominium associations cover several buildings with as many as 600 units. However, such large associations are extremely difficult to manage and are not conducive to establishing the sense of community that is necessary for the condominium to be successful.

Condominium associations are most often formed from the top down and frequently cover exactly the same area that was formerly under the responsibility of a particular State management

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<sup>4</sup> Loc. cit.

<sup>5</sup> Desilets and Vanoyan, 2001.

company. The legislation on condominiums has not yet succeeded in encouraging homeowners to form condominium associations themselves.

#### **F. Property rights**

The 1999 Civil Code regulates the details of the ownership rights established after privatization, including the protection of those rights, as well as the terms and conditions for renting, transferring and disposing of housing and other real estate. The Civil Code also spells out regulations on mortgages on residential units, foreclosure and eviction in case of default.

The Civil Code is definitely an important step in the consolidation of the legal framework that enables a housing market to flourish. It provides for the comprehensive protection of ownership rights, including procedures to restore these rights or compensate for any violation, procedures for waiving the right of ownership in favour of others, etc. The Civil Code created an unequivocal basic rule of law to protect individual ownership rights, which is a necessary condition for both housing consumers and producers to engage in formal business activities involving housing and other real estate. So the Civil Code has definitely increased the confidence of banks and investors in the housing and real estate markets.

A fundamental question that emerges in this context is the registration of these rights. It was first addressed in 1993 by a government resolution that laid down the registration procedures and defined the documentation needed to officially register the right of ownership to privatized apartments. Responsibility for registrations and for issuing ownership certificates was given to the local technical inventory authorities of the regional departments of the State Unified Cadastre for Real Estate. The 1995 Law on Real Estate regulated the conditions and procedures for the possession, use, disposal, sale and purchase as well as easements affecting real estate. It was complemented, in 1997, by a second government resolution which further established the procedures for the alienation of real estate conditional upon notarization and registration by the State Unified Cadastre for Real Estate. The Law on Real Estate remained valid until the adoption of the Civil Code in 1999.<sup>6</sup>

The legal provisions for the registration of property rights, in particular the establishment of clear procedures for the registration of all transactions (sale, purchase, lease, mortgage) are an important development in the legal framework governing the housing sector. The establishment of the State Real Property Cadastre Committee together with the enactment of the Civil Code helped to create a unified system of cadastral registration, which contains a range of property-related information. A reliable cadastre information system not only contributes to security of tenure but also greatly helps to increase the trust of banks in lending activities within the housing sector (see chap. V).

New legislation was passed in early 2003 to provide clear guidelines for the legalization of the “unauthorized buildings and unauthorized land occupation” that have mushroomed during the past 10 years. The illegal occupation of State-owned and community-owned land will be regularized by the new Law. The legislation aims to incorporate illegal constructions into the

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<sup>6</sup> Janoyan, loc. cit.

formal housing market by officially recognizing ownership rights and including these properties in the cadastre and property registration system.

According to the Law, residents of unauthorized buildings and of illegally occupied land are expected to apply to the local division of the State Real Property Cadastre Committee to formalize their ownership rights. The Law sets certain fees, based on the surface of the construction and/or the plot of land. For the rights to be recognized, they must not conflict with urban development norms, they must not limit other people's rights and the property must be safe. The right of ownership is recognized if the land is acquired at its cadastral value. There is also a possibility of leasing the land/ property; the leasing fees are also specified by the Law.

It is hoped that the Law will help to bring the high number of illegal constructions – approximately 320,000 - into the formal housing market. However, it is expected that many people will find it difficult to comply with the financial requirements of this Law.

### **G. Decentralization and land rights**

The establishment of a functioning cadastre system has also greatly contributed to the registration and record keeping of land parcels. This is an important prerequisite for the transfer of land to the municipalities as provided for in the new Law on Local Self-government. The Law stipulates that land and property (assets) that are considered State property and are situated in the administrative territory of the municipality will be transferred to it without compensation (unless such assets are necessary for the State to exercise its authority).<sup>7</sup> The mapping and registration of land rights in 800 different municipalities has started and at the beginning of 2003 the first municipality received full ownership of its land. Consequently, local self-government bodies will henceforth not only be in control of an important input to housing production, but will also be responsible for land management and land policies.

The responsibilities of the local self-government bodies are mainly determined by the Law on Local Self-government. The Law assigns responsibilities to the local self-government bodies for the management and maintenance of non-privatized residential and non-residential buildings, support to property management including assistance to condominium associations, the preparation of urban development plans and land-use schemes and the provision of public utilities. Although the Law does not devolve rights and obligations directly related to housing production to the local level, it does touch upon fundamental inputs, i.e. land and public utilities and support to property management, e.g. condominium associations, which will help the development of the housing sector.

### **H. Legislation concerning housing finance**

Access to housing is closely linked to the availability of financial resources and, consequently, the existence of an adequate housing finance and banking system. For banks to be willing to engage in housing finance certain legal provisions need to be in place. In general, banks consider Armenia's legal framework conditions to be adequate (see chap. V).

<sup>7</sup> Gtz et al., *Local Governance Programme* (August 2002).

Armenia has courts, appeals courts and ultimately a constitutional court in place to judge disputes on property, foreclosure, collateral and recovery of real property, but banks report that disputes can take up to 180 days to be resolved. Difficulties in settling collateral obligations and recovering property and the social impact of evictions may cause further delays in law enforcement. Banks have repeatedly been faced with a situation where they were granted property title, but the property was still occupied. Banks report legal shortcomings with regard to procedures for vacating property and reregistering properties. They also report a lack of well-trained officers in charge of foreclosures. Problems are also reported with property auctions even though there is a formula for calculating the value of properties. Auction prices cannot be lower than the value given by this formula. Problems in setting prices, dates and periods and limited information about auctions often lead to properties generating little or no money to creditors. Finally, banks also report that judges may not be fully informed and are not accustomed to judging property disputes, which results in additional bottlenecks when defaults on loans and mortgages make the resolving of collateral obligations necessary.