

**MF Comments of 24.01.14**

**M e m o r a n d u m**

To: Cyrus R. Vance Center and Catalytic Communities

From: Mattos Filho Advogados

Date: January 24, 2014

Re: Primary Housing and Property Laws in Brazil – Rio de Janeiro's *Favelas*

Dear Sir/Madam:

As per your request, please find below an overview of Brazilian legislation regarding housing and property, and in particular, legislation governing ownership, adverse possession, and the relocation of citizens. The focus shall be on residents of Rio de Janeiro's informal settlements ("favelas").

This memorandum is divided in five (5) sections: (I) the first briefly introduces the legal framework governing housing rights in Brazil; (II) the second addresses the principal aspects of property ownership to be taken into account when studying Brazilian housing rights; (III) the third describes landholding compliance in Brazil; (IV) the fourth describes landholding programs and their rules from a federal law perspective as well as some examples of landholding programs specifically relating to Rio de Janeiro and (V) the final section consists of a chart summarizing the key laws and regulations affecting housing in Brazil and in particular, the State and Municipality of Rio de Janeiro.

**I. INTRODUCTION TO THE LEGAL FRAMEWORK GOVERNING HOUSING**

The Brazilian legal system is civil law-based. Brazil is organized as a federative republic composed of twenty-six states and a federal district. The Brazilian Federal Constitution assigns joint jurisdiction to the federal government and the states to legislate over certain matters, including property and housing issues.

The Brazilian federal government can legislate over general matters, while states are empowered to legislate on specific interests. In turn, municipalities are entitled to legislate on local matters and to pass supplementary laws on issues that are considered of local interest and that have not been specifically regulated by federal or state laws, e.g., laws on the urban sanitation system.

The Federal Constitution provides several protective measures for property and housing. Clauses XXII and XXIII of Article 5 of the Federal Constitution establish that property is a fundamental right and should serve its social function. Further, Article 6 of the Federal Constitution states that housing is a social and a fundamental right to be observed by the Brazilian government. Clause XX of Article 21 of the Federal Constitution provides that the

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federal government has the obligation to issue guidelines for urban development, housing, sanitation and transportation. Pursuant to Clause IX of Article 23 of the Federal Constitution, the federal government, the states, the federal district and the municipalities have shared legislative power to “promote housing construction programs and to improve housing and basic sanitary conditions.” Articles 182 and 183 of the Federal Constitution set forth general policies for urban municipal development, including eminent domain and adverse possession of public lands.

In addition to the Federal Constitution, there are also Brazilian federal laws supporting housing rights. Brazilian Federal Law No. 11,124 of June 16, 2005, for example, provides for the National System for Social Interest Housing (*Sistema Nacional de Habitação de Interesse Social – SNHIS*) and creates the National Housing Fund (*Fundo Nacional de Habitação de Interesse Social – FNHIS*). According to Article 2 of that law, the SNHIS aims to provide low-income citizens with access to urban land and to sustainable, dignified housing, as well as overseeing all projects relating to social housing.

In this regard, bearing in mind that the focus of this memorandum is to provide guidance to residents of Rio de Janeiro’s *favelas*, Article 230 of the Constitution of State of Rio de Janeiro of October 5, 1989, is of importance since it establishes Instruments that the State and its municipalities may use to assure the social function of property, such as the administration of public lands, expropriation, assignment or permission, granting of use rights or eminent domain, among others.

In light of the foregoing, the federal government, through the Ministry of Cities (*Ministério das Cidades*), is responsible for assisting with, evaluating, and proposing instruments for the implementation of the National Housing Policy,<sup>1</sup> which includes a set of rules and guidelines that were developed in 2004 to promote dignity in housing.

In the Municipality of Rio de Janeiro, two main governmental bodies regulate housing and urban issues, namely, (a) the Municipal Housing Office (*Secretaria Municipal de Habitação*); and (b) Municipal Fund Management Council for Social Interest Housing (*Conselho Gestor do Fundo Municipal de Habitação de Interesse Social*). These bodies will be discussed further below.

## **II. OWNERSHIP OF REAL ESTATE PROPERTIES IN BRAZIL – LEGAL BASICS**

In order to understand Brazilian legislation regarding housing rights, one must first understand the concept of property under Brazilian law and, in particular, ownership, possession and adverse possession. For this reason, please find below a brief explanation of the principal aspects of ownership in Brazil.

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<sup>1</sup><http://www.cidades.gov.br/index.php/plano-nacional-de-habitacao>

## **II.1 Ownership**

Clause XXII of Article 5 of the Brazilian Federal Constitution guarantees the right to own land. As such, land ownership is an *in rem* right under Brazilian law.<sup>2</sup> Along with other *in rem* rights regarding property, the ownership of land is also regulated by the Brazilian Civil Code.

Ownership is a *right in rem*. *Right in rem* is a legal relationship in which a person or entity has total control over the possessed property, and can enjoy and use it at its/his/her discretion. This right rests directly with the property and grants the owner enjoyment of the property and its fruits.

In Brazil, only the law can create a *right in rem*. In this regard, the Brazilian Civil Code describes a list of *rights in rem* in Article 1,225. Pursuant to that article, *rights in rem* include: (a) property; (b) surface rights; (c) easements; (d) usufruct; (e) use; (f) habitation; (g) mortgages; and (h) others.

The Brazilian Civil Code provides no definition of ownership. Instead, it states in Article 1,228 the rights of the owner, which are: *"The owner has the right to use, enjoy and dispose of the thing and the right to reclaim it from those who unfairly owned or possessed it"*. Accordingly, ownership is the right to use, enjoy and dispose of property and claim it from anyone who unfairly holds it. In other words, it is the legal relationship between a person or entity (the holder of property) and society.

However, ownership is a *right in rem* which must be exercised in accordance with its social function, not only for the benefit of the holder, but also for the benefit of the community. The Brazilian Federal Constitution, which encompasses general principles of economic activity, affirms that private property must have a social function (Article 170). City land fulfills a social function when it meets the fundamental standards expressed in that city's Master Plan. A city's Master Plan is the basic tool of development policy and urban planning. It is approved by the City Council and is mandatory for cities with over 20,000 inhabitants.

Please note that if property does not fulfill a social function, it does not mean that the land's owner will lose its/his/her status of owner. It means that it/he/she can use, enjoy and dispose of its/his/her property provided that it will aim to fulfill the property's social function. Through the use of the property, the Brazilian Government seeks social justice, contributing to local economic development and urban planning.

## **II.2 Possession**

In Brazil, possession of real property is regulated by Article 1,196, *et seq.*, of the Brazilian Civil Code. If a person does not have valid title to land, but is in physical possession of it, it/he/she only has possession. Possession is not an *in rem* right. Since the possessor is not the owner,

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<sup>2</sup> *In rem* rights refer to general rights that refer to a thing rather than a specific person and can be enforced against anyone. See <http://www.merriam-webster.com/dictionary/jus%20in%20rem>

possession in itself does not permit a person to dispose of real property or hold it in its/his/her name. However, possession allows possessors to use the land as if it were their own.

If a person has possession of real property that is adverse to its owner (as described in more detail in item II.4 below), the possessor may be subject to a lawsuit for repossession by the owner. Likewise, if the possessor has the legal right to possess the property, but a third party with no title to it attempts to invade it, the possessor is entitled to initiate a legal proceeding for repossession against that third party.

Possession may be fair or unfair, considering how it was acquired. Only fair possession is subject to legal protection. Fair possession is acquired in accordance with the law. Unfair possession is acquired in a violent, illegal or precarious ways, as provided in Articles 1,200 and 1,208 of the Brazilian Civil Code. Possession can also be acquired in good or bad faith.

If the possessor ignores or is unaware of the obstacle that prevents her from acquiring the thing possessed, possession is in good faith. If it/he/she knows the obstacle, then it/he/she is acting in bad faith, as provided in Article 1,201 of the Brazilian Civil Code. The possessor in bad faith is fully aware that it/he/she does not have the right to retain the thing, and/or is aware of the illegitimacy of her condition.

The Brazilian Code of Civil Procedure includes as typical possessory legal actions (i) repossession (*Reintegração de Posse*), (ii) the maintenance of possession (*Manutenção da Posse*), and (iii) prohibitory interdict (*Iterdito Proibitório*).

In the case of a dispossession (*esbulho*), which is an aggression that puts an end to a holder's possession, the appropriate lawsuit to be filed is repossession. In case of disturbance (*turbação*), which is an aggression which only makes it difficult to exercise possession, the action for maintaining possession is the appropriate legal response. Prohibitory interdict is the appropriate legal action to correct an aggression that threatens possession. This action is preventive, because it seeks to prevent disturbance or dispossession.

Both of the legal actions of repossession and maintenance of possession share the same procedural rules, although their objectives are different. In accordance with Article 927 of the Brazilian Code of Civil Procedure, the plaintiff of a repossession or maintenance of possession lawsuit must prove: (i) prior possession of the thing; (ii) the disturbance or dispossession committed by the defendant, (iii) the date where possession was violated, and (iv) the preservation of possession, though such possession has been impeded in the case of a maintenance action, or lost in the case of action for reinstatement.

In the preliminary hearing, the plaintiff may produce testimonial evidence, and the defendant, through its/his/her lawyer, can challenge the witnesses and ask questions. If its/his/her justification is accepted, the judge will immediately issue a warrant for reinstatement or maintenance of possession. If the justification is rejected, the injunction will be denied, and the parties will continue the proceeding.

If the second hearing, the so-called “hearing of justification”, is not established, regardless of the warrant, the defendant will be summoned to provide the judge with her response within 15 days. If the hearing of justification has already been held, the defendant will have 15 days from the date that it/he/she was summoned to provide the judge with a response.

It is understood that if the defendant fails to appear at the hearing of justification or fails to secure representation by a lawyer, despite being validly summoned, the period for responding will have already begun. If a defendant is validly summoned and does not appear on the hearing and/or does not present any response, it/he/she will be in default (*revelia*), according with Article 330 II of the Brazilian Code of Civil Procedure. If the defendant has been summoned through public notice (*citação por edital*), or in a “certain-time” (*citação com hora certa*), the judge will designate a special guardian to present its/his/her defense.

Regardless of the response, the judge shall confirm if the case is subject to dismissal (*extinção do processo*) or summary judgment (*julgado antecipadamente*) in accordance with Articles 329 and 330 of the Brazilian Code of Civil Procedure. Otherwise, Article 331 of the Brazilian Code of Civil Procedure shall apply.

Possession is also protected by the Brazilian Criminal Code, which contemplates in item II, paragraph 1 of article 161, the criminal penalty of imprisonment between one to six months and fine for any individual who invades a property in possession of third parties with violence or serious threat, with or without the help of other individual(s) (*esbulho*).

### **II.3 Tenancy**

With regard to possession, it is also important to mention the law governing residential and commercial leases in urban areas in Brazil, Law No. 8,245 of 18 October 1991. This law was drafted with the aim to regulate the use and the rights of the lessee that has possession of a property. Law No. 8,245 limits the rights of the owner, who is obliged to respect the peaceful use and to provide for adequate conditions of the house leased.

Pursuant to the lease law, overlapping guarantees are prohibited. This rule intends to inhibit the abusive practice of some landlords, who obliged tenants to provide them with more than one guarantee to rent a property. Further, this law forbids the landlord from repossessing the property during the rental term agreed in the lease contract, provided the tenant is complying with its/his/her obligations.

### **II.4 Adverse possession / Squatting**

Adverse possession (*usucapião*) is regulated by Articles 1,238 to 1,244 of the Civil Code, which establishes that a person who possesses private real estate property as its/his/her own for a given period (usually 10-15 years), without interruption or opposition, acquires ownership, regardless of the title being acquired in good faith or not. After the required period of uninterrupted possession has passed, the possessor may request title to the land through a

judicial proceeding. Such title is evidenced by a judicial decision and is equivalent to a property title for the purpose of registration at the relevant land registry.

The most common term for claiming adverse possession is 15 years. However, such term may be reduced to 10 years if the possessor uses the property for habitual housing, or if it/he/she has undertaken any productive work or services to improve the land. The period may also vary in accordance with applicable law. Such law is grounded in the fact that the real property must comply with its social function, as guaranteed by the Federal Constitution, Article 5, XIII.

In this regard, ownership must be limited to its social function. Many studies of housing rights point to adverse possession as a solution for the communities that make up *favelas*. In this scenario, the population that lives in a *favela* and seeks to prove its possession and landholding should file a collective lawsuit; if the lawsuit is judged to be valid, the residents of the *favela* will have legal title to their land, in other words, will be legitimate owners of their land, as will be further detailed below.

## **II.6. Registration and transfer of real property**

As a general rule, the Brazilian Civil Code requires that the disposal of real property as well as the creation, transfer, modification or waiver of *in rem* rights over real property shall be executed as a public deed, if the property's value exceeds 30 times the current minimum wage (in accordance with Article 108 of the Brazilian Civil Code), except for transactions involving the Real Estate Finance System (*Sistema Financeiro Imobiliário*), or the SFI, regulated by Law No. 9,514/97, and the Housing Finance System (*Sistema Financeiro Habitação*), or the SFH, regulated by Law No. 4,380/64, among other cases specified under Brazilian legislation.

Under Brazilian law, each parcel of real property has its own land title with its respective record number registered with the relevant Land Registry. The land title works as a way to identify each parcel of land, since it shall contain, at least: (i) the description of the real property, its plot and buildings; (ii) the name and identification of the first owner and their successors through the current owner; (iii) the liens and encumbrances on the real property; and (iv) if the property is owned by a corporation, the corporation's actions, such as incorporation, spin-offs, change of denomination, among others, which have affected the real estate.

The transfer of real property titles becomes effective upon registration of the conveyance document with the relevant Land Registry and after fulfillment of certain legal formalities pursuant to Articles 1,227 and 1,245 to 1,247 of the Brazilian Civil Code.

Land Registry offices have the primary objective of publicizing, providing authenticity and security to legal acts, whether motivated by interests of the society or individuals. Land Registry offices are supervised by the judiciary of each state. Consequently, the specific rules regarding each Land Registry, as well as the fees charged by each Land Registry office when registering or enrolling any document in a property title, vary by state. There are certain documents that are required by the Land Registry offices to register a public deed and they also may vary in every district.

In addition to the notary and the registry fees when transferring real property, a stamp duty – ITBI ("Imposto sobre Transmissão de Bens Imóveis"), which is a Municipal tax, is also levied. The ITBI varies in each municipality and has a rate that vary from 2% to 4% of the real estate property value. Should the transfer occur by means of a donation or inheritance, a tax for non-chargeable transfers – ITCMD ("Imposto de Transmissão Causa Mortis e Doação") will be levied (usually at a rate of 4%) by the state government. Such tax varies in each state.

In Brazil all real estate property is subject to taxation. If the land is located within city limits, it is subject to the annual payment of IPTU (*Urban Territorial Property Tax*). The properties located in rural zones are subject to the annual payment of ITR (Rural Territorial Tax).

The law provides tax relief for certain transfers of property ownership as well as discounts on the fees charged for the use of the property. Articles 290 and 290-A of Federal Law No. 6,015/73, for example, provides for the reduction of taxes levied on the acquisition of properties under the SFH or relating to houses developed through a social program. Moreover, they establish that no tax should be levied when registering the first property acquired under landholding programs that are subject to Federal Law No. 11,481/2007. That law sets out provisions regarding the social program "My House, My Life", which will be further explained below in section III.1.

In view of the foregoing, when real estate property is subjected to urban and landholding regularization, it is important to establish an integrated system, connecting land, urban, housing, environmental, tax and budget policies.

### **III. LANDHOLDING COMPLIANCE IN BRAZIL (*Regularização fundiária*)**

Landholding compliance means bringing real property into legal compliance, including allowing residents to obtain legal title to their property. This provides residents with legal security of tenure, access to public utility services and affordable housing financing, and it allows them to have an official address<sup>3</sup>. Usually, landholding compliance is used by the low income population, which does not have sufficient income and information to acquire properties.

It is important to highlight that landholding compliance is a complex topic, and that the measures to be undertaken to comply with applicable laws vary according to the area specifications, and other conditions.

Landholding compliance can be developed, for example, through mechanisms set forth in Federal Law No. 11,977/2009, including the policies for the federal program "My House, My Life". That program provides for, *inter alia*, the financing of affordable housing to low-income families, as will be further explained below in section III.1.

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<sup>3</sup> More information available at:  
<http://www.mpsp.mp.br/portal/page/portal/Cartilhas/regulariza%C3%A7%C3%A3o%20fundi%C3%A1ria.pdf>

### **III.1. Federal Law n. 11,977 of July 7, 2009<sup>4</sup>**

The federal government established the "My House, My Life" program in 2009 with the objective of creating other mechanisms that incentivize construction of new housing units and requalification of urban real estate, directed at low-income families. Under the My House, My Life program, low-income families are organized by cooperatives, associations or other non-profit organizations in order to petition for technical and financial assistance for affordable housing developments. Once an entity's development plan is approved, they receive financing benefits from the Brazilian Federal Bank, Caixa Econômica Federal. As of mid-July 2013, the program was directed at families with a total monthly income of less than R\$1,600.<sup>5</sup> In Brazil, due to the legal framework described in section I above, municipalities have the power to pass legislation about housing matters.

Beyond the My House, My Life program, it should be noted that landholding compliance is not limited to only one centralized procedure. It could happen through an administrative or a judicial procedure. In view of those matters, and considering the fact that *favelas* are a reality that must not be ignored in the Brazilian housing context, the federal government passed Law No. 11,977 in July 2009, expecting a significant increase in regularization of landholding in Brazil.

This law represented the first time that landholding compliance in Brazil was addressed by a federal law rather than municipal laws.

Among other advances, Law No. 11,977 provides for: (i) landholding compliance by means of new legal tools that grant increased autonomy to municipalities<sup>6</sup>; (ii) encouragement of land and urban compliance, i.e., encouragement of proper public utility services, such as running water, sanitation, electricity, etc., and public roads; (iii) a more streamlined procedure for establishing landholding compliance.

#### **III.1.1. The landholding compliance procedure provided by Federal Law No. 11,977**

Law No. 11,977 defines landholding compliance as being the "set of legal, urban, environmental and social measures aimed at the compliance of informal settlements with specific laws, and the provision of property titles for its occupants, to ensure the social right of housing, the full development of the social function of urban property and the right to an ecologically balanced environment".

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<sup>4</sup> For more information, please see:

<http://www.defensoria.sp.gov.br/dpesp/repositorio/28/documentos/cartilharfcidades.pdf>

<sup>5</sup> For further details related to this program, please click the link below:  
[http://www1.caixa.gov.br/gov/gov\\_social/municipal/programas\\_habitacao/entidades/entidades.asp](http://www1.caixa.gov.br/gov/gov_social/municipal/programas_habitacao/entidades/entidades.asp);  
<http://www.cidades.gov.br/images/stories/ArquivosSNH/ArquivosPDF/Instru%C3%A7%C3%A9sNormativas/IN-36-ALTERADA-PELAS-INS-44.pdf>

<sup>6</sup> This is important, considering that each city has its own peculiarities. By giving municipalities more autonomy, they can manage more appropriately their own matters.

Based on the above, Law No. 11,977 introduced an administrative program for landholding regularization, which is considered to be the most significant advance brought by the law. Administrative programs are specific landholding compliance programs usually defined by Municipalities<sup>7</sup>.

These administrative programs are usually directed to certain *favelas* and do not apply to all of the municipality's territory. When a judicial proceeding is chosen by the residents of a *favela* in order to bring the *favela* into landholding compliance, it usually takes years to be completed, and residents do not risk having their land regularized, since the claim may be deemed groundless.

According to Article 47 of the law, the area to be subject to an administrative program of landholding compliance must:

- (i) Be occupied in a peaceable and uncontested manner, for at least five (5) years;
- (ii) Be situated in "Special Zones of Social Interest" (*Zonas Especiais de Interesse Social - ZEIS*)<sup>8</sup>; or
- (iii) For areas owned by the federal government, states, the Federal District and municipalities, they must be declared as interest areas for implementation of a landholding compliance project.

The following is a brief summary of the landholding compliance procedure provided by Federal Law No. 11,977<sup>9</sup>:

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<sup>7</sup> Other federative entities may also define programs providing instruments related to housing rights to be used by the municipalities; in this case the municipalities have the autonomy to decide to execute the programs or not, and how to execute them.

<sup>8</sup> In Brazil, one important instrument for landholding compliance is "Special Zones of Social Interest" (*Zonas Especiais de Interesse Social - ZEIS*), which are specific areas/zones, previously demarcated by law, to be used as housing settlements, especially for low income families, which include promoting the inhabitant's requalification, landholding compliance and urbanization. ZEIS were provided by the Brazilian federal government in 2001, by the enactment of Cities Statute Law (Federal Law No. 10,257/2001), which allows municipalities to designate certain areas as ZEIS. Among other things, the initiative seeks to protect designated areas from real estate speculation by establishing them as areas designated for low-income housing. Under ZEIS, low-income neighborhoods and *favelas* become subject to rules of occupation that differ from those of the rest of the city.

In order to promote landholding compliance, plots may first be declared as ZEIS through municipal laws. Thereafter, the steps for landholding compliance through ZEIS include, among others, the identification and registration of land and buildings, registration of the social and economic status of inhabitants, development of compliance projects, and, finally, issuance of title in the name of inhabitants.

As mentioned above, ZEIS were an instrument used by the federal government of Brazil in order to promote the landholding compliance through the program My House, My Life (Federal Law n. 11.977, of July 7th, 2009), but were formerly introduced in Brazilian's legal regime, by Federal Law No. 10,257/2001.

<sup>9</sup> For further information, please refer to pages 23/25 of the manual available at <http://www.defensoria.sp.gov.br/dpesp/repositorio/28/documentos/cartilharcidades.pdf>.

**1<sup>st</sup> step:** Landholding compliance project, which must have the elements established by the law<sup>10</sup>. Basically, the project must contain information regarding the areas or plots, the buildings that must be reallocated, the streets that already exist, the streets that will be built, specific measures to be undertaken in order to promote urban, social and environmental sustainability. Residents, housing cooperatives, civil entities and others, even if not public authorities, may promote landholding compliance, but they cannot perform all of the acts of the procedure. They are allowed to make the landholding compliance project and, after approval by the competent bodies, request the registration of the land parcelling which results from this procedure.

**2<sup>nd</sup> step:** Approval of the project by the municipality, according to Article 53 of the law.

**3<sup>rd</sup> step:** Urban demarcation, which is the delimitation of an urban area, occupied by housing on public or private land, with the specific purpose of promoting landholding compliance. This can only be effected by the public government (Union, States, Federal District or Municipalities). In the case of private land, any of these entities are able to make the urban demarcation. In cases of public areas, any entity can make the demarcation of land of its own domain. The demarcation on federal lands can only be effected by the Union itself; the demarcation of state land may be effected by the Union and the State; municipal land can be demarcated by the Municipality and the State. The urban demarcation must observe the municipal laws, since it is municipality's role to execute the urban development policy. This step aims to define the occupants, qualify the kind of occupation and specify the amount of time the occupation has been taking place. At the end of this phase, an Urban Demarcation Certificate is issued for registration with the relevant Land Registry office.

**4<sup>th</sup> step:** Tenure legitimization<sup>11</sup>. This step intends to acknowledge the residents' possession of the areas that have been demarcated. In this step, the government recognizes a certain situation, that is, the peaceful and uncontested possession of a certain area, by residents who do not have any assignment of rights over that real property, or any other right over the property, as defined by the law<sup>12</sup>. By the end of this phase, the government will issue a Tenure Legitimation Title, under the name of the resident that will be duly registered in the relevant Land Registry office.

**5<sup>th</sup> step:** Conversion of the Tenure Legitimation Title into property. When the Tenure Legitimation Title is given to residents of private areas, the beneficiaries are allowed to apply

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<sup>10</sup> For more information, please see article 51 of the Law n. 11,977, available at [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2009/lei/l11977.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/lei/l11977.htm).

<sup>11</sup> This step is applicable only when the agent undertaking the landholding compliance is not the owner of the land. When the procedure is being done by the holder of the domain itself (public lands), this is an unnecessary step, since it is possible to immediately transfer real rights on behalf of the possessor, through other instruments, such as Special Right to Use Land for Housing (*Concessão de Uso Especial para Fins de Moradia*), that will be analyzed below.

<sup>12</sup> Please see article 59 of Federal Law n. 11,977 available at [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2009/lei/l11977.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/lei/l11977.htm).

for the recognition of ownership after five years from the registration of the Tenure Legitimation Title, in the relevant Land Registry office.

This procedure can also benefit the municipality, since the landholding compliance, when finished, allows the municipality to charge taxes on the area.

### **III.2. Other landholding compliance procedures<sup>13</sup>**

As above mentioned, there are different mechanisms that can be used for promoting landholding compliance under Law No. 11,977. Please find below other examples, apart from the proceedings contemplated under Law No. 11,977:

<b>Instrument</b>	<b>Requirements</b>	<b>How to</b>
Special Urban Adverse Possession Federal Constitution - Article 183 City Statute (Law No. 10.257/2001) Article 9. Civil Code - Article 1240	<ul style="list-style-type: none"> <li>•Private areas;</li> <li>•Continuous and uncontested possession for five years;</li> <li>•Property located in urban areas up to 250m<sup>2</sup>;</li> <li>•Property used for housing; and</li> <li>•Resident cannot own of another real estate.</li> </ul>	File a lawsuit.
Action for compulsory judicial confirmation of ownership ( <i>Adjudicação Compulsória</i> ) Law No. 6766/79 - Articles 25 and 26 and Civil Code - Articles 1417 to 1418	<ul style="list-style-type: none"> <li>•Private areas;</li> <li>•Existence of a purchase and sale commitment; and</li> <li>•Proof that paid for the property.</li> </ul>	File a lawsuit.
Special Right to Use Land for Housing ( <i>Concessão de uso especial para fins de moradia - CUEM</i> ) Decree-Law No. 271/67 - Article 7º	<ul style="list-style-type: none"> <li>•Public areas;</li> <li>•Continuous and uncontested possession for five years, completed by 30/06/2001;</li> <li>•Property located in urban areas up to 250m<sup>2</sup>;</li> <li>•Property used for housing; and</li> </ul>	The possessor must request the Grant, demonstrating the requirements of Provisional Measure No. 2220/2001.

<sup>13</sup> For further information, please refer to page 34 of the manual available at <http://www.defensoria.sp.gov.br/dpesp/repositorio/28/documentos/cartilharcidades.pdf>

	<ul style="list-style-type: none"> <li>• Resident cannot be the owner or assignee of rights over another real estate.</li> </ul>	
Grant for Real Right of Use (Concessão de Direito Real de Uso - CDRU) Decree-Law No. 271/67 - Article 7º	<ul style="list-style-type: none"> <li>• Public areas;</li> <li>• The legislation does not establish other requirements to be met by the residents, only that the administrative procedure must show the public interest.</li> </ul>	Legislative authorization is needed. Property valuation. Celebration of administrative agreement, that may establish onerous or gratuitous a concession.

#### **IV. LANDHOLDING COMPLIANCE IN THE CITY OF RIO DE JANEIRO, STATE OF RIO DE JANEIRO**

##### **IV.1. Landholding Main Programs**

###### ***Morar Carioca* Program**

This is a municipal program created in 2010 to promote social inclusion through the complete urban and social integration of all *favelas* in Rio de Janeiro by 2020. The Program's guidelines include: (a) guaranteed participation of the community in all stages of planning; (b) accompanying social work; (c) elimination of troubled areas and resettlement of inhabitants; (d) building-up and upgrade of housing units in and around the *favelas*. This program is an instrument of urban development, compliance, and housing. In addition to other infrastructure projects, this program provides a new legal regime to regulate the construction sector, including where and how people can build real property. The program is in effect as a result of Municipal Decree No. 36,388 of October 29, 2012 (please refer to chart below)<sup>14</sup>.

The "Morar Carioca" program has already delivered 53,000 housing units. The administrative procedure basically consists on the demarcation of a *favela*, as a ZEIS (as mentioned in section III above of this report); followed by the urbanization work in the area by Rio de Janeiro City Hall, through private companies chosen by a public bid. After the urbanization work is completed, the landholding compliance is effected through the issuance of a "Grant to Real

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<sup>14</sup> For further details about this program, please click on the link below:  
<http://www.rio.rj.gov.br/web/smh/exibeconteudo?article-id=1451251>

Right of Use", a "Grant for Special Use for Housing Purposes" or a "Tenure Legitimation Title", in accordance with the kind of property on which the *favela* is located<sup>15</sup>.

### ***Morar Carioca Verde* Program**

This is a sustainable version of the "Morar Carioca" program and is already in effect. Communities founded in environmental protection areas were included in this program and by March 15, 2013, the first 16 housing units had been delivered. The first apartment building was built with solar heating and reclaimed rainwater, among other environmentally-friendly features.<sup>16</sup>

*Favelas* of Babilônia and Chapéu Mangueira, in Leme, City of Rio de Janeiro, are the first to benefit from "Morar Carioca Verde" program. In *favela* of Babilônia, only 16 out of 171 housing units have been delivered. With regard to the habitants of environmentally protected area of the benefited *favelas*, they will be relocated to a total of 117 apartments<sup>17</sup>.

### ***New Alternatives* Program (*Programa Novas Alternativas*)**

This program includes the rehabilitation, restoration, and construction of properties of areas considered "empty" within the Rio de Janeiro's city center (downtown). In order to promote social and economic development, such program promotes the construction of mixed-use housing such as apartment buildings that also feature services and other commerce.

This program is already active. Properties brought into compliance through this program will be sold through "My House, My Life" program.<sup>18</sup>

### ***My House, My Life* Program (*Minha Casa Minha Vida*) General and in the Municipality of Rio de Janeiro**

In the same year the program "My House, My Life" was created at the federal level, the Municipality of Rio de Janeiro was the first city in Brazil to sign the Term of Acceptance to the program. In the Municipality of Rio de Janeiro, the program is coordinated by the Municipal Housing Office and has resulted in a list of recommendations for the construction of sustainable housing.<sup>19</sup> In connection with the My House, My Life program, the Municipal Housing Office: (i) establishes priority regions for project development; (ii) suggests actions and cost reduction strategies or exemptions for the development of projects; (iii) registers and instructs interested

<sup>15</sup> For further information: <http://www.rio.rj.gov.br/web/smh/exibeconteudo?id=4225399>

<sup>16</sup> For further details about this program, please click on the link below:  
<http://www.cidadeolimpica.com.br/projetos/morar-carioca/>

<sup>17</sup> For further details, see: <http://www.cidadeolimpica.com.br/projetos/morar-carioca/>.

<sup>18</sup> For further details related to this program, please click the link below:  
<http://www.rio.rj.gov.br/web/smh/exibeconteudo?article-id=125406>

<sup>19</sup> For further details related to this program, please click the link below:  
<http://www.rio.rj.gov.br/web/smh/exibeconteudo?article-id=107023>

families; and (iv) registers, when necessary, families with total monthly wages below R\$1,600 with the federal government's social programs single registry (*Cadastro Único* - CADÚNICO).

The support center of "My House, My Life" program in the city of Rio de Janeiro<sup>20</sup> can be reached through the following:

Address: Praça Pio X 119, térreo, Candelária, Centro.  
Contact numbers are +55 (11) 2976-7434 and +55 (11) 2976-7446  
E-mail: [hcof@pcrj.rj.gov.br](mailto:hcof@pcrj.rj.gov.br).

## **IV.2. Main landholding related authorities in Rio de Janeiro**

### **Municipal Housing Office (*Secretaria Municipal de Habitação*)<sup>21</sup>**

The Rio de Janeiro Municipal Housing Office is responsible for the urbanization of *favelas* and also for ensuring that *favelas* comply with local property laws. The governmental agency oversees the construction of housing for low-income families that earn up to ten (10) minimum wage salaries per month, but focuses primarily on families with income up to three (3) monthly minimum wage salaries per month<sup>22</sup>. The main objectives of the Municipal Housing Office include: (i) the improvement of housing conditions in the *favelas*; (ii) the construction of 50,000 houses for low-income families, bringing property into compliance with local laws; and (iii) the execution of housing projects developed by the Municipality of Rio de Janeiro, including "Morar Carioca".

The Municipal Housing Office is also responsible for certain obligations arising from the "My House, My Life" Program in Rio (please refer to chart and further information below), including: (i) definition of priority regions for project development; (ii) suggestion of actions and costs reductions or exemptions for the development of projects; (iii) registration and guideline to interested families; and (iv) registration, whenever required, of families with wages limited to R\$1,600.00 with the federal government's social programs registry ("CADÚNICO").

### **Municipal Fund Management Council for Social Interest Housing (*Conselho Gestor do Fundo Municipal de Habitação de Interesse Social*)<sup>23</sup>**

The Municipal Housing Office coordinates the Municipal Fund Management Council for Social Interest Housing (the "Council"), which is part of the National Housing System for Social Interest created by Federal Law No. 11,124/05. The Council establishes guidelines for the actions and resources of the Municipal Fund for Social Interest Housing and provides assistance

<sup>20</sup> <http://www.rio.rj.gov.br/web/smh/exibeconteudo?id=152699>.

<sup>21</sup> <http://www.rio.rj.gov.br/web/smh/exibeconteudo?article-id=94333>

<sup>22</sup> As of January 1, 2014, the monthly minimum wage salary was R\$ 724.00. As of early 2014, ten minimum wage salaries is equivalent to R\$ 7,240.00 and three, R\$ 2,172.00. See <http://economia.uol.com.br/noticias/redacao/2014/01/01/novo-salario-minimo-de-r-724-entra-em-vigor-a-partir-de-hoje.htm>.

<sup>23</sup> <http://www.rio.rj.gov.br/web/smh/exibeconteudo?article-id=1796611>

for those who benefit from the housing programs. The Council, which is staffed with 10 public servants and 10 members of civil society organizations, also approves budgets, plans, and goals for Municipal Fund for Social Interest Housing resources.

#### **IV.3. Landholding cases in Rio de Janeiro**

In order to provide some actual examples of landholding compliance in Brazil, please find below certain real cases for reference.

To achieve the above purpose, we have contacted Bento Rubião Foundation Center for the Defense of Human Rights (*Centro de Defesa dos Direitos Humanos Fundação Bento Rubião*)<sup>24</sup>, which is a non-governmental, non-profit private legal entity with head offices in Rio de Janeiro, which seeks to reduce social inequalities and help minority groups that have their human rights violated because of ethnic, race, socioeconomic condition and/or gender.

The Bento Rubião Foundation is responsible for two social projects, namely "Rocinha Mais Legal" and "Direito à Terra", that seek to promote the population's housing rights.

The "Rocinha Mais Legal" project started in 2004, executing landholding, environmental and urbanization compliances of the *favela* of Rocinha, in Rio de Janeiro. The landholding compliance procedure is undertaken by the Bento Rubião Foundation. Lawsuits that have been filed in 2004 and are not yet concluded, are now undertaken by a Legal Unit of Pontifical Catholic University of Rio de Janeiro, composed by law students of the university.

The landholding procedure starts when the Bento Rubião Foundation assembles the inhabitants to present a housing project, as well as answer residents' questions on the matter and organize them into groups for monitoring the procedure. After the above exercise, a topography team assesses the *favela* and measure and design houses, plots, streets, free areas, leisure areas, etc. Along with the topography work, the registration of residents takes place – the inhabitant provides the Foundation with his/her documents, answers questions, etc. Then, the legal measures (lawsuit) start, eventually resulting in the issuance of the property title, enabling the registered resident to become the owner of the land<sup>25</sup>.

"Direito à Terra" project provides legal, social and urban advice to vulnerable groups located in the State of Rio de Janeiro that are under threat of forced eviction, ensuring that such groups stay in the land on which they live and providing guidance on landholding compliance.

Several lawsuits have been filled by the inhabitants of certain *favelas* in Rio de Janeiro with the support of Bento Rubião Foundation Center for the Defense of Human Rights. We have found some important results of those lawsuits<sup>26</sup>:

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<sup>24</sup> For more information, please visit: <http://www.bentorubiao.org.br/>.

<sup>25</sup> More information in the guidebook "Rocinha Mais Legal – Uma Questão de Cidadania".

<sup>26</sup> <http://www.bentorubiao.org.br/noticias/nota-publica/>.

1. *Favela* Beira Rio Residents' Association and Bento Rubião Foundation Center for the Defense of Human Rights have filed a lawsuit requiring that the Municipality of Rio de Janeiro refrain from any forced eviction of residents or trespass on the land in *favela* Beira Rio. The judge ruled in favor of the plaintiffs, which benefited approximately 150 families. This decision was made after the population of the *favela* received some visits from the sub mayor of Barra da Tijuca, who informed the population that forced eviction of the dwellers was soon going to take place.
2. The dwellers of *favela* Mangueira de Botafogo, along with the support of Bento Rubião Foundation Center for the Defense of Human Rights, filed a collective adverse possession lawsuit, which was considered valid, benefiting approximately 100 families. This case qualifies as a collective adverse possession, since (i) the urban area has more than 250m<sup>2</sup>; (ii) the same is occupied by low-income population; (iii) the lawsuit relates to the exclusive use of property; (iv) the dwellers occupied the property for a period of five (5) years; (v) without interruption or opposition; (vi) it was not possible to identify the land occupied by each resident; and (vii) the residents do not own any other urban or rural property.  
The judge understood that collective adverse possession is an instrument to be used for promoting the urban policy and social justice and that it has strong constitutional support, since it aims to develop (i) the social function of property (Article 170, II and III); (ii) the protection of the environment (Article 170, VI); (iii) reduce social inequalities (Article 170, VI); (iv) ensure the well-being of city residents (Article 182, "caput"); (v) social harmony (preamble); (vi) human dignity (Article 1, III); (vii) justice and social solidarity (Article 3, I); and (ix) the eradication of poverty and marginalization (Article 3, III).  
Also, the court decision stated that through collective adverse possession, the law has allowed not only the acquisition of ownership by the occupiers (landholding compliance), but the urbanization of the area and the possibility of access of public services by the low income population that live in the *favelas*.
3. Another collective adverse possession lawsuit was considered valid, embodying the neighborhood of Barcelos, part of the *favela* of Rocinha. This was part of the project of landholding compliance promoted by Bento Rubião Foundation Center for the Defense of Human Rights and the Archdiocese of Rio de Janeiro, in this site.

Usually, in the landholding compliance in the City of Rio de Janeiro, the population only receives a notice to leave their houses, without guarantee of a house replacement or without knowing where to go to, which is worrying for the dwellers, especially with the World Cup and the Olympics to be hosted in Rio Janeiro (among other Brazilian cities).

In Brazil the laws regarding the right of housing are considered to be fairly advanced when compared with the rules of other countries. However, Brazilian laws are rarely put in practice. As mentioned above, non-governmental organizations have an important role in landholding compliance, especially for minority groups which usually have no information on housing rights.

## V. HOUSING LEGISLATION IN BRAZIL

Please find below the main laws governing housing in Brazil, the State and the Municipality of Rio de Janeiro.

LAW	SPHERE	LINK	SUMMARY	MAIN ISSUES TO NOTE
Federal Constitution of October 5, 1988	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/Constituicao/ConstituicaoCompilado.htm">http://www.planalt.o.gov.br/ccivil_03/Constituicao/ConstituicaoCompilado.htm</a>	Primary legal document governing the country.	<p>Property is identified as a fundamental right, as well being subject to a social function– Art. 5, XXII and XXIII.</p> <p>Right of housing– Arts. 6; 21, XX and 23, IX (Housing is a social right, and as such, federal, state and municipal governments must establish guidelines for urban development).</p> <p>Urban development policy – Art. 182 and 183 (please refer to City Statute below).</p> <p>Dignity of the human being – Art. 1, III.</p> <p>Fundamental objectives of the Federative Republic of Brazil – Art. 3, I and III</p> <p>General Principles of Economic Activity – Art. 170, II, III and VII.</p>
<b>CODES</b>				
Civil Code	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/leis/2002/L10406">http://www.planalt.o.gov.br/ccivil_03/leis/2002/L10406</a>	Laws governing private relationships, and, among them, ownership of real estate.	<ul style="list-style-type: none"> <li>✓ Adverse possession (usucapião) – Art. 1,238, <i>et seq.</i>;</li> <li>✓ Registering of title –</li> </ul>
Law 10.406 of				

LAW	SPHERE	LINK	SUMMARY	MAIN ISSUES TO NOTE
January 10, 2002		<a href="#">compilada.htm</a>		<p>Art. 1,245</p> <p>Loss of property – Art. 1,247, <i>et seq.</i></p> <p>Possession – Art. 1,196, <i>et seq.</i></p> <p>Acquisition of possession – Art. 1,208.</p> <p>Rights of the committed buyer – Arts 1,417 and 1,418.</p> <p><i>In rem</i> rights – Art. 1,225, <i>et seq.</i> (Ownership is Clause I).</p> <p>Ownership – Art. 1,228, <i>et seq.</i></p> <p>Adverse possession – Arts 1,240 and 1,240A (repeats special adverse possession mentioned in Art. 9 of the City Statute, which is adverse possession for special use).</p>
Code of Civil Procedure – Law No. 5,869 of January 11, 1973	Federal	<a href="http://www.planalto.gov.br/ccivil_03/leis/l5869.htm">http://www.planalto.gov.br/ccivil_03/leis/l5869.htm</a>	Provisions for procedures regarding litigation.	<p>Possession lawsuits procedure – Art. 920, <i>et seq.</i></p> <p>Adverse possession procedure – Art. 941, <i>et seq.</i></p> <p>Dismissal of the case – Art. 329</p>

LAW	SPHERE	LINK	SUMMARY	MAIN ISSUES TO NOTE
				Summary judgment – Art. 330
				Preliminary hearing – Art. 331
<b>OTHER LAWS</b>				
Law 4.132 of September 10, 1962	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/leis/l4132.htm">http://www.planalt.o.gov.br/ccivil_03/leis/l4132.htm</a>	Provisions for expropriations for social purposes.	Expropriation – Art. 1 (expropriation for social purposes must promote the fair distribution of land or stipulate its use for social welfare).
Law 8,245 of October 18, 1991	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/leis/l8245.htm">http://www.planalt.o.gov.br/ccivil_03/leis/l8245.htm</a>	Provisions for leasing urban properties and the rights of the Lessee procedures related thereto.	Regulates the use and the rights of the Lessee that has possession of a property and limits the rights of the owner, who is obliged to respect the peaceful use and to provide for adequate conditions of the property leased.
Law 9,514 of November 20, 1997	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/leis/L9514.htm">http://www.planalt.o.gov.br/ccivil_03/leis/L9514.htm</a>	Regulates the Financial Housing System, creating the fiduciary alienation (or <i>Sistema Financeiro chattel mortgage</i> ) and <i>Imobiliário</i> or SFI. provides other measures.	Regulates the Real Estate Financial System (or <i>Sistema Financeiro de Habitação</i> ) or SFH.
Law 4,380 of November 20, 1997	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/leis/L4380.htm">http://www.planalt.o.gov.br/ccivil_03/leis/L4380.htm</a>	Establish (i) the monetary correction in real estate contracts of social interest; (ii) the financial system for home ownership; and (iii) creates the National Housing Bank (BNH), the Real Estate Credit	Regulates the Housing Financial System

LAW	SPHERE	LINK	SUMMARY	MAIN ISSUES TO NOTE
			Corporation, the Real Estate Letters, the Federal Office of Housing and Urban Development.	
Law 11,481 of May 31, 2007	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/focused_ato2007-2010/2007/Lei/L1481.htm">http://www.planalt.o.gov.br/ccivil_03/focused_ato2007-2010/2007/Lei/L1481.htm</a>	Provides measures Sets out provisions focused on the land regarding the Minha Casa, Minha Vida regularization of social interest in properties of Program the Union.	
Decree Law 271 of February 28, 1967	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/decreto-lei/del0271.htm">http://www.planalt.o.gov.br/ccivil_03/decreto-lei/del0271.htm</a>	Provisions for the urban division of land into parcels or lots, as well as the responsibilities of the person in charge of such division.	Grant of use of public or private land as a provisional <i>in rem</i> right – Art. 7  (The grant of use mentioned shall be previously approved by the relevant authorities, as the case may be (Art. 7, § 5º).
Law 6,015 of December 31, 1973	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/leis/l6015.htm">http://www.planalt.o.gov.br/ccivil_03/leis/l6015.htm</a>	Provisions for public registries.	Real Estate Registry – Articles 167, <i>et seq.</i>  No charges of notary and registry fees for landholding compliance – Art. 213, § 15º.
Law 6.766 of December 19, 1979	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/leis/l6766.htm">http://www.planalt.o.gov.br/ccivil_03/leis/l6766.htm</a>	Provisions for the division of urban land into blocks.	Landholding Compliance and Real Estate Registry – Art. 18 (after the approval of the division project, the person in charge of such division shall submit it to the real estate registry, together with other documents, such as title,

LAW	SPHERE	LINK	SUMMARY	MAIN ISSUES TO NOTE
				which will be dismissed in the event the division project involves low-income residents, as long as executed by the relevant authorities and approved by law for the purpose of implementing housing projects).
Law 9.636 of May 15, 1998	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/leis/leis/19636.htm">http://www.planalt.o.gov.br/ccivil_03/leis/leis/19636.htm</a>	Provisions for the administration and acquisition of federal government land, including the concession for special use of housing, which is the concession for a special use license that is applied to occupied federal government land.	Concession of special use for housing – Art. 22A (see especial features described in <i>Provisional Measure– MP– 2.220 of September 24, 2001</i> below).
City Statute– Law No. 10.257 of July 10, 2001	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/leis/leis_2001/l10257.htm">http://www.planalt.o.gov.br/ccivil_03/leis/leis_2001/l10257.htm</a>	Provisions for urban development policy, including general guidelines for landholding compliance to be observed by the municipalities in developing their own urban policies.	<p>Objectives of urban policy– Art. 2.</p> <p>Among them should be mentioned:</p> <ul style="list-style-type: none"> <li>✓ (I) The right to housing;</li> <li>✓ (II) Democratic governance through community's participation in urban policy;</li> <li>✓ (XIV) Urban land compliance at areas occupied by low-income persons, through specific laws of use and occupancy of land and buildings, considering the</li> </ul>

LAW	SPHERE	LINK	SUMMARY	MAIN ISSUES TO NOTE
				<p>social and economic status of population and environmental rules.</p> <p><i>In rem</i> right of Use or grant of Special Use for Housing Purposes – Art. 4<sup>th</sup>, V, g and h.</p> <p>Special urban adverse possession– Art. 9, et seq.(a person who possesses as his own an urban land or edification of maximum size of 250sq. mt., for 5 years, with no opposition, using it for residential purposes for the family, will acquire title, as long as s/he is not owner of another property. Title may also be claimed collectively, as per Art. 10).</p>
<i>Provisional Measure (MP) 2.220 of September 24, 2001</i>	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/mpv/2220.htm">http://www.planalt.o.gov.br/ccivil_03/mpv/2220.htm</a>	Provisions for the concession of special use mentioned in Art. 183, paragraph 1, of Federal Constitution.	Concession of special use – Art 1 (a person who, until June 30, 2001, possessed as her own, for 5 years, with no opposition, public real estate located in urban area of maximum size of 250 sq. mt., has right of special use for housing, unless s/he is owner or beneficiary of another property).
Law 11,124 of June 16, 2005	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/ato2004-">http://www.planalt.o.gov.br/ccivil_03/ato2004-</a>	Provisions for the National Objectives of SNHIS – System for Social Interest Housing ( <i>Sistema</i>	Art. 2. The SNHIS aims to, <i>inter alia</i> , provide low-

LAW	SPHERE	LINK	SUMMARY	MAIN ISSUES TO NOTE
		<a href="http://www.planalt.o.gov.br/ccivil_03/Ato2007-2010/2008/Lei/L1888.htm">2006/2005/lei/l1124.htm</a>	<i>Nacional de Habitação de Interesse Social – SNHIS</i> to income citizens access urban land and to and creates the National Housing Fund ( <i>Fundo Nacional de Habitação de Interesse Social – FNHIS</i> ). <i>Nacional de Habitação de Interesse Social – FNHIS</i> will oversee all projects related to social interest housing.	sustainable, dignified housing. Also, SNHIS
Law 11.888 of December 24, 2008	Federal	<a href="http://www.planalt.o.gov.br/ccivil_03/Ato2007-2010/2008/Lei/L1888.htm">http://www.planalt.o.gov.br/ccivil_03/Ato2007-2010/2008/Lei/L1888.htm</a>	Support provisions for <i>My House, My Life</i> program	Technical assistance for beneficiaries of <i>My House, My Life</i> Program– Art. 2, paragraph 1.
<b>My House, My Life (Minha Casa, Minha Vida)</b>		<a href="http://www.planalt.o.gov.br/ccivil_03/Ato2007-2010/2009/lei/l1977.htm">http://www.planalt.o.gov.br/ccivil_03/Ato2007-2010/2009/lei/l1977.htm</a>	Provisions for federal program <i>My House, My Life</i> that establishes housing and improvements for troubled areas occupied by low-income citizens.	National Program for Urban Housing – Art. 4, <i>et seq.</i>
<b>Law 11,977 of July 7, 2009</b>				Landholding compliance– Art. 46, <i>et seq.</i>  Administrative adverse possession – Art. 60 – 5 years after registry of the title that legitimizes the possession, holder of such title request that real estate registry convert such title into ownership, as s/he acquired ownership through the adverse possession procedure provided by the Constitution in its Art. 183. For this purpose, the person shall present: (i) distribution certificates reflecting the nonexistence of lawsuits regarding possession or ownership of the parcel;

LAW	SPHERE	LINK	SUMMARY	MAIN ISSUES TO NOTE
			<p>(ii) statement that person does not own other rural or urban real estate; (iii) statement that property is used for the person and his/her family's housing; and (iv) statement that they have no knowledge of any other adverse possession rights.</p> <p>The file below describes the step-by- step process for a landholding compliance stated by Federal Law 11977/2009.</p> <p> <a href="#">Cartilha de Regularizacao Fundia</a></p> <p>The steps include:</p> <p>1 – Selection of the land: includes research of the current status of the area, the municipal legislation, period of occupation, social and economic profile of inhabitants, among others;</p> <p>2 –Issuance of boundaries, with proper documents;</p> <p>3 – Notification issued by the compliance petitioner to the relevant authorities, if land is</p>	

LAW	SPHERE	LINK	SUMMARY	MAIN ISSUES TO NOTE
				<p>located in a public area (notice of claim to public land must be made within 30 days);</p> <p>4 – Delivery of boundary memo to real estate registry with proper documents;</p> <p>4.1 – Personal notification of owner as well as the creditors of existing liens and encumbrances of land by Real Estate Registry;</p> <p>4.2 – If current owner was identified, relevant authorities must be notified in order to inform current owner of adverse claim;</p> <p>4.3 – Public notification (<i>Notificação por edital</i>) of neighbors and potentially interested persons, as well as of owner and creditors if they are not identified by personal notification;</p> <p>4.4 – Encouragement of agreement between potentially interested person and relevant authorities, by the real estate registry officer, in the event of a claim by a potentially interested party. If no agreement is reached, proceeding is</p>

LAW	SPHERE	LINK	SUMMARY	MAIN ISSUES TO NOTE
				<p>extinguished;</p> <p>4.5 – Registry of the urban boundary permit;</p> <p>5 – Draft of the landholding compliance project by the relevant authority;</p> <p>6 – Acceptance of the landholding compliance project by the municipality;</p> <p>7 – Registry of the land division due to landholding compliance with the real estate registry, with the issuance of the consequent land titles;</p> <p>8 – Recognition of possession with the issuance of title by relevant authority. After issuance of such title, submit it for registry at relevant real estate registry.</p>
Decree 7,499 of June 16, 2011	Federal	<a href="http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2011/Decreto/D7499.htm">http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2011/Decreto/D7499.htm</a>	Provisions governing operational matters for <i>My House, My Life</i> program.	<p>Guidelines for federal government's implementation of <i>My House, My Life</i> Program – Art. 2.</p> <p>Priority criteria that must be observed for urban land– Art. 4 (e.g., donations by federal government, states, and</p>

LAW	SPHERE	LINK	SUMMARY	MAIN ISSUES TO NOTE
				<p>municipalities of land located in consolidated urban areas falling under program; tax benefits for construction of social interest housing).</p> <p>Notary fees related to landholding compliance proceedings – Art.19.</p>
Constitution of State of Rio de Janeiro  October 5, 1989	State	<a href="http://www.camaraj.gov.br/internet/interacao/constituições/constituição_rj.pdf">http://www.camaraj.gov.br/internet/interacao/constituições/constituição_rj.pdf</a>	Provisions for the role of the State Government, together with the Municipal Government when providing the social function of property through specific instruments, such as the special property tax, expropriation, land division, among others.	Instruments that the State and its Municipalities may use to assure the social function of property – Art. 230.
Charter of Municipality of Rio de Janeiro	Municipal	<a href="http://www.leismunicipais.com.br/lei-constitucional/riodejaneiro-rj/3613">http://www.leismunicipais.com.br/lei-constitucional/riodejaneiro-rj/3613</a>	Provisions for urban and environmental policy of the Municipality of Rio de Janeiro.	<p>Social function and right of housing – Art. 422, paragraph 1.</p> <p>Principles of urban policy – Art. 429. (e.g., urbanization, landholding compliance, titling of <i>favelas</i> and low-income areas, without removing habitants).</p> <p>Art. 458 – the right to be informed of the acts of public power in relation to urban policy. “The</p>

LAW	SPHERE	LINK	SUMMARY	MAIN ISSUES TO NOTE
				public power guarantees that the means that information arrives to citizens allows discussion of urban problems and participation in their solutions.”
Law 4375 of May 25, 2007	Municipal	<a href="http://www.leismunicipais.com.br/area-rio-de-janeiro/lei-ordinaria/2007/451/4515/lei-ordinaria-n-4515-2007-estabelece-o-sistema-municipal-de-habitacao-de-interesse-social-smhis-2007-05-25.html?wordkey=regularização+fundiária">http://www.leismunicipais.com.br/area-rio-de-janeiro/lei-ordinaria/2007/451/4515/lei-ordinaria-n-4515-2007-estabelece-o-sistema-municipal-de-habitacao-de-interesse-social-smhis-2007-05-25.html?wordkey=regularização+fundiária</a>	Provisions for Municipal Social Interest Housing System in accordance with National Social Interest Housing System.	The aim of the Municipal Social Interest Housing System – Art. 2 (enabling access to urban land by low-income citizens through implementing special programs).
Law 5079 of September 22, 2009	Municipal	<a href="http://www.leismunicipais.com.br/area-rio-de-janeiro/lei-ordinaria/2009/507/5079/lei-ordinaria-n-5079-2009-determina-que-o-titulo-de-propriedade-de-programas-habacionais-populares-seja-outorgado-a-mulher-2009-09-">http://www.leismunicipais.com.br/area-rio-de-janeiro/lei-ordinaria/2009/507/5079/lei-ordinaria-n-5079-2009-determina-que-o-titulo-de-propriedade-de-programas-habacionais-populares-seja-outorgado-a-mulher-2009-09-</a>	Provisions for grant of title in housing programs.	Title and landholding compliance programs – Art. 1 (women shall have priority over men regarding right to title, observing following order: wife, mother, daughter, and granddaughter).

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		<a href="#">22.html?wordkeyt xt=regularização fundiária</a>		
Supplementary Law 111/2011 of February 1, 2011 ("Plano Diretor")	Municipal	<a href="http://www.leismunicipais.com.br/arquivos/rio-de-janeiro/lei-complementar/2011/11/11/lei-complementar-n-111-2011-dispoe-sobre-a-politica-urbana-e-ambiental-do-municipio-instituicao-plano-diretor-de-desenvolvimento-urbano-sustentavel-do-municipio-do-rio-de-janeiro-e-das-outras-providencias-2011-02-01.html">http://www.leismunicipais.com.br/arquivos/rio-de-janeiro/lei-complementar/2011/11/11/lei-complementar-n-111-2011-dispoe-sobre-a-politica-urbana-e-ambiental-do-municipio-instituicao-plano-diretor-de-desenvolvimento-urbano-sustentavel-do-municipio-do-rio-de-janeiro-e-das-outras-providencias-2011-02-01.html</a>	<p>Provisions for urban and environmental policies of the Municipality of Rio de Janeiro.</p> <p>Guidelines for urban policy – Art. 3 (clauses IV, V, VI, VII, XX, XXV relate to implementation of adequate infrastructure, increases in housing supply, the universalization of access to land and dignified housing and democratic governance for landholding compliance).</p> <p>Special Areas of Social Interest– Arts. 70, 205, et seq.(such areas are delimited spaces in city that will be submitted to specific urban development policies).</p> <p>Preemptive right– Art. 77 (provides pre-emptive right for government in acquisition of real estate located in specific places identified by municipality for landholding compliance, execution of programs, and housing projects having social</p>	<p>Principles of urban policy – Art. 2 (social function of property and access to housing with dignity, among others).</p>

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			<p>interest, among others).</p> <p>Urbanization of Special Zones of Social Interest (ZEIS) – Arts. 205, <i>et seq.</i> (applicable to <i>favela</i> zones and resettlements of low-income citizens, including informal land subdivision)</p> <p>– Art. 230 an objective of urbanization and regularization is to offer a “complementary alternative to the production of low-income housing.”</p> <p>– Art. 230 a guideline of regularization is “socioeconomic programs.”</p> <p>Resettlement of low-income citizens – Art. 211, <i>et seq.</i> (procedure will prioritize communities living in at-risk areas and seek to immediately define what measures will be implemented in this area, resettling people in the same area if possible; second, nearby; and third, in areas with infrastructure, mass transportation, and urban resources).</p> <p>Compliance policy (Mapping) – Art. 238</p>	

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				(mapping of land is part of compliance policy; therefore, it will be applied in order to better comprehend areas to be brought into compliance).
Decree 34,522 Municipal of October 3, 2011		<a href="http://raquelrolnik.files.wordpress.com/2011/11/decro-nc2ba-34522-de-3-de-outubro-de-2011-pref-rio-de-janeiro.pdf">http://raquelrolnik.files.wordpress.com/2011/11/decro-nc2ba-34522-de-3-de-outubro-de-2011-pref-rio-de-janeiro.pdf</a>	<p>Guidelines for demolition of buildings and resettlement of their habitants in planned settlements, through urban interventions provided by urban settlement projects or in public interest projects. The opinion of the beneficiary shall always be considered. Agreed solutions must be achieved and must improve the housing conditions of the beneficiary.</p>	<p>Guidelines for demolition of buildings and resettlement of their habitants– Schedule A.</p> <p>Conditions for application of this decree – Clause 1.1. of Schedule A – Accordingly, before compulsory relocation of housing will be permitted, even if justified, there must be previous agreement and acceptance by the families to be resettled regarding the objectives, conditions, and benefits of project. The participation of the population to be benefitted is guaranteed in all stages of the process. Also, improvements made to their properties must be recognized.</p> <p>Alternatives for relocation: Clause 1.2 – (i) new local housing, through construction of new residential units built to code when foreseen in project or in My House, My Life Program</p>

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			<p>development or similar program; (ii) payment for the improvement; (iii) acquisition of new housing in the same community (“assisted purchase”); (iv) financial assistance for the accelerated payment of a real estate purchase and sale agreement regulated by Federal Law 11.977/2009; (v) monthly rent until definitive resettlement of the housing).</p> <p>Procedure for relocation – Clause 1.4. Procedure should observe the following:</p> <ul style="list-style-type: none"> <li>✓ Unit to be demolished shall observe its numerical order. The number of units to be resettled is defined considering the domiciles affected by the urban intervention plan;</li> <li>✓ The families of those dwellings shall be registered, including their personal information and information about their property;</li> <li>✓ The owner must choose among the options presented;</li> <li>✓ The negotiation must</li> </ul>	

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				conclude within 3 months of first call notice.
Decree 36,388 Municipal of October 29, 2012 – <i>Morar Carioca</i>	Municipal	<a href="http://www.rio.rj.gov.br/web/smh/exibeconteudo?artigo_id=3324950">http://www.rio.rj.gov.br/web/smh/exibeconteudo?artigo_id=3324950</a>	Municipal program of urbanization of <i>favelas</i> , which is coordinated by Municipal Housing Office (SMH) and is an instrument for urbanization, to implement compliance, and provide housing in accordance with Complementary Law 111/2012.	Principles of the <i>Morar Carioca</i> Program – Art. 3 (among them is the guaranteed participation of organized society in all stages of planning, accompanying social work, elimination of troubled areas and resettlement of inhabitants plus the production of housing units in and around the <i>favelas</i> being upgraded).
Decree 36983 of April 9, 2013	Municipal	<a href="http://www.leismunicipais.com.br/ari/rio-de-janeiro/decreto/2013/3698/36983/decreto-n-36983-2013-delega-competencia-a-titular-da-secretaria-municipal-de-habitacao-e-das-outras-providencias-2013-04-09.html?wordkeyxt=regulariza%C3%A7%C3%A3o-fundi%C3%A1ria">http://www.leismunicipais.com.br/ari/rio-de-janeiro/decreto/2013/3698/36983/decreto-n-36983-2013-delega-competencia-a-titular-da-secretaria-municipal-de-habitacao-e-das-outras-providencias-2013-04-09.html?wordkeyxt=regulariza%C3%A7%C3%A3o-fundi%C3%A1ria</a>	Provisions governing power of Municipal Housing Office to grant title free of charge to inhabitants of low-income areas.	Requirements to be observed when granting title – Art. 1: <ul style="list-style-type: none"> <li>✓ The beneficiary shall not be concessionaire, tenant, owner, or have possession of any other property;</li> <li>✓ Plot shall not exceed 250sq. mt.;</li> <li>✓ Municipal Attorneys Office must approve draft of such title.</li> </ul>
Normative Instruction No. 36 of July 15, 2009	Federal	<a href="http://www.cidade.s.gov.br/images/s/tories/ArquivosSN/Vida%20Programa%20ArquivosPDF/Instru%C3%A7%C3%A3o%20C3%A7%C3%A3o%20fundi%C3%A1ria.pdf">http://www.cidade.s.gov.br/images/s/tories/ArquivosSN/Vida%20Programa%20ArquivosPDF/Instru%C3%A7%C3%A3o%20C3%A7%C3%A3o%20fundi%C3%A1ria.pdf</a>	Establishes the guidelines for the <i>Minha Casa, Minha Vida</i> Program	Qualifying families must organize into cooperatives or have affiliations with nonprofit organizations in order to

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		3% B5esNormativ as/IN-36- ALTERADA- PELAS-INS- 44.pdf		petition for technical and financial assistance for affordable housing developments.