

LAND INFORMATION AS A KEY ISSUE OF A SUSTAINABLE DEVELOPMENT OF HOUSING[†]

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ABSTRACT

Land has two major utilities: its value of use and its value of exchange. The right to housing, as recognised in a number of international human rights instruments, can be effectively provided by ensuring the use value of land. In the case of housing, this type of use is made up of two constituents: the generic residential condition as derived from the planning use given to land and its specific use as a family home. As housing affordability depends on the changing relationships between house prices and rent, and between house prices and income, one of the main alternatives that has been used to balance the equation, is the financing of the purchase price through the mortgage market. The real estate collapse that began in 2008 is attributable to many factors but two basic issues seem to be at the root of the problem: the mixture of credits of very different qualities in financial products and the lack of reliable information with regard to both the origin of the mortgage and the real estate that guaranteed it. Therefore, in order to maintain the efficiency of the mortgage market as a mechanism to provide affordable housing in conditions of sustainability, it is necessary, with a peremptory nature, to restructure the territorial information systems in such a manner so that they rely on real estate understood not just as the object of rights but also as physical objects that form part of the territory. At the same time, one of the details that must necessarily be included in the content of land information should be the use of a property as a family home, maintaining the circuit with regard to the mortgage chain of family homes permanently identified and isolated within the primary and secondary mortgage markets, both at the time of their constitution and later when the MBSs are issued.

Keywords: Land use value, housing affordability, family home mortgage, mortgage chain, land use information, land information systems.

1. INTRODUCTION: IT'S ALL A LOAD OF RUBBISH! WE HAVE TO LEARN TO WALK BEFORE WE CAN RUN.

These are rainy days. Within a crisis whose impact is far-reaching, housing has turned into a distressed sector, in the midst of declining house prices, deteriorating fundamentals and limited liquidity. Time always flows forward and history cannot be changed. But we can try to understand what happened in order to learn from previous mistakes and moreover, to avoid repeating them. For this it is necessary to have reliable information organised in a way that would prevent further failures in the real estate market, of which housing is a significant part.

The legal system is based on a two legged structure: land and property rights. Information on land is the permanent link between them in that real estate remains unmoved and property rights flow permanently in markets throughout the world. In this sense, land information is the chain that anchors property rights to the land. If land information is weak, transactions which rely on it lack efficiency thus poisoning the market and, as a result, the real estate system, housing included, becomes nothing more than a giant with jelly legs.

This paper argues the need for a thorough review of the Land Information Systems (LIS) both the content and the structure so that ultimately, we might see the wood for the trees.

The focus of the paper then moves to the two main cornerstones on which housing relies: the use of real estate as family homes and the mortgage market as basic mechanism to afford a home. This paper aims, as its goal, to provide the reader with material and insight that complement existing treatments of the subject instead of a comprehensive coverage that can be found in other general works. Without losing sight of housing, the paper discusses in detail a few areas that are often overlooked such as the identification of the family home use as a priority of LIS and the relationship between solvency and guarantee as an unresolved matter of LIS.

2. HOUSING AS A USE VALUE OF LAND

Land has two major utilities: the use value and the exchange value. Use value is the utility of using or consuming a good, a basic first need in the case of housing. Exchange value is the price or worth that a good or commodity has in the market. Exchange value of land, as a scarce resource and a first necessity good, has a constant rise in price.

The right to housing is recognised in a number of international human rights instruments as the Universal Declaration of Human Rights. The effective exercise of this right can only be effectively provided by the use value of land to the extent that it is the means for ensuring the right to adequate housing in no uncertain terms.

At this point it's important to differentiate between the use of land, understood as generic utility, and the specific use of land in each case. In general terms, use of land can be defined as the bundle of possible utilizations granted by the planning to a given land. In this sense, a distinguishing feature of land is its marked instrumental condition as a basis for a sustainable development.

But the use includes a range of possible utilisations of a given land. Thus, the same dwelling house can be used for different purposes as far as the owner can decide i.e. to live there permanently, to spend his holidays every year in it or to rent out. That decision converts an objective use of land into a subjective one, always within the legal limits. So, in the case of housing, this type of use is made up of two constituents: the residential condition as derived from the land use planning and the specific use as a family home.

Despite the fact that these data are essential in order to analyse the issue of housing, the Land Information Systems (LIS) lack information with regard to this point. Yet, in the developed world, information about housing is often shrouded in legal uncertainty

Even though housing is a major first need of human beings it is not the only one. Household incomes must be able to meet not only housing but also other basic needs on a sustainable basis. But the high value of land hinders the affordability of housing, in particular the purchasing of a single-family home.

Due to these causes, as housing affordability depends on the changing relationships between house prices and rents, and between house prices and incomes, two major alternatives have been used to make up for it: renting a house or an apartment for the purpose of housing tenure, or financing the purchase price through the mortgage market,

In relation to the first alternative –renting– it has been widely reported that the financial crisis may have contributed to the rapid growth of the rental market as consumers are more likely to consider renting instead of buying in times of financial hardship.

But some negative externalities always arise, mainly in the case of long-term rentals that refer, on the one hand, to the quicker obsolescence of the rented apartments or houses. Although both parties –landlord and tenant– enjoy the property in different ways, their interests are adverse to each other with regard to the cost of repairs and maintenance. There is an ever present temptation for the temporary holder of land to waste it by letting buildings fall into disrepair, and the body of law that grew up to remedy this waste, simple in general outlines, yet leading to complications in detail, with the subsequent increase of transaction costs as a twilight zone.

On the other hand, the lack of an efficient secondary rental market impedes liquidity and therefore the recovery of the money that has been used to build and develop apartments and houses for renting. This circumstance limits the rental industry to a specific kind of investor more concerned with commercial leases than housing leases.

3. THE RISE AND FALL OF THE MORTGAGE MARKET AS A HOUSING AFFORDABILITY MECHANISM.

The second alternative is the residential mortgage market. Home ownership is beyond the means of most families without mortgage financing. Residential mortgages used to be a traditional way to access ownership by families with a median household income. But this route of access to housing was abruptly cut off by the real estate collapse that began in 2008. The collapse is attributable to many factors but some basic issues seem to be at the root of the problem.

The first is the misunderstanding between solvency and collateral.

Although a car safety depends largely on the quality of airbags, one cannot assess the safety of a car only by the quality of the airbags. Car safety also depends on the quality of the steering, brakes, shock absorbers, etc. Similarly, the quality of a credit not only depends on the

collateral but also on other basic factors such as the ability to pay i.e. solvency of the debtor. Thus, loan efficiency requires both the borrower's ability to pay –DTI– and accurate property valuation – LTV–. If the loan is based solely on the value of collateral, repayment of the loan will depend on the market value of the security. It is as if the borrower sold the property to the lender.

Since the unstoppable development of Alt-A Residential Mortgages after 2004 the ratio solvency-to-collateral (STC) became strongly unbalanced, distorting the performance of residential mortgage markets.

In this scenario, the increase in borrower defaults leads to an increase in the supply of properties in a given market lowering the real value of the property as collateral

This means that it would be necessary to maintain constantly updated information on mortgage loans given that an increase in defaults will reduce the market value of neighbouring properties and therefore their value as collateral. However, this effect of spatial correlation remains invisible to the land information systems

Secondly, the use of creative financing techniques to enhance the availability of affordable housing created a system organised around unclear principles. Structuring of securities –the mixture of credits of very different qualities in financial products– was the other ground that caused systematic failures in secondary markets.

By the early part of the 21st century, nearly every mortgage lender incorporated the twin messages of *affordable housing* and *creative financing* into marketing. The use of structured finance by banks for reasons of funding introduced a new element of volatility and instability into the model of many banking institutions. The consequences were of a dual nature. In the first place, the resulting risk of the mixture of two products of a different credit quality will always be higher than the sum of the risk of each product considered individually. This circumstance was not kept in mind by the credit rating agencies.

In the second place, the fragmentation of a mortgage loan and the mixture of the said fragments with fragments of other credits require, in the case of the failure of any of the credits, the reconstruction of the credit by means of the reunification of its fragments. This will also require the necessary breakdown of the product that contains the said fragments due to the indivisible nature of the real right represented by the mortgage with regard to the guaranteed obligation.

From a *humpty-dumpty* perspective, this situation could be described as the process of breaking down of vases that have been lent to us into pieces and the subsequent creation of new vases of an undoubtedly inferior quality. When the owner of the vases asks for them to be returned, we would have to collect the original pieces of the vases by breaking the newly created vases and remake the original vase trying to use any surplus pieces to make other new vases. In this manner the process goes on and on.

To the aforesaid a new factor of uncertainty must also be added: the lack of reliable information with regard to the origination of mortgage loans and the property rights that secure the loans.

Both the lack of information from the start as well as the breakage that is produced during the transmission of the information that is produced during the procedure of securitisation, impede a real valuation (understood as the possibility to make a direct valuation) not only of the risk of the credit but also of the efficiency of the collateral.

As one sole information system with regard to real estate does not exist (in any case the lack of a standard system is not an obstacle for the standardisation of its deficiencies), the repetitive sequence *fragmentation–construction–fragmentation*, is produced also during the process of transmission of the information of the mortgage, acting as a veil. Deconstruction of data becomes opaque information that fails to meet the current needs of the real estate industry. Hidden from public view behind this thick curtain, mortgages are born, live and die in secondary markets day after day.

Therefore, land information systems have need of a deep adjustment with regard to the information structures in the sense that both the rights as well as the real estate that are used as a collateral can be perfectly identified at any point in the mortgage chain.

4. CONCLUSIONS

On the basis of these considerations and maintaining the efficiency of the mortgage loan as an instrument to acquire a property in conditions of viability and stability, the following conclusions can be made:

A.- It is necessary with a peremptory nature, to restructure the territorial information systems in such a manner so that they rely on real estate understood not just as the object of rights but also as physical objects that form part of the territory. Information on property rights relies on real estate that is composed of physical objects. This means that their use, and therefore their value, depends on some essential factors such as localisation and spatial correlation. The lack of these data is one of the most significant shortcomings of Land Information Systems these days.

B. - Taking into account the transnational circulation of mortgage titles, it is necessary to standardise the language used for the treatment of the information with regard to real estate. However, standardisation must not be confused with uniformisation keeping in mind that the form of a message is not the same as its content.

C.- Territorial information, in itself, must be considered as a valued commodity of public interest. Its generation, through the thread of real estate transactions, must procure the necessary resources for its conservation, administration and reuse with a free nature.

D.- One of the details that should necessarily be included in the content of territorial information should be the use of a property as a family home.

E.- In the same manner, it would be convenient to maintain in isolation and permanently identified the circuit, within the primary and

secondary mortgage markets, regarding the finance of family homes, both at the time of their constitution and later when the MBSs are issued.