

Chapter IV

LEGAL FRAMEWORK

The Republic of Moldova now has extensive legislation regulating most of the housing-related sectors, which has been enacted over a historically short period of time. The legislative process is an ongoing one, as old laws, codes and regulations are gradually being redrafted or replaced by new ones. In this situation, some contradictions between legal acts and gaps in the legislative system are inevitable. This chapter explores the housing-related legislation and identifies further areas for action.

A. General framework legislation for housing

Developing a new legal framework for the transition from a planned to a market economy was one of the major tasks facing the Republic of Moldova after it became an independent sovereign State in 1991. In the past ten years, Moldova has made significant progress in laying the groundwork for a new approach to housing distinct from the former system of State-planned housing allocations. New legislation has been passed to reinstate the private ownership of housing, return real estate to its previous owners and regulate the development process, etc.

Main legislation

General

- The new **Constitution of the Republic of Moldova** adopted by parliament on 29 July 1994
- The National Housing Concept, adopted by the Government in 1994
- The Housing and Real Estate Strategy, adopted by Government in 1999
- Law No. 2718-X, 3 June 1983 on Housing Code
- The new Housing Code – draft 2001
- Law No. 186-XIV of 1998 on Local Public Administration

Land and real estate

- Law No. 828-XII, 25 December 1991 – the Land Code
- Law No. 459-XII, 22 January 1991, on Property
- Law No. 861-XII, 14 January 1992, on Leasing
- Law No. 302-XIII, 2 December 1994, on the Normative Price of Land
- Law No. 564-XIII, 13 July 1995, on Concessions
- Law No. 488-XIV, 8th July 1999, on Expropriation for Public Utility Purposes
- Law No. 523-XIV, 16 July 1999, on the Public Property of the Administrative-territorial Units
- Law No. 838-XIII, 23 May 1996 (and subsequent No. 563-XIV, 29 July 1999), on the Real-estate Cadastre

Housing privatization/restitution

- Law No. 1324-XII, 10 March 1993, on Housing Stock Privatization (and subsequent amendments in 1994 and 1995)
- Law No. 1225-XII, 8 December 1992, on the Rehabilitation of Victims of Political Persecution
- Government Decision No. 338, 26 May 1995, on the Restitution to and Compensation for Property of Politically Persecuted Persons
- Legal acts for stimulating the completion of unfinished blocks of flats: Parliamentary Decision No. 834-XIII, 16 May 1996, Government Decisions Nos. 676/1995, 601/1996, 945/1999 and 675/1999.

Housing management

- Law No. 913-XIV, 30 March 2000, on Housing Condominiums
- Government Decision No. 1224, 21 December 1998, on Regulations for Housing Operation and Management

Taxation

- Law No. 1245-XII, 22 December 1992, on Land Tax and Taxation Procedures
- Law No. 186-XIII, 19 July 1994 on Local Taxes and Tariffs
- Law No. 838-XIII, 23 May 1996, on Collateral (with subsequent amendments in Law No. 563-XIV, 1999)
- Law No. 1163-XIII, 24 April 1997, the Fiscal Code, Title VI on real-estate taxes
- Law No. 1056-XIV, 12 October 2000, for the Implementation of the Fiscal Code – Title VI

On 29 July 1994, the parliament of the Republic of Moldova adopted a new **Constitution**. It states that the market, free economic initiative and loyal competition are the basic factors of the economy. The economy of the Republic of Moldova is a market economy, with a social orientation, based on private and public property, engaged in free competition.

The Constitution guarantees private property rights and the liability of the State (art. 46); no property can be expropriated, except for public utility purposes, with prior and just compensation. According to the Constitution, the State protects property and guarantees its enjoyment in all forms, as long as it is not in contradiction with the interests of society (art. 127).

The right to housing is proclaimed to be a basic right of all citizens and ensuring social assistance and protection is included among the duties of the State.

At present, the main framework legislation for housing is the **Housing Code** and the **Civil Code**, approved in Soviet times. Both are now being revised. The draft of the new Housing Code lays down as its basic principles “the free and unrestricted access to housing as the intangible right of each citizen” and “housing as a major long-term objective in the national interest for the local and central administration”. The Housing Code aims to bring together all housing-related legislation (regulating relations between individuals, enterprises and the central and local authorities in various housing tenure types). The new Civil Code is expected to define real estate with all its attributes and recognize private business companies, both basic preconditions for land development activities.

In 1994 the Government adopted the **National Housing Concept** as a new approach to the development of the housing sector. It sets out the principles for the reform of the housing sector:

- Ensuring the right of every citizen to choose the most adequate way of solving his/her housing problem;
- The clear separation of responsibilities between the State and individuals and legal entities in the housing process (in financing new construction and the rehabilitation and management of the existing stock);
- The provision of (free) housing for the socially vulnerable;
- Creating the conditions for the development of the housing market by restructuring and/or creating the financial and fiscal framework for housing, housing privatization, restructuring the building industry, etc.

In 1999 the Government approved the **Housing and Real-estate Market Strategy**. It emphasizes the role of the State as a facilitator of the development of the housing market, while creating a social safety net for the most vulnerable part of the population. It states that the role of the central administration is to formulate a general strategy for the housing sector and to create the necessary legislative and institutional framework. The duties and responsibilities of the local authorities include local policies and the management of housing, levying real-estate taxes and charges, as well as granting subsidies for the socially needy. At present, the Strategy – though providing a general direction for the development of a housing market and accompanied by a set of action plans and measures (see box) – has not become a guiding document in its own right.

State support for housing

- Law No. 982-XIII, 19 September 1996, on Housing Stock with Special Status
- Law No. 933-XIV, 14 April 2000 on Special Social Protection for Certain Population Groups (“winter subsidies”)
- Government Decision No. 761/2000 on Compensation for Certain Population Groups (“winter subsidies”)

Development control

- Law No. 835-XIII, 17 May 1996 on the Principles of Urban and Territorial Planning
- Law No. 721-XIII, 2 February 1996 on Quality in Construction
- Government Decision No. 360, 25 June 1996 on the State System for Controlling Construction Quality
- Law No. 332-XIV, 29 March 1999, on Licensing Different Types of Activities (including provisions for all construction-related activities)

B. Land and real-estate development

Landownership and land tenure, information about land and the protection of landownership and real-property rights are key issues in the political and economic transformation that has been taking place in the Republic of Moldova since 1991. The development of a functioning and flexible land market within which families and individuals have the opportunity to choose their place of residence and business activity and the reliable protection of rights to land and real estate are preconditions for housing privatization, investment and transactions in the market.

The legislative framework for land and real estate represents a completely new approach, far from that of the Soviet period, when agricultural land was the property of the State and of the collective farms and urban land had no monetary value, being considered a natural resource with the State as the only owner, allocating and managing it according to central-planning principles.

From the viewpoint of land and real-estate development, the legal framework developed so far encompasses the following areas:

- Constitutional and general legal regulations (see sect. A above);
- The process of privatization and property registration; the transfer of property rights and access to information related to land;
- Urban planning and construction regulations;

- The definition of Government and municipal authorities’ responsibilities.

As early as 1991, the *Land Code* (and its subsequent revisions) provided the overall framework for major changes in land ownership. Though primarily referring to agricultural land, the Code started the process (later reinforced by the Constitution adopted in 1994) of establishing landownership rights for Moldovan and foreign nationals. All categories of landowners have State protection and can freely use and dispose of their property. However, the Land Code stipulated a moratorium on sales until 1 January 2001 and this hindered free transactions. This latter restriction was lifted as unconstitutional in 1996 (by a Constitutional Court ruling).

Former collective or State farm workers and pensioners were allocated a share of land (an average of 1 ha) out of a “privatization fund”; plots for individual housing construction were granted free to all applicants inside the settlement limits (0.04-0.07 ha in cities and 0.08-0.12 ha in villages). Land-share owners can use their plot for farming, or they can sell, donate or lease it.

Specific provisions of the Land Code illustrate the importance that Moldova attaches to its high-quality agricultural land, as a basic economic resource. Articles 71 and 83 allow for the conversion of agricultural land only in exceptional circumstances and then only in the case of land of low fertility. Considering that, according to official data, most of Moldova’s land is very fertile, conversions to non-agricultural, i.e. urban, use are very limited.

Subsequent legislation completed the framework for land transfers/transactions:

- The Law on Leasing stipulates that all land and real estate can be leased to Moldovan and foreign natural and legal persons, with the exception of protected land of natural, historical or cultural value and of forests.
- The Law on Renting, addressing primarily the agricultural sector, contains provisions regulating relations between landlord and tenant, by a rental agreement that cannot exceed 99 years.
- The Law on Collateral allows for land, buildings and other constructions to be registered as collateral for loans.

The *Law on the Normative Price of Land* is the main legal act regulating public and private land conversion to non-agricultural use. The Law stipulates that the value of land is based on the natural and economic potential of agricultural land (agricultural rent) in both agricultural and urban areas. This method of valuation is seriously thwarting the development of the real-estate market: it may lead to excessive prices for land used for business purposes (of little or no agricultural value) and the under-pricing of valuable inner-city land.

The *Law on Expropriation for Public Utility Purposes* fills the procedural gaps in the above legislation by stipulating that prior and due compensation should be granted in any case of compulsory purchase of private land and property. The Law contains an extensive, if not exhaustive, list of public utilities which can ask for expropriation. It also stipulates that compensation shall be established by court decision, at real-estate market value.

The *Law on Leasing* contains provisions on the long-term (up to 99 years) leasing of all real estate, including land, buildings and housing of all types. All rights for a lease longer than three years have to be duly registered. Lease contracts include all the rights of possession and use, sublease and succession.

Real-estate registration

One of the crucial issues for the development of a real-estate market is clear ownership rights supported by an effective and reliable system of registration.

In February 1998 the parliament passed the *Law on the Real-estate Cadastre*. The Law stipulates the mandatory registration of all real property and establishes a new unitary system – with complementary technical, legal and economic elements – to ensure the identification, registration and monitoring of all land and other real property, regardless of their use and owner (Moldovan and foreign citizen, legal persons, international organizations, administrative-territorial units). The institutional setting consists of the National Agency for Geodesy, Cartography and Cadastre, as the coordinating body, and 12 regional units with 28 branches, directly in charge of establishing and managing the cadastre registers. The registers contain the legal, economic and technical characteristics of real estate, namely:

- The physical identification of plots of land, buildings, apartments and rooms in multi-storey buildings;
- The patrimonial rights of economic management;
- Rights of use (including permanent use, lease for more than three years, freehold, succession);
- Easements and charges;
- Mortgages;
- Legal facts limiting or terminating ownership rights.

The register is open to the public and everybody can have access to real-estate information, in accordance with legal procedures.

By Government Decision No. 1030 of October 1998, a State programme was established to speed up the creation of the real-estate cadastre. With the assistance of the World Bank and the United States Agency for International Development (USAID), a first cadastre project was initiated in 1999. It has had wide-ranging results over the past two years in revising and completing the existing legal

framework, in organizing the regional cadastre offices and in furthering primary mass registration.

By December 2000, over 2 million properties and 1.9 million plots of agricultural land had been registered; cadastral works for 32 settlements had been completed and another 50 were in progress.

The Law on the Real-estate Cadastre and the first cadastre project represent significant steps towards the development of housing and land markets. They have set in motion a dynamic process of legislative activity: two new important legal acts have been drafted (on valuation for taxation purposes and on regulating valuation activity) and proposals were made to revise other relevant legislation (inter alia the Land Code and the Law on the Normative Price of Land). They are also the basis for a new institutional framework (institute for land use, information bank for land, etc.) and for the envisaged establishment of a fiscal cadastre.

C. Privatization of State-owned housing

The privatization of housing was another major step towards reinstating and reinforcing private property rights. In accordance with the *Law on Housing Stock Privatization* (No. 324-XII of March 1993 et seq.), State and enterprise housing were transferred to sitting tenants, mainly in exchange for national “patrimonial” bonds and, to some categories of residents, free of charge.⁴⁹ In the first stage (1993-1996) only the apartments were transferred into private ownership and the buildings remained on the balance sheet of the State. By 1997, patrimonial bonds were no longer used for privatization and tenants had to pay for “living space” exceeding established norms (20 m² per person and an additional 10 m² for each family). Buildings and houses were transferred to the balance sheet of the homeowners’ associations. Resources obtained from privatization were transferred into the municipal budget to be used for housing purposes (according to the law).

At present, 94% of the stock has been transferred to private ownership. The residual public housing stock is now very limited and should not be considered as social housing. It is distributed throughout all urban areas and managed in conjunction with the privatized stock.⁵⁰ The Law on Housing Stock Privatization granted, for the first time, the right to possess more than one dwelling (either by keeping former housing or by acquiring additional units, paying the full commercial price established by the Government). It should also be noted that privatization did not eliminate housing inequalities: some residents were entitled to privatize good-quality, large apartments, while others had to buy the room they were occupying in a hostel. In most cases, the new owners acquired a liability rather than an asset, considering the need for massive investment in repair and renovation.

Restitution of housing to the former owners was granted by a decision of the local authorities. Houses were returned with the ancillary land.

The privatization of *unfinished housing* was the subject of a number of government decisions (GDs), aiming to speed up the completion of construction by attracting funds and selling individual apartments or whole structures. The Ministry of Environment, Construction and Territorial Development is in charge of monitoring the stock of unfinished buildings. According to recent information, this stock consists of 296 buildings with about 20,000 apartments. Incentives ranged from long-term credits subsidized by the National Bank of Moldova (Parliamentary Decision No. 834/1996), to sales by auction of whole structures (GD No. 676/1995), via pre-sale (under the terms of “privatization”) of individual apartments to those eligible from the waiting lists (GD 366/1998). Since all the efforts deployed did not resolve the problem of unfinished buildings, in 1999 the Government united all the provisions in a three-year special programme (GD No. 675/ July 1999), adding a new incentive (VAT exemption).

⁴⁹ Free transfer of housing was granted to those who had accumulated more than 35 working years and to specific categories of individuals (e.g. university professors, disabled persons, etc.)

⁵⁰ Residents in non-privatized housing are those who were put off by the red tape, younger households with insufficient years of work and unable to raise money to pay the cash balance or dysfunctional families (V. Isaico).

D. Housing management and maintenance

For almost five decades the State was the main owner of housing, and ensured the management and maintenance through management enterprises. The new Law on Housing Stock Privatization stipulated, for the first time, the mandatory establishment of private homeowners' associations as a major step towards helping new owners to take over their incumbent responsibilities.

The *Law on Housing Condominiums* (No. 913-XIV/2000) defined the new concept of *condominium* as a set of real-estate assets, including the apartment building or individual house, the ancillary land and other premises (constructions). The Law stipulates the *obligatory association* of all real-estate owners – private, municipal and other – with a view to jointly managing, maintaining and operating jointly the assets constituting the condominium (under the name of private homeowners' association (PHOA)).

The Law regulates ownership relations in the condominium, the rights and duties of the owners, the framework for the management of the condominium and the procedures for the establishment and registration of PHOAs.

According to the Law, PHOAs are legal entities, functioning on the model of consumer cooperatives. Their main activities concern:

- The management, operation and repair of the condominium's assets;
- The renovation of common spaces and premises;
- The leasing, renting or selling of the association's assets to supplement its revenues for the maintenance and renovation of the joint properties.

The associations may also sue individual owners and tenants for non-payment of their lawful dues related to public services, and the use, maintenance and repair of common spaces. However, it should be noted that under current constitutional provisions, evictions for failure to pay or to comply with other duties cannot be enforced.

The management of the condominium (current repairs, renovations) can be carried out, on a contractual basis, by certified individuals, legal entities or by the association itself.

Subsequent legislation (GD No. 1224/1998) made detailed provisions for housing in municipal or other institutional property, for tenancy in multi-apartment structures and for the management of buildings. The Government Decision regulates contractual relations between owners and renters or lessees, their respective rights and duties concerning operation, repair, maintenance of and payment for public utilities.

E. Legislation regulating the financial aspects of the housing sector

At present real-estate taxation comes under the *Law on Local Taxes and Charges (Law No. 186-XIII/1994)*. Unlike all other local taxes and charges which are directly fixed by the local authorities, the two separate taxes applied to buildings and land are fixed by parliament. Both are fixed on a normative basis, with no connection to market values and changes due to inflation. Taxes on land depend on location, area and fertility potential. Taxes on buildings are related to the current registered value (representing the replacement cost less physical depreciation)⁵¹.

The Law on Local Taxes and Charges also provides for the collection of a special tax from all individuals and legal entities for *land planning and development*. For companies this tax consists of 10% of their annual payroll and for individuals of a sum equalling two minimum wages. Out of this tax, local authorities are expected to finance the preparation of urban development plans and other planning-related activities.

The recently adopted *Fiscal Code (Law No. 1163-XIII/1997) – Title VI* introduces new methods of real-estate taxation. It contains detailed provisions on procedures for taxes on all real property, including land for agriculture, industry, transport and other types of activities. Unfinished buildings (80% completed) and unfinished constructions abandoned for more

⁵¹ It is common practice in transactions (i) to declare a lower value of the real estate, to evade some taxes; (ii) to raise excess loan on a property (high-risk lending); (iii) to require a higher collateral to minimize risk.

than five years are considered taxable goods and the tax base is fixed at 50% of its value.

Maximum taxes should not exceed 0.5% of the tax base; they are revised by local authorities every three years, so as not to be less than half of the maximum tax. Tax exemptions are granted by law to real estate used by public authorities, public institutions, religious institutions and a number of special categories of individuals (disabled persons, war veterans, etc.).

Though Title VI of the Fiscal Code made provision for the enforcement of the new taxation methods by 1 January 2001, until the Fiscal Code is enforced and related legal provisions are adopted, transitory legislation⁵² provides for real-estate taxes to be fixed, up to January 2004, on an annual basis by local authorities.

Important provisions of the new Fiscal Code are closely linked to the adoption of subsequent legal acts. These include the adoption of the law on valuation (and subsequent regulation of valuation activity and the monitoring of the real-estate market), which will introduce the concept of market value of taxable goods and due methods for establishing it:

- Comparative analysis of sales
- Method of revenues
- Method of expenses

The introduction of the Fiscal Cadastre (see sect. C above) at a later stage will enable the monitoring of and the necessary transparency for all information on real-estate taxation.

Legal basis for the mortgage system

The Law on Collateral (No. 563-XIV/1996 and subsequent revision) introduced regulations governing the use of real estate as lien. The Law allows for the alienation, possession, attachment and transfer of collateral. Pursuant to the legal registration of property liens, the Law specifies the following categories of mortgages: on land, buildings with ancillary land, on enterprises, *on future assets and patrimonial rights*. Properties are mortgaged

through contracts between the creditor and the owner of the property, which have to be registered by the Notary Public. The Law also allows real-estate owners and leaseholders to enter into secondary mortgages. Claims of creditors for non-payment and foreclosure are dealt with in the Arbitration Courts.⁵³

Recent legislation⁵⁴ established the mandatory registration of all mortgages in the cadastre register.

At present, the existing legislation on collateral and the absence of a mortgage law are hindering the development of mortgage financing by:

- Cumbersome collateral procedures;
- The liquidation of collateral through the Arbitration Court if a borrower defaults.

State support for housing

The constitutional right to housing in principle protects Moldovan citizens from homelessness and eviction. However, subsequent legislation does not provide for effective enforcement of this basic right.

Support for housing, urban development and management and the building and operating of public utilities are listed among the responsibilities of the local authorities - local councils of villages, communes, towns, municipalities – as stipulated in the Law on Local Public Administration.⁵⁵ Local governments should finance the responsibilities assigned to them by the Law on Local Public Administration from their budgets. Yet, due to the scarcity of funds, local governments are unable to provide housing for those in need who are relegated to the local authorities' hopelessly long waiting lists.

⁵³ Current legislation on collateral results in strong underwriting practices: the majority of mortgages are at low loan-to-value ratios (30%-70%). Meanwhile, to avoid legal problems of foreclosure, many lenders want to obtain the title to a housing unit before issuing the credit. Having obtained the title, the bank can rent back the unit to the borrower, until full repayment of the loan (equivalent of leasing). To minimize risk, lenders often require substantial collateral in addition to the title to a housing unit.

⁵⁴ Cadastre Law.

⁵⁵ Law on Local Public Administration No. 186-XIV/1998, Section 2, art.13 (1), a, c, h.

⁵² Law No. 1056 – XIV, 16 June 2000 on the Implementation of the Fiscal Code.

Special support for families and individuals is provided, through local budgets, to cover utility costs (Law No. 933-XIV/2000 and subsequent government decisions). Financial support is supposed to cover 25-50% of the cost of energy, public services (water, sewage, waste disposal), district heating and the hot water supply.⁵⁶ Beneficiaries belong to certain categories, selected on criteria other than low income (e.g. former victims of political persecution, disabled persons, war veterans), with the exception of single parents, single pensioners and families with four or more children.

F. and use and building regulations; development control

The former Soviet type of urban planning and development was governed by State ownership of land, by centrally planned practices and distribution of funds and by supply-driven housing development. After the creation of the Republic of Moldova and its market mechanisms, a new and comprehensive approach to planning was adopted. The *Law on Urban and Territorial Planning* (No. 835-XIII/1996) lays down the basic principles for efficient urban planning and management and the responsibilities of local authorities in the development of their respective administrative units (village, commune, town, municipality).

The Law distinguishes the following levels of territorial planning:

- National level – overall guiding documents to be approved by parliament
- County level – approved by the county councils
- Municipal level (i.e. villages, communes, towns and municipalities) – approved by the local councils.

General urban plans (master plans) are the main documents for guiding urban development and defining major land uses, including residential development. It is the task of the local authorities to:

- Commission and approve the urban development plans;
- Establish basic urban regulations to ensure the efficient use of urban land;
- Issue building permits that conform with the approved planning documents.

Current practice is still lagging behind the generous aims of the law, i.e. to give broad guidance to the development process and provide a basis for the development of a permissive system of development control mechanisms. Shortcomings are mainly related to the way public land is allocated, namely:

- The free allocation of land to citizens for private housing construction, with the later option of transfer into private ownership;
- The allocation of land to legal entities for the construction of multi-apartment structures, for an unlimited period of time or for long-term lease;
- Allocation to the relevant department of the municipality for the construction of municipal dwellings. With the end of municipal construction, this type of allocation is virtually inexistent.

While legislation allows for the sale of public land, bureaucratic problems and the reluctance of some local authorities to sell are hampering the process.

Despite the urban development mechanisms stipulated in legislation, housing development is haphazard, sometimes jeopardizing sustainable urban development. For instance, in Chisinau large districts of individual homes have been built over the last years, without the simultaneous and proper provision of basic public services (water, sewerage). Beyond the ecological consequences of such a situation, local authorities might soon be faced with residents' demands for compliance with the legal responsibilities of the administration to provide proper infrastructure.

⁵⁶ According to the Ministry of Employment and Social Protection, many people who are eligible do not apply because of the very cumbersome procedures and because compensation does not cover their utility bills.

A comprehensive *Law on Construction Quality* (No. 721-XIII, 2 February 1996) established the basic requirements for building activity, including housing construction. It makes provision for the rights and responsibilities of all actors involved in the construction process, including State institutions. Certification requirements are

stipulated for all individuals and legal entities involved in planning, design, technical supervision and construction, as well as for building materials. Quality control is mandatory for all categories of construction (whether new, modernized or repaired), with the exception of one- or two-storey individual homes.

