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EXECUTIVE **SUMMARY**

# Law for the development of the mortgage market and the creation of trusts in the Dominican Republic

## I. PURPOSE OF THE LAW

The purpose of the Law for the Development of the Mortgage Market and the Creation of Trusts (hereinafter either the "Law" or the "Law on Trusts") is to create the necessary legal structures and to strengthen existing ones, in order to develop the Dominican mortgage market, by channeling resources from voluntary or compulsory savings towards long-term financing for housing and general construction, improving the capital markets by expanding the opportunities available for institutional investors and encouraging the use of debt instruments to facilitate such channeling of funds, which together with the creation of special fiscal incentives, state contributions and economies of processes, serve to promote housing projects, especially low cost housing, thus alleviating the housing shortage in the Dominican Republic.

## II. DEFINITION OF A TRUST

For the purposes of achieving the goals defined in the Law, the concept of the trust was created. In this regard, the Law defines a trust as «the act by which one or more persons, called settlors, transfer property rights or other real or personal rights to one or more legal persons, called trustees, creating a separate patrimony, called the trust property, to be managed by the trustees pursuant to instructions provided by the settlor or settlors, for the benefit of one or more persons, called the beneficiaries, with the obligation to return such properties at the time of termination of the trust to the person designated therein or pursuant to the law". The Trust is based on a relationship of will and mutual trust between the settlor and the trustee, whereby the latter must faithfully manage the trust property in strict adherence to instructions and requests made by the settlor in this regard.

TABLE OF CONTENTS




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In light of this definition, it is important to highlight the following concepts:

*Settlor:* is the individual or legal person transferring property rights or other real or personal rights to the trustee(s), for the creation of one or more trusts.

*Trustee:* is the legal entity authorized by law to act as such, receiving the assets or rights assigned in trust to comply with the instructions given by the settlors. Pursuant to the Law on Trusts, the only ones that may act as trustees under the law are legal entities incorporated under the laws of the Dominican Republic with the exclusive purpose of acting as trustees, as well as investment fund managers, securities intermediaries, multiple service banks, savings and loans entities, and other financial institutions authorized by the Monetary Board.

*Beneficiary:* is the person or entity, in favor of whom the trust property is managed.

The aforementioned parties have the rights and obligations provided under the Law on Trusts. In the case of trustees, the Law also establishes prohibited operations, and the liability regime, grounds for removal, among others.

## III. TYPES OF TRUSTS

The trust may be created subject to a condition or a period of time, or it may be a simple trust. It can also be created over all or part of the estate of the settlor.

The trust may be established to accomplish any legal purpose or objective, including promotion of the development of the housing market, as long as it is not contrary to morality, public order and decency. It is presumed to be irrevocable and may not be amended, unless otherwise expressly stated in the document creating the trust. Irrevocable trusts can be exceptionally revoked by the settlor, provided they have not been affected by the trustee or trustees, as provided under the Law. After acceptance, if the document establishing the trust does not contain a provision enabling the trust to be revocable, it shall be deemed irrevocable, and may not be amended or revoked, except with the unanimous consent of the trustees and beneficiaries of such trust.

A trust is created by incorporating assets or rights of any nature to a separate patrimony, whether movable or immovable, tangible or intangible, determinable in terms of their type, except for rights which, according to law, are strictly personal. Additional assets may be added to a trust after its creation, either by the settlor or by a third party, provided such third party has the consent of the trustee, as provided by Law.

The property and rights that are part of the trust property constitute a separate and independent patrimony, separate from the property of the settlors, the trustees and separate from the other trusts any trustee may be managing at a time.

Properties that are part of the trust will be affected for the intended purpose of the trust and, therefore, shall be used for the payment of obligations and responsibilities the trustee may assume in the performance of its duties and with the objective of fulfilling the purpose for which the trust was created.

The creditors of the beneficiaries of a trust have no claim against the trust property for credits they may have against such beneficiaries, while such assets are part of the trust,

but the Law enables them to pursue, to the satisfaction of their claims, the revenues and profits generated by the trust, which are to be delivered to the beneficiaries by the trustees. Similarly, goods incorporated into a trust may not be pursued by creditors of the settlor unless their claims are generated prior to the incorporation of such assets to the trust property and are affected by any type of legal security over them, which must be declared as provided by the Law.

Notwithstanding the foregoing, the property constituting the trust may be pursued, sequestered or seized for damages, debts or obligations created in the name of the trust itself, or in cases where the trust is incorporated to defraud third parties and their rights. In any case, in order to impose some temporary judicial measure on trust property, prior authorization from a judge is required.

A trust may be created through an authentic act documented by a notary public or by a document under private signature, the latter requiring signatures to be certified by a notary public. The document creating a trust is considered a formal contract, which means that the law states the minimum provisions it must contain to be valid, and in the absence of which such trust may be subject to invalidation. The Law also details provisions that are prohibited in this type of document.

In this sense, the document creating a trust shall not contain clauses that imply the imposition of abusive and illegal conditions or to change the nature of the business of the trust, create a diversion of its original intent, or result in an illicit diminishing of third party rights.

In addition to a document creating a trust, the settlors may draft a memorandum of additional intent or a letter of will, specifying and giving further guidance with respect to the management and operation of the trust.

Acceptance of the trustee or trustees must be given in written form, in the document creating the trust or in separate documentation, with the same formalities awarded to the former.

The trust, including the authentic document for estate planning, must be registered in the offices of the Mercantile Registry of the Chamber of Commerce and Production with jurisdiction over the addresses of the trustees. Equally, termination of the trust must be notified in writing to the same Chamber of Commerce. This registration is carried out in addition to any other formality that may be required, depending on the type of document incorporating the trust or the nature of the assets included, which must be made pursuant to the laws in force. Once registered, the trust becomes enforceable against third parties.

As for the transfer of the assets in favor of the trust, each settlor or its successors are required to integrate into the trust property all assets and rights indicated in the document creating the trust, within the term and place provided therein, and they must collaborate and deliver all documents that may be necessary to perfect the transfer of such assets. The transfer of rights subject to registration is perfected after the change of ownership is appropriately registered. The transfer of other assets is perfected with their delivery, endorsement, or notification to the assigned debtor, as applicable.

## IV. TAXATION

Regarding the tax regime applicable to trusts, it is important to note that all acts creating,

modifying, revoking or terminating trusts, or replacing trustees, as well as their registration are exempt from all taxes, duties, fees, charges, municipal taxes or contributions. However, fees are payable to the corresponding Chamber of Commerce and Production at the time of registration of the trust in the Mercantile Registry, which are fixed fees and charged in proportion to the amounts involved in the trust. The registration of a trust that has been created by an authentic act is also subject to the payment of registration taxes applicable to all authentic documents in the corresponding civil registration office.

As for transfer taxes and inheritance taxes, the transfer of assets and rights to the trustee for the purpose of incorporating the trust property, is subject to the payment of transfer or registration taxes as provided by law, depending on the nature of the assets involved. For the purposes of determining the amount of taxes to be paid in this respect, the trust documentation must include provisions on the transfer of such assets, and their value. However, it is important to mention that trusts involved in public offering of securities are exempt from all transfer taxes. When a settlor is transferring assets to a trust, such settlor is exempt from paying revenue taxes and capital gains taxes that may arise where applicable, as set out in the Tax Code. Once the trust property is formed and the corresponding assets and rights are transferred, any further transfer of the trust property resulting from a replacement of trustees shall be exempt from all taxes, including income taxes, capital gains taxes, taxes on the transfer of industrialized goods and services, value added taxes and any transfer or registration taxes.

It is important to mention that the transfer of assets to the trust, for purposes of estate planning, is not subject to any probate tax or donations taxes, and instead, such transfer will be only subject to transfer and registration taxes, as indicated above. Income generated from the use or transfer of trust property, including income derived from the subsequent sale of some of the assets, and profits or income arising thereof, are exempt from all direct taxes or charges, including any income tax, and any tax on assets established in the Tax Code of the Dominican Republic, as amended, with the exception of the tax applicable to real estate properties forming part of the trust property, and taxes on capital gains arising from the sale of capital assets.

In the case of real estate property taxes, they are determined and paid on an annual basis, as determined by Law No.18-88 on Real Estate Properties and Empty Urban Lots, as amended, pursuant to the valuation procedure that may be in force at the time of payment, and no exemption or deduction provided under Article 3 of the aforementioned law, regarding the first five million pesos (RD$5,000,000.00) or the inflation adjustment on the value of the property, are applicable for these purposes.

Income generated by the assets that comprise the trust property at the time of their distribution to the beneficiaries, and service fees of the trustees, are subject to the payment of income taxes by the person or legal entity that, pursuant to the laws in force, is responsible for such payment, subject to any exemptions that may apply in their benefit, and regardless of whether the income has been received in kind or cash.

On transferring capital assets by the trustee, the tax on capital gains will be determined and paid by the trustee from the funds in the

trust property, in the manner provided in Article 289 of the Tax Code of the Dominican Republic, as amended, prior to any distribution of revenues from such transfer.

The Internal Revenue Department (DGII) shall grant trusts a special National Taxpayers Registry Number (RNC) and Tax Receipt Forms.

## V. NULLITY PROVISIONS, PROHIBITIONS AND TERMINATION OF TRUSTS

A trust is null and void if: a) it is created without complying with the procedural and substantive requirements relating to the document establishing the trust; b) if it lacks a purpose or cause, c) if it has an unlawful purpose or cause, or, d) if its undertaken by a person unable to execute such document without representation. If a provision of the document creating the trust is invalid for any reason, the remaining provisions will remain in force, unless the invalid provision cannot be separated from the others without distorting the purpose of the trust.

The following are prohibited:

**a)** A secret trust business, meaning as such the one that does not have express and written proof of the intended purpose of the trust provided by the settlor in the incorporating document;

**b)** A trust stating that the trustees shall permanently acquire, out of the trust business, ownership of trust assets;

**c)** A trust designating the trustee or trustees as beneficiaries, except as provided in paragraph I of Article 31 of the Law on Trusts and

**d)** A trust created to defraud creditors or tax authorities, which may be challenged in the terms allowed by the laws in force and the Law on Trusts.

A trust is extinguished by the occurrence of any of the following causes:

**a)** Arrival of the term specified in the constituent documentation;

**b)** Achievement of the purpose for which it was created, when such purpose is accomplished prior to the arrival of the term;

**c)** Fulfillment of a condition that would terminate such trust if such trust is created subject to it;

**d)** Total loss or extinction of the assets of the trust;

**e)** Impossibility of fulfilling its purpose;

**f)** Impossibility of fulfillment of a condition to which the existence of such trust is subjected to or when such condition is not achieved during the term provided at the time of creation of the trust;

**g)** By express agreement between the settlor, the trustee and beneficiaries;

**h)** Revocation of the trust decided by the settlors, if they had expressly reserved such right in their favor in the incorporating document;

**i)** Death of the settlor, except in cases where such settlor had executed an authentic act required for estate planning trusts, as foreseen in the Law on Trusts;

**j)** Absence, resignation or death of the trustee or trustees, when there is no specification as to their replacement pursuant to the incorporating document or the Law on Trusts;

**k)** Resignation or removal of a trustee or trustees, provided there is no possibility of appointing a substitute trustee within the term provided in the incorporating document and when such appointment is not made within one (1) year of such resignation or removal;

**l)** Bankruptcy, compulsory liquidation or any equivalent process of the trustee with ownership of the assets comprising the trust property, provided there is no possibility of appointment of replacement within the period provided for in the constitutive document and unwillingness of doing so, within one (1) year after the bankruptcy, compulsory liquidation or equivalent process;

**m)** For actions undertaken by third parties to put an end to the trust and,

**n)** When the capacity of trustee and beneficiary is merged into a single person and it may not be remedied by appointing a new trustee or beneficiary by the settlor.

For the termination of the trust to become effective with respect to third parties, publicity and disclosure formalities similar to those required for its creation need to be complied with.

When the trust is extinguished, the assets comprising the trust property that are under the control of the trustee(s) are returned to the person or persons entitled under the incorporation document and in accordance with the circumstances of extinction. In the event that the incorporating document does not contain such information, the assets are given back to the settlor(s) or their successors, or in their absence, the estate will pass to the State.

## VI. TYPES OF TRUSTS

The Law on Trusts establishes the types of trusts available. In this sense, trusts may be:

**a) Estate Planning Trusts:** these are, as their name suggests, used for estate planning purposes;

**b) Cultural, Philanthropic and Educational Trusts:** these are non-profit trusts whose purpose is the maintenance and preservation of cultural heritages such as museums, or the promotion and encouragement of education, or for undertaking any philanthropic work, among others;

**c) Investment Trusts:** these are trusts created by trustees with their clients for the benefit of the latter or of third parties appointed by such clients, with the primary purpose of investment or placement in any form, of amounts of money, pursuant to the instructions contained in the constituent document. This type of trusts can only be managed by investment fund managers and stock brokers authorized to carry out portfolio management activities;

**d) Real Estate Investment and Real Estate Development Trusts:** these independent estates managed by a managing or trust entity, on behalf and at the expense of the beneficiaries, with the primary objective of investing in real estate projects in various stages of design and construction, to accomplish their completion and sale or lease. Additionally, they can acquire real estate properties to generate capital gains;

**e) Trusts for Public Offering of Securities and Products:** these are trusts created for the exclusive and ulterior motive of backing up public offerings of securities made by the trustee, and the trust property securing such offering may be incorporated under any of the trust modes provided in this section;

**f) Collateral Trusts:** these trusts, and the trust property incorporated therein, are destined to secure compliance with certain obligations, agreed or arranged, by the settlor or a third party, and

**g)** Other types of Trusts.

## VII. AUTHORIZATION OF PUBLIC OFFERING OF SECURITIES BY TRUSTS AND INVESTMENT BY PENSION FUNDS

Securities issued by trusts are governed by the provisions of the Securities Exchange Law and the Law on Trusts. If the issuance of these trust securities will be made by financial intermediaries, authorized for such purposes and governed by the Monetary and Financial Law, this process is also regulated by the Banking Superintendency.

Any financial intermediary intending to issue securities backed up by public trusts, must submit to the Banking Superintendency an application for registration. The Banking Superintendency shall have a period of thirty (30) calendar days from receipt of such request to decide on it. In the event of a favorable opinion, the Banking Superintendency shall register the public offer of securities. The Law on Trusts provides an expeditious procedure for specialist issuers, where the Banking Superintendency will only have fifteen (15) days to decide on the application. If the Superintendency does not respond within the time limits provided by law, such silence shall be deemed equivalent to an approval of the application.

With respect to brokerage firms or any other company authorized by Law intending to issue trust securities, they must follow such procedure before the Securities Superintendency, which shall have a period of thirty (30) days to respond to any request. This period shall be fifteen (15) days for specialized issuers. Once a favorable opinion is issued, such issuance is registered in the Securities Market Registry.

With respect to investment of pension funds in such securities, participations in closed funds and participations in mutual or open funds, as well as public securities generated by duly authorized trusts, whether issued by the trustee backed up by the trust property, or by others secured by the trust property or by third parties with guarantees provided by trust funds, which is why resources from pension funds may be invested in such securities, provided they be subject to the provisions of Law 87-01. The Committee in charge of Rating Risks and Providing Investment Limits, shall have a term of not more than sixty (60) days from the enactment of the Law on Trusts to issue a resolution setting out the minimum conditions and parameters that will apply to investments of pension fund resources.

Trusts created under the Law on Trusts shall be governed by the laws of the Dominican Republic. The court with jurisdiction over the affairs of the trusts is the Court of First Instance of the jurisdiction in which the trustee is domiciled or, alternatively, arbitration can be chosen in the document incorporating the trust, without affecting the administrative powers possessed by the competent authorities, as indicated in the Law.

## VIII. SECURITIES AND INSTRUMENTS FOR HOUSING AND CONSTRUCTION FINANCING

For the purpose of raising funds for mortgage financing for housing and the construction sector in general, the Law on Trusts provides that financial intermediation entities may issue publicly offered securities and other securities intended to obtain funds. The following are some of the securities that may be issued:

**a)** Mortgage Notes;

**b)** Mortgage Bonds;

**c)** Mortgage Certificates;

**d)** Mortgage Participation Agreements;

**e)** Endorsable mortgage loans;

**f)** Non-endorsable mortgage loans;

**g)** Participations in closed investment funds and mutual or open funds;

**h)** Trust securities;

**i)** Mortgage-Backed Securities and,

**j)** Other securities authorized by the Monetary and Financial Authorities destined to develop the mortgage market.

## IX. MORTGAGE LOANS AND THEIR NON-SEIZABILITY

Mortgage loans that a financial intermediary has to secure a duly authorized issue of securities and the cash flows from loan payments considered individually or together, are not subject to attachments or seizures made directly on the debtors for debts of the financial institution that originated the loan portfolio and of the issuer of the securities that are backed up by them. They are also not subject to opposition, charges or other actions made directly with the debtors of the financial intermediary that originated of the loan portfolio and issued the corresponding securities.

## X. AUTHORIZATION OF PUBLIC OFFERING OF SECURTIIES AND INVESTMENTS BY PENSION FUNDS

The Securities Superintendency is responsible for regulating public offerings of securities, except when dealing with securities issued by financial intermediaries, in which case the entity in charge shall be the Banking Superintendency.

In regard to the authorization process, the Banking Superintendency has a period of thirty (30) days for financial entities and up to 15 days for specialized issuers, to decide on the authorization of the subscription of a public offering of securities. Likewise, authorization must be obtained and registration must be undertaken by the Securities Superintendency, who shall have the same time periods as provided above to decide on the appropriate request. The Law also provides a simplified procedure for specialized issuers.

For publicly offered securities established under the Law on Trusts to be able to be bought as investment by pension funds, the provisions contained in the Social Security Law, its regulations and complementary provisions shall apply as well as those provided in the Law on Trusts.

## XI. PROVISIONS APPLICABLE IN CASES OF DISSOLUTION AND/OR LIQUIDATION OF FINANCIAL INSTITUTIONS AND REGULATORY POWERS

In case of dissolution and / or liquidation of a financial intermediary, the securities for funding housing and construction shall be considered as privileged obligations and, therefore, shall be transferred along with the mortgage loans backed up by them, and their respective mortgage securities to another authorized financial intermediary. In the absence of proposals for the acquisition of such obligations and assets by a financial intermediary, the Monetary Board shall have the power to determine, on a case by case basis, the treatment to be granted, all based on the regulations issued for such purposes by the Board, and such assets and liabilities shall be excluded from the assets to be liquidated and

handled independently, from an accounting perspective.

## XII. INSURANCE RELATED TO MORTGAGE SECURITIES

The Law on Trusts defines the insurance for promotion of insured mortgages, as the type of insurance that provides coverage for mortgage loan losses as a result of default by the debtor. Financial intermediaries, in their discretion, may insure all or part of their mortgage loans with this type of insurance. Similarly, financial intermediaries may buy policies of private insurance to cover financial losses generated as a result of default by the debtor. These policies may be bought from insurance companies duly authorized to operate in the Dominican Republic.

Additionally, financial intermediaries may enter into hedging arrangements designed to secure payment and performance of loans, financial instruments or securities issued by a portfolio of loans, securities certificates that evidence ownership over the collateral, and those aimed to ensure the risk of inflation and exchange rate fluctuations.

## XIII. SECURITIZATION OF A MORTGAGE PORTFOLIO

The process of securitization of a mortgage loan portfolio is subject to the provisions of the Securities Exchange Law, and where applicable, the provisions of the Monetary and Financial Law.

The minimum capital requirements for securitization companies will be established by the National Securities Council. This minimum capital shall be established as a result of adding the following equity accounts: paid-in capital, reserves, surplus due to premiums paid for shares, retained earnings from previous years, revaluation of assets, bonds mandatorily convertible into shares, and any other account determined by the National Securities Council. For purposes of calculating minimum capital, accumulated losses from previous years are deducted. The minimum capital shall be adjusted annually by the authorities.

Financial intermediation companies may participate in securitization transactions and purchase securities issued thereof without need of approval from the Banking Superintendency, provided the transaction meets the following conditions:

**a)** Is made with securitization companies having the status of Specialized Issuers, referred to in Article 68 of the Law and,

**b)** That in relation to the transfer of the loan portfolio to be securitized, in addition to the provisions of the preceding paragraph, the value does not exceed twenty percent (20%) of the technical capital of the entity question.

In cases where the aforementioned two conditions are not met simultaneously, prior authorization from the Banking Superintendency is required, which shall give its rejection or non-objection to the participation of the financial entity concerned to transfer mortgage loan portfolios, as part of the securitization transaction, during a period not exceeding thirty (30) calendar days from receipt of the application and the completion of all documentation required for this purpose. In the same period of thirty (30) calendar days, the Banking Superintendency must file an application to the Monetary Board when the portfolio subject to securitization exceeds thirty percent (30%) of the technical patrimony of the financial inter-

mediary concerned, and such portfolio would be transferred to a securitizing entity as part of a securitization process.

The law includes an abbreviated approval process for specialized issuers, whereby the authorities have a period of only 15 days to hear and decide on an application for approval. If the authorities do not provide an answer within the period specified by the Law, the application shall be deemed was approved. The non-objection issued by the Monetary Board or the Banking Superintendency, as applicable, in favor of a financial intermediary to transfer a loan portfolio, as part of a securitization transaction, in cases where their respective authorizations are required, shall imply the authorization for selling or assigning such portfolios to securitization entities, as well as authorization to act as manager of the portfolios to be transferred, as appropriate.

After completing any of these processes, the intermediary institution shall notify the Banking Superintendency.

## XIV. AUTHORIZATION FOR PUBLIC SECURITIES ISSUED FROM A SECURITIZATION PROCESS AND INVESTMENT BY PENSION FUNDS.

The issuance of publicly offered mortgage-backed securities issued as a result of a process of securitization of mortgage loans, is subject to prior authorization and registration in the Securities Superintendency, which has thirty (30) days, starting from receipt of the request, to decide on it. For specialized issuers the Law provides an abbreviated process of fifteen (15) days for the authorities to decide on the case.

If the Securities Superintendency does not answer on a particular request for public offering of securities to be securitized, and the other authorizations that may be required by law have been obtained, such silence shall be deemed as approval by the Superintendency, and such governmental entity shall have to register the issuance in the Securities and Products Markets Registry, subject to the deposit of the certificates of approvals from other authorities and presentation of the acknowledgement of receipt from the Securities Superintendency.

As for the issuance schedules, the Law provides that the Securities Superintendency may authorize a single issuance or successive issuances of public securities, fulfilling the criteria of massification, homogenization and standardization, without affecting other criteria established by the stock market.

There will be no restrictions in respect of entities carrying out securitization processes of mortgage portfolios, and these can have on each of the separate patrimonies, assets that have been created or sold by an entity authorized to do so, related to the securitization company.

Securities issued from a securitization process shall be considered among the instruments referred to in Article 97 of the Dominican Social Security Law. The issuance of these securities is governed by the Social Security Law, its regulations and supplementary rules and the provisions of the Law on Trusts. Issuers interested in their securities being bought by pension funds, must file a request from the Committee in charge of Risk Rating and Investment Limits, from the Pensions Superintendency.

## XV. PROCEDURE FOR TRANSFER OF LOANS, TAX TREATMENT AND APPOINTMENT OF REPRESENTATIVES OF INVESTORS OF MORTGAGE-BACKED SECURITIES

Assignments or transfers of portfolios of mortgage loans for securitization purposes shall constitute full and irrevocable assignments for all legal purposes.

For the purposes of making the loan transfers enforceable against third parties, and being able to exercise all creditors rights with respect to the collateral granted therein, the new owner of these credits as a result of a securitization, is exempt from submitting certificates of registration of such collateral in its name. Also, for the purposes of the transfer of the portfolio, the notification provided under article 1690 of the Dominican Civil Code to the assigned debtors shall not be needed in order to perfect such assignment. The securitization entity shall be deemed the new owner of such credits and therefore shall have rights enforceable against third parties after the registration of the securitization in the Securities and Products Market Registry by the Securities Superintendency. Such registration must contain certain information indicated by the Law on Trusts, and must be executed in the form of an authentic act prepared by a Notary Public, and its registration with the Civil Registration Office will only have to pay fees applicable to contracts with no value.

With regard to payments made by assigned debtors during the execution of the securitization as well as deposits made by them in special accounts with respect to which the transferor of the portfolio was authorized to deduct payments due under the mortgage in question, shall be valid and shall discharge the assigned debtors as they are received by the transferor of the portfolio. In such cases, the transferor will be solely responsible with respect to the securitization company or other person, as agreed freely, for amounts received by such debtors, except when the transferor decides not to receive such payments and informs the assigned debtors about the transfer of the loan and the new place where payment are to be made.

If the transferor of a credit portfolio subject to securitization receives information regarding a foreclosure or attachment made by a third party over a property given as collateral, after the transfer of ownership of the credit has occurred, such transferor must give notice to such third party, by bailiff officer act, that this credit has been transferred and that the foreclosure or attachment should be stopped immediately, under penalty of claim for damages if not done as instructed.

If the transferor of a mortgage loan portfolio is the registered creditor of the mortgage in the appropriate Land Registrars Office, and a foreclosure procedure is started by any third party creditor and such creditor notifies the list of conditions for a public auction of the property pursuant to Article 691 of the Code of Civil Procedure, or of the notice indicated under article 153 of the Agricultural Development Law, as amended, or notifies the transferor of the notice of sale required under this law if it entails a special foreclosure procedure, the transferor shall notify, by bailiff officer act as well, the transfer of the mortgage loan to the foreclosing party and shall give notice to the securitizing company as well, within a period not exceeding one (1) day of receiving any notice to such effect, for the purpose of making the process known to the latter. In these

cases, the securitization entity may file objections to the specifications provided it does so within the deadline established.

However, in the case of a regular foreclosure process, an opposition to the list of conditions for the public auction will be admitted by the securitization entity, provided the required written opposition is given at least five (5) calendar days within the timeframe provided, for reading such list of conditions. If the transferor of the portfolio does not make such notification within the term of one (1) day as provided above, it will compromise its responsibility with respect to the securitization entity, up to the lowest amount between the value secured by the mortgage security and the pending balance of the loan, to the extent that the mortgaged property is awarded to any third party and the transferor has received the proceeds of the public auction from the purchaser of such property, given that the starting bid price can never be less than the security registered as a first rank mortgage over such property.

Transfers of loans and mortgage securities in a portfolio that is going to be securitized are exempt from taxes, duties, rights, national or municipal taxes or other taxes of any kind. Similarly, when the securitization entity decides, in its sole discretion, to register the transfer of mortgage securities and other collateral in its favor, for and on behalf of the separate tranches, in the appropriate public registries, such registration is exempt from all taxes, fees, national or municipal taxes or contributions of any nature.

The issuer shall appoint a representative of the investors, for which purpose it shall sign an indenture required by the regulations issued by the Securities Superintendency. This contract must contain the appointment and acceptance of such representative, and such appointment is final, subject to the rights of the investors, who together in a meeting of investors, may appoint a new representative in order to replace the previous one.

## XVI. SEPARATE PATRIMONY CREATED IN SECURITIZATION PROCESSES.

In a process of securitization undertaken by securitization entities with the condition of specialized issuers or otherwise, the creation of a separate patrimony shall be understood as perfected on the date of execution of the indenture, date on which the assets contributed are considered as transferred into a separate patrimony. To this end, said indenture must include a certification of the legal representative of the securitization entity, stating everything required by the law itself, under Article 108.

Securitization entities may sell assets or replace properties, contracts, loans or individual rights that are part of the trust property, without prior authorization of the representative of the investors, provided that such power is expressly granted in the relevant indenture.

However, securitization companies may not transfer, in any case, in favor of their own patrimony, assets that comprise the trust property they manage.

The separate funds created under these securitization transactions and the flows they generate are not subject to claim or attachment, except as provided in paragraph I of Article 101 of the Law on Trusts, in which case it must have authorization from a competent judge.

Also, creditors of the securitization entity, the originator or the manager of the assets, may

not, regardless of the origin or quality of their credits, have a claim against the assets that are part of the trust property, nor may they register securities over such assets, seize or attach any of them. The assets that comprise de trust property may not be returned or transferred to the securitization entity, the originator or the servicer of the underlying assets, if the become bankrupt, are under liquidation or in any other process of this nature, pursuant to the regulations in force.

The only claim a third party may have with respect to the assets that are part of the trust property, relate to the payment of obligations arising from trust securities backed up by such trust property and other obligations to third parties assumed on behalf of such trust property as expressly defined in the corresponding indenture.

If the securitization entity goes into bankruptcy, compulsory liquidation, or any equivalent process, it will only affect its own assets and will not entail the liquidation of the trust property. In no circumstance can a trust property be declared in bankruptcy or liquidated as a result of the occurrence of this situation in the securitization entity. Also, the liquidation of one or more of the separate funds of trust property will not imply the bankruptcy of the securitization entity, or the liquidation of other separate funds.

When a securitization entity is declared bankrupt, undergoes a forced liquidation or any equivalent process, the representative of the investors or whomever is appointed by the meeting of investors shall temporarily manage the separate funds, subject to the procedure defined in the corresponding indentures, until they are finally transferred to another trustee. The foregoing is without prejudice to the power of the meeting of investors to require, by unanimous vote, the liquidation of the separate fund, which will be carried out by the representative of the investors or a person designated by such meeting.

The separate fund established in the securitization process referred to Article 107 of the Securities Exchange Law and the Law on Trusts will be independent from the patrimony of the securitization entity, which shall keep such assets off the balance sheet of such entity and shall keep a special register and separate accounting for each separate group of funds set up. For all tax purposes, each fund is considered as a neutral vehicle and in no case it shall be considered a taxpayer with fiscal obligations and it shall not be subject to pay any type of tax derived o related to the securitization process nor for the services agreed by the securitization entity to carry out such process and charged to such separate fund. The foregoing does not affect the fiscal obligations of the securitization entity itself in terms of complying with the rules governing its formal obligations arising out of the securitization process.

However, revenues generated by securities issued from a securitization transaction, as well as income of the securitization entity and other participants in the securitization process, including originators and managers of mortgage credit portfolios, and residual rights beneficiaries, will be liable to pay income taxes, subject to the application of any tax exemptions that may apply for each taxpayer in particular.

The Internal Revenue Department (DGII) will provide each separate patrimony with an independent and special National Taxpayers Registration Number (RNC).

## XVII. INCENTIVES FOR SECURITIZATION, GENERAL PROVISIONS AND REGULATORY AUTHORITY

The Law on Trusts provides a series of tax incentives applicable to securitization transactions. The fiscal regime provided in the Securities Exchange Law applies to securities derived from securitizations of mortgage portfolios meeting the conditions and requirements defined by the legislation and rules in force. The provisions of the Securities Exchange Law shall also apply in the case of local and foreign investors, so profits generated from fixed or variable income securities and dividends shall be exempt from taxes, and therefore not subject to withholding taxes at the time of payment of such profits on account of investors residing or not residing in the Dominican Republic.

## XVIII. COLLATERAL AGENT

The collateral agent is a legal entity duly empowered to act as such, designated by written document, called collateral document, executed by the creditors or other beneficiaries of a loan secured by a pledge, mortgage or other security, including assignment of the benefits from insurance policies and any other ancillary right, to act as its agent and representative in all steps and actions destined to create, perfect, maintain and foreclose on the security to guarantee the corresponding loan.

Multiple Service Banks, savings and loan associations, any other financial intermediary or foreign bank authorized by the Monetary Board can act as collateral agents, as well as any other commercial company incorporated under the laws of Dominican Republic or foreign laws with the sole and exclusive purpose to act as collateral agent. Individuals cannot act as collateral agents pursuant to the Law.

Creditors or beneficiaries may, in any loan transaction including collateral of any nature, such as pledge or mortgage securities, and the assignment of benefits on insurance policies, by private document, appoint a collateral agent to act as its agent and representative thereof.

The private document destined to appoint a collateral agent must contain at least the rules inherent to the scope and limits of authority of the powers granted to the collateral agent for such purposes, as well as the rules concerning its appointment, removal, replacement, resignation and termination, without affecting any other provisions the parties may agree to include.

In addition to the above, the Law on Trusts provides the rights and responsibilities of collateral agents, their tax treatment, the procurement process of goods, among other aspects concerning the regulation thereof.

## SPECIAL PROVISIONS RELATING TO LOW-COST HOUSING

### I. DEVELOPMENT AND CONSTRUCTION OF LOW-COST HOUSING PROJECTS

Low-cost housing projects are projects destined to solve housing problems in the country, with the participation of both the public and private sectors, with units that will have a sale price equal to or less than Two Million Pesos (RD$2,000,000.00), amount which shall be adjusted for inflation pursuant to the provisions of the Tax Code. These housing projects are the ones that will benefit from the development and implementation of the legal, fi-

nancial and fiscal provisions included in the Law on Trusts. However, in order to benefit from the incentives created by the Law on Trusts, such low-cost housing projects must be duly authorized by the National Housing Institute (INVI).

The Law provides that trusts for construction shall be exempt from the payment of one hundred percent (100%) of the following taxes:

**a)** Income taxes and capital gains taxes;

**b)** Any tax, duty, fee, charge or contribution that may be applicable to bank transfers and the issue, exchange or deposit of checks;

**c)** Taxes on assets or estate taxes, including but not limited to, real estate property taxes, luxury housing and empty urban lots;

**d)** Taxes, fees, and charges on construction provided for in the Law that creates a System for the Preparation of technical regulations for the planning and execution of projects; and,

**e)** Taxes on real estate property transfers and registration of real estate transactions in general.

In addition to the above, trusts created for construction of low-cost housing projects, shall be entitled to seek compensation for the Tax on the Transfer of Industrialized Goods and Services (ITBIS) paid during the process of construction of such housing, that will serve as initial payment in the acquisition of such low-cost housing.

## II. DEVELOPMENT AND CONSTRUCTION OF LOW-COST HOUSING PROJECTS WITH GOVERNMENT CONTRIBUTIONS AND PRIVATE SECTOR PARTICIPATION

Low-cost housing projects may be developed with investments from both the State and the private sector, through the creation of a trust for purposes of its construction. The law provides that the real estate property contributed to the trust for such construction may be subject to a conventional mortgage in favor of the entities financing the project.

The Law on Trusts also provides that the document incorporating the trust for the construction must indicate the instructions regarding the duties of the appointed trustee, the scope of the administration, sale and disposition of the trust property, including the characteristics of the houses to be built and all those features provided by the Law.

In terms of recruiting the firms or persons to execute the design and construction of these projects, a bidding process will be mandatory. The trustee will have to inform through the agreed media, the conditions that purchasers have to meet to be able to purchase units from the projects and the process of requests and approval of such buyers. These homes may be assigned only to purchasers for whom these units shall constitute a first home destined as their primary residence, and under no circumstance, as secondary home. Failure to observe this condition shall be punished with the annulment of the allocation of the residence and such house will be transferred to a third party buyer.

Residences within this system cannot qualify to be constituted as a "Family Property" as defined by law.

## III. SAVINGS ACCOUNT FOR THE ACQUISITION OF HOUSING

The Law on Trusts defines the savings account created for the planned acquisition of housing, as the type of contract for bank deposits to be executed between an individual

and a duly authorized financial institution, in order to save monthly funds towards the purchase of a home. These accounts will not be subject to seizure or attachment and shall bear interests as determined by the banking institution concerned.

Employees may request their employer to deduct money from their salaries and to transfer them to their savings accounts. Payments made for the purchase or acquisition of a home from the planned saving account, through checks or wire transfers, shall be exempt from any tax, duty, fee, charge or contribution that could be applicable to bank transfers and the issue of exchange or deposit checks. Likewise, these accounts will not generate the customary charges for fees or commissions from the financial institution acting as paying bank of the account owner.

The savings account owner, when opening such account with the corresponding banking institution, shall indicate in the contract executed for such purpose, the monthly amount such owner will deposit into it; amount which may be changed with prior notice to the financial institution involved. This amount may not exceed 30% of the employee's salary, regardless of the type of account in question.

The employee shall comply with the formalities provided by the Law to authorize deductions from wages to be contributed to their savings accounts or to modify or suspend these contributions.

Once the employee authorizes the employer to make contributions in the aforementioned savings account, the employer shall have the following obligations:

**a)** Withhold from the corresponding amounts from the salaries to be paid to the worker and instruct the paying bank to deposit such amounts to the account of programmed savings for the acquisition of housing, as instructed by the worker and,

**b)** To make the allocation of these funds in the account of programmed savings for the acquisition of housing of the worker, in the amount, frequency, and during the term indicated by such worker. In case of monthly contributions, they must be made no later than the first five days of each month.

An employer who fails to comply with its obligations, according to the instructions of the employee shall be liable for criminal and labor claims provided by the Law on Trusts, and must answer to the employee owning the account for any loss or benefits not generated as a result of such breach.

In case of change of employer, the employee must sign a new contract with a new employer for the purposes of regular deposits and such contract shall be notified to the relevant department of the Ministry of Labor, before the first appropriate discount is to be performed by the new employer.

In case the account holder ceases as an employee, such holder may make the direct contributions to the account.

## IV. SPECIAL PROCEDURES FOR FORECLOSING ON REAL ESTATE MORTGAGES AVAILABLE TO MORTGAGE CREDITORS

In his final chapter, the Law on Trusts provides a special procedure of foreclosure available to creditors, such as, without this list being exhaustive, local or foreign financial intermediaries, security agents mentioned in the Law, securitization companies and trustees, as long as the mortgage has been granted by

a contract, regardless of the type or nature of the debt they secure.

The foreclosure process is started with a formal request for payment, which is carried out pursuant to the terms and conditions specified in the Law on Trusts. For all matters not covered therein, the provisions of the Dominican Code of Civil Procedure.

## CAN PELLERANO & HERRERA HELP YOU?

Yes. Pellerano & Herrera has been the leading law firm in the Dominican Republic for over 20 years. The firm is well known for providing pragmatic, strategic, and constructive legal advice to clients to help them meet their business goals. Pellerano & Herrera is committed to innovation and to the application of best practices, and it regularly identifies new opportunities for clients and designs legal strategies accordingly. As one example: The firm and its affiliates provide comprehensive assistance to clients establishing greenfield or brownfield projects by identifying not only the legal issues involved – and by helping to solve them – but also by assisting in tax planning and personnel recruitment.

In the trusts area, Pellerano & Herrera offers general advice on:

- Structuring and creation of a Trust Company
- Structuring a trust
- Creation of an Assurance Agent
- Planning process for the Securitization
- Financing, among others.

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