

REAL ESTATE MARKETS ADVISORY CHECKLIST¹

(Draft)

POLICY PRINCIPLES AND GUIDANCE FOR THE DEVELOPMENT OF A COUNTRY'S REAL ESTATE MARKET THAT BENEFITS ALL

Introduction

During a recent UNECE REM seminar organized in New York on 16 December 2008 entitled “The real estate and the financial crisis: causes, effects and impacts on development”, it was highlighted that the current global financial crisis is the result of inadequate regulation of real estate and financial markets. Real estate bubbles were allowed to improperly inflate, mortgage lending was improperly supervised, financial markets were allowed to develop complex financial instruments that few understood, credit risk was inadequately modeled, and credit ranking agencies failed to carry out their fundamental role. Investors also failed to properly understand the instruments they were buying and consumers failed to evaluate the risks they were undertaking in buying inflated property with innovative mortgages.

Experts in the meeting agree on the need to develop policy guidelines for both the real estate and financial sectors that will promote stability and sustainability. REM consequently decided to develop principles and guidelines for the development of a sounder real estate market, to be opened for discussion and input at a REM Forum to be organized in Rome on 3-4 June 2009.

This document contains such draft guidelines, which will be further refined through direct interaction with experts attending Rome event and future debates. The guidelines provide a specific input to the work of UNECE on real estate related issues. They should however be taken into consideration within a wider spectrum of other tools developed by the UNECE Committee on Housing and Land Management (CHLM) and its Working Party on Land Administration (WPLA), such as for instance the guidelines for housing finance, spatial planning, social housing and condominium management. Thus, also these guidelines and publications issued under the UNECE CHLM and WPLA are meant as an integral part to this document.²

These guidelines represent a specific attempt to address the current lack of regulations and guidance but, taken alone, they cannot provide an exhaustive solution to the more complex issues related to the lack of adequate housing present in several countries in the

¹ These principles were developed under the leadership of Giampiero Bambagioni, Chair of the Real Estate Market advisory group (REM) in cooperation with REM members and with the involvement of a team of experts including economists, jurists and real-estate market scholars of international renown, and with the support of Tecnoborsa, the Organization for Development and Regulation of the Real Estate Economy of the Italian Chambers of Commerce.

² See for instance:

- *Restrictions of ownership, leasing, transfer and financing of land and real properties in Europe and North America*” - WPLA, Geneva, 2003.
- *Guidelines on Real property Units and Identifiers* - UNECE, New York and Geneva, 2004
- *Land Administration in the UNECE Region* – Development trend and main principles – UNECE, New York and Geneva, 2005

UNECE region, which require comprehensive polices and the direct intervention of Governments.

These guidelines main aims are to:

1. promote the understanding of some critical issues of the real-estate sector, in order to better develop management tactics and strategies that may assist at different extents depending on the level of development of national economies – in the identification of solutions to the current financial market crisis world-wide; and
2. define rules and principles that may promote the development of solutions to be within different enforcement frameworks according to the development level of the national real-estate markets and in compliance with the respective legal systems, so that medium and long-term economic and social benefits may be drawn.

The application of the following principles should be based on widely accepted key concepts:

- a) *Sustainable development*: as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs”³;
- b) *Good governance*: which should prevent decision-making based on self-interest and favor decision-making to the benefit of common good;
- c) *Transparency*: the degree of clarity and openness through with which decisions are taken ;
- d) *Accountability*: the extent to which political actors are responsible to society for their actions;
- e) *Fairness*: the degree to which rules are equally applied equally to everybody;
- f) *Efficiency*: the extent to which limited human and financial resources are applied without waste, delay or corruption or without compromising the well-being of future generations.

Principle 1

An integrated national legal system should be established and harmonized with regional and international regulations, and technical reference frameworks for the supervision and application of the regulations should be created, in order to promote the proper functioning of the real-estate market.

Rationale:

The norms and regulations, together with the systems set up by every country to control and legally protect the rights of possession and use of real estate, provide the necessary foundations on which to create and develop efficient and integrated markets. Without an integrated, national legal system, all the activities which involve management and investment in the value of a property, and which in turn contribute to increase employment opportunities and the overall economic development of a nation, are considerably jeopardized.

³ United Nations, 1987. "Report of the World Commission on Environment and Development." General Assembly Resolution 42/187, 11 December 1987. Retrieved: 2007-04-12

Guidelines:

1. A clear, harmonized set of laws should be in place or established, in order to enable investments and free trade of real estates and property rights by the legitimate owners. This aspect is the key element of the real estate market. Moreover, the more a market is open and broad-based (and also accessible to foreign buyers), the more numerous the opportunities to get profitable selling prices.
2. The identification and protection of property rights should be promoted as a prerequisite for the granting of real estate as guarantee and, hence, as a key element for the access to mortgage loans and financing.
3. Bankers and backers should be given legal certainty to be able to recover landed-property loans, including *performing* funds and *non-performing* funds implying credit-recovery executory actions.
4. A clear and efficient set of laws should be promulgated in order to contribute to the fostering and protection – although indirectly – of the investment of citizens' savings in real estate. If additional resources are invested in this sector – either by the state or private individuals including with the use of PPP combinations – then the opportunities for housing, infrastructures and utilities are increased; house leasing on the free market may meet the needs of those citizens who cannot afford buying a house even with the support of mortgage loans and contribute to greater housing mobility for labor relocation purposes.
5. A comprehensive set of laws should be in force to enable the existence of a farming land market to allow transparent trade legitimize property and possession rights so that use is not disputed over time.
6. An efficient legal system and a well trained, independent judiciary with a solid experience in real-estate litigation should be available to adjudicate on private property rights and contractual disputes.
7. Court rulings relating to such adjudications should be enforceable.
8. Laws on property attachments should be aimed at the speeding up of credit-recovery executory actions whenever loans are not repaid, based on clear, efficient and rapid legal proceedings and the awareness that long enforcement times may be especially costly in economic terms (as the free exploitation of the guarantee estate is prevented) and in social terms (as the personal or third-party use of the attached assets is prevented).
9. Legal barriers, that are arbitrarily established to the ownership of real estate by individuals, groups or legal entities should be eliminated in those countries where they are still existing. However, the legitimate possession and productive exploitation of public real estate should be permitted, regulated and protected, in those cases where it is leased or rented to private individuals or legal entities. These rights of use should be freely negotiable and transferable either for free or for a consideration.
10. (...)

Principle 2

Real-estate transaction risks should be reduced by identifying and protecting property rights through the establishment of an efficient system for the registration, cataloguing, classification and updating of real property data, based on modern land-registry and cadastre records.

Rationale:

The identification and protection of property rights is based on the availability of secure data and information that may be exceptionable to third parties. This necessarily implies the availability of an efficient asset cataloguing and classification system and the possible access to information on title deeds, to which third parties can refer to in order to obtain proof of the legitimacy of the title of ownership over time.

For this purpose, regularly updated public registers and cadastral systems are needed, to eliminate any risk of fraud in transactions and, at the same time, to provide legitimacy to the lawful possession of an asset which in turn will facilitate access to bank loans and insurance.

Guidelines:

1. An efficient, integrated system of identification, cataloguing and classification of real estates and property rights should be established – even in those economies under transition, so that every asset is associated with information on their legitimate owners/title holders.
2. The land cadastre and land registry should cover the entire country. In order to be objectionable to third parties and hence enforceable to anyone (including the state), all transactions affecting real-estate property or use rights should be recorded in a public register. The signatures set on the relevant deeds should be verified and authenticated by a public officer.
3. The information recorded in land cadastre/land registry should be open for public access at a reasonable cost.
4. The registration or recording of property rights for buildings and lands should be comprehensive, accurate and up to date.
5. Ideally, the land registry/cadastre should be digital and it should also be possible to access it electronically by authorized public actors operating in the real estate market.
6. The creation and registration of mortgages should be effected in a way that may be consulted electronically.
7. The public should also have electronic access to information held by the central and local government concerning public planning and environmental policies.
8. (...)

Principle 3

An efficient and transparent real-estate market also depends on the harmonization of legal and voluntary regulations with international standards, ethical rules and best practices.

Rationale:

In order to encourage economic development and contribute to social well-being, real estate markets should be efficient (i.e. respond well to the aims they are intended to serve), data and information on market trends should be accessible and based on clearly documented studies. These requirements are essential in order to make purchases and sales safer and attract investments from abroad, as markets which are not transparent and have little data and information available are usually riskier, presenting critical aspects also for financiers. The riskiest real estate markets also determine higher costs in mortgages and loans. In order to be widely understood, real estate markets should be in line with international standards and best practices as far as possible, as shared operational methodologies and procedures contribute to efficient, top quality processes and professional services.

Guidelines:

1. The knowledge of market dynamics and access to information sources should be fostered (i.e. data on the number of transactions and leasing contracts signed in a given period of time, new construction permits issued, average times required for the conclusion of a selling/purchasing transaction, cost of loans etc.) so that trend analyses may be developed in an objective/reliable way and be understandable at national and international level.
2. Objective and reliable periodical monitoring of real-estate price trend should be performed.
3. The culture of good quality professional service to satisfy customer expectations should be promoted.
4. All services and skills required for the smooth operation of the real-estate sector should be adequately developed (lawyers, surveyors, brokers, valuers, asset manager, facility manager, consultants, fund administrators, managers of complex real estate services for the banking/credit sector, such as non-performing loans and securitizations, experts and other professionals).
5. The skills and characteristics of various professional figures should be well identified and the qualifications required to exercise a specific profession and any additional specializations should be defined. The culture of continuous vocational upgrading should be diffused, to provide a professional performance whose quality is acceptable from a customer/consumer point of view.
6. Services should be based on high performance standards and on civil and professional liability rules. The strengthening of ethical standards and the adoption of specific codes of conduct (to be drawn up with the help of all the interested parties) should be promoted.
7. National methodologies and terms should be integrated and harmonized with international professional standards and international best practices.
8. Voluntary, international norms that are specific of the building and real-estate sector, such as those embraced by the International Organizations for

Standardization (ISO), or those developed on a regional scale such as those embraced by the European Committee for Standardization (CEN) should be fostered. National regulatory organizations should acknowledge international standards at a national level.

9. Codes of conduct and monitoring/supervision activities even from sector organizations should be encouraged, in order to measure the efficiency and quality of processes and services by the various professional categories.
10. The services should be competitive. More comprehensive information on the professional characteristics required in order to compare services rendered, costs/fees, etc. should be promoted.
11. (...)

Principle 4

A well-developed real-estate economy contributes to the conversion of unused or underused resources into productive capital to reduce poverty.

Rationale:

Influential studies have stressed that the real estate sector can be a driving force for development in both emerging economies and developed countries due to its close interconnection with many other sectors of the economy. There are basically three levels of market, each with different characteristics: Developed Real Estate Economy, Emerging Real Estate Economy and Non-existent (or informal) Real Estate Markets. The development of real estate markets and related jobs, real estate financing (mortgages), management and land administration, i.e. of the sector we identify as “real estate economy”, can decisively contribute to a country’s development and this sector can produce effective social and economic benefits. Globally, these factors could assist in reducing poverty levels and contribute to reduce migration flows towards countries which offer a better quality of life and employment opportunities .

Guidelines:

1. Spatial plans should be elaborated as key instruments for territorial development and efficient use of resources which encourages respect for the landscape and quality of the environment and enables construction permits to be obtained quickly should be developed. Land use planning has a regulatory and development function.
2. The strengthening of the real-estate sector and an efficient administration, operation and maintenance of buildings and lands should be key elements of the national policy to promote economic development, social justice and equity and political stability.
3. The promotion of an integrated land administration system will help to:
 - Develop and monitor the correct operation of land and real-estate market;
 - Improve town planning and development of infrastructures;

- Support a more equitable land and property taxation;
 - Guarantee ownership and security of tenure ;
 - Support environmental management;
 - Provide real credit guarantee;
 - Protect state lands and facilitate land reform;
 - Provide sustainable transactions and control of land use, as well as measures to prevent and manage land disputes.
4. Energy efficiency and investments in renewable energy sources should be promoted for both the construction of new buildings and refurbishment. This will reduce energy consumption and contribute to reduce maintenance costs which – in turn – will affect the value of property, knowing that high management costs largely reduce market opportunities.
 5. (...)

Principle 5

Governments are responsible for developing integrated framework policies that initiate and guide decision making processes by setting the conditions for the operation of effective coordination amongst sectors, the identification of bottlenecks, and action in housing and land management at both a regional and local levels in order to encourage a healthier real estate market.

Rationale

It is also important to consider the possible feedback effect between an increase in financial stability of the real estate sector and attempts to make the real estate market more environmentally sustainable and more socially responsive to the need to provide adequate housing for all. It is also probably necessary to develop suggestions for some short term actions to boost real estate markets, which will hopefully stimulate debate on more structural institutional reforms in the long term to help minimize the recurrence of the financial crisis and its social impacts.

Guidelines:

1. A comprehensive set of regulations should be made available/developed to regulate construction methods.
2. There should be no unnecessary substantial delays in bureaucratic approval of procedures for real estate development.
3. Property rights should be protected and fair compensation be paid to affected asset owners in case of expropriation for public reasons.
4. An interdepartmental political approach to issues relating to land policies and any attempts to improve or implement reforms should be supported and actively encouraged at the highest governmental level.

5. Prospective buyers/tenants of any type of real estate should have no restrictions on their choice of tenure options, including sale, lease or mortgage.
6. No price restrictions should be imposed by regulations on real estate input markets (e.g. labor, capital land, construction materials), or related real estate services (e.g. brokers, surveyors, valuation experts) or real estate products (e.g. rent control).
7. There should be no unnecessary substantial delays in bureaucratic approval of procedures for real estate development.
8. The costs of real estate transactions in the countries where they are presently too high should be reduced, in order to promote the access to property and allow greater housing mobility to be realized for labor/study relocation.
9. Extra-legal constraints which inhibit (in part or in total) the freedom of private individuals to enter into private contracts as regards interests in land should not exist.
10. Restitution issues should not hold up the completion of registration of title.
11. (...)

Principle 6

Access to credit and mortgages as well as microfinance for low income earners are essential elements of a healthy real estate market.

Rationale:

Credit policies directly influence real estate market dynamics, in the sense that real estate assets form the collateral on which mortgages and loans are allocated. Competitive mortgage rates facilitate the purchase of a house and they have a direct influence on living standards. Competitive mortgage rates with easier repayment installments are increasingly an essential need for both young couples and first-home family buyers.

The provision of competitive mortgages and loans to provide access to private ownership, or partial ownership for a growing number of citizens, would contribute to solving housing problems.

Guidelines:

1. Capital markets and the banking sector should be regulated and well developed.
2. Private investment in real estate investment should be encouraged.
3. Mortgage and secondary-mortgage markets should be regulated and developed.
4. Average returns on investments in real estate and other investments in the industrial and financial sector should be comparable.
5. Small to medium loans may be secured on real estate.
6. There should be no restrictions on financial intermediaries allowed to engage in real estate financing.

7. Insurance cover against fire, standard risks and natural disasters should be available at internationally competitive rates.
8. All insurance companies operating within the jurisdiction of a specific country should be covered by an adequate regulatory regime.
9. A need to promote alternative forms of funding based on microcredit first and foremost among economies in a state of transition.
10. (...)

Principle 7

Advanced real estate financial products, similar to those developed for securitization, should be redefined, as these have significantly contributed to the current global financial crisis.

Rationale:

The financial crisis has highlighted a key factor in the relationship between real estate and the financial worlds. The lack of transparency in the assessment of the value and the risk of real estate assets, especially when it has been used to back financial products, appears to be one of the causes for the current crisis. The absence of compatible regulations in a global financial market, governing not only financial institutions and their financial products but also the property backed warranties, has contributed to the current crisis. The lack of rules affects not only financial institutions and their financial products, but also the collateral and other warranties backing these products, which are often real estate assets.

Guidelines:

1. The valuation and rating of the warranty-backed financial products must have a direct connection with the value of the real estate under warranty assessed by an independent valuator.
2. There should be a minimum capital reserve required to meet outstanding risk (i.e. Solvency ratio).
3. There should be adequate research and monitoring of the criteria for real estate underwriting.
4. Credit Rating Agencies (local or international) and Financial Institutions should share information on the value of real estate.
5. Financial Institutions should operate a credit scoring system when assessing lending in a standard format.
6. (...)

Principle 8

Property appraisal criteria based on commonly shared valuation standards should be applied, as reliable real-estate appraisal is essential to purchasing and selling transactions, the access to loans and the definition of equitable tax policies.

Rationale:

In order to contribute to the creation of more efficient and developed markets, it is necessary on the one hand to improve the reliability of valuation processes for transaction purposes or for landed-property financings based on a prudential Loan-to-Value (L-T-V) ratio for lands or buildings; on the other hand it is considered that developing and fostering the introduction of a real-estate rating system may reduce sector investment risk and improve lower-interest-rate loans. In addition, modern mass-appraisal systems contribute to tax equalization, by avoiding that very different tax rates are applied to assets having similar economic and technical characteristics.

Guidelines:

1. Property valuation for tax purposes should be based on transparent asset appraisal criteria according to international standards that are implemented at local/national level.
2. Property valuation for mortgage or loan-granting purposes should be based on transparent criteria, according to international valuation standards that are comprehensible and reproducible also by third-party valuers working for rating agencies for securitization purposes
3. There should be a government regulated licensing or certification process for rating agencies, so that valuations can only be carried out by appropriately qualified, licensed persons.
4. There should be sufficient transparency in data recording for information regarding comparable sales transactions to be readily available to all valuers.
5. The number and amount of taxes on land and/or transactions in land should not be disproportionate to the value of transactions in land which trigger the tax charge.
6. All market operators should all have easy access to all the relevant information required to engage in a transaction.
7. All laws and procedures affecting property rights and transactions should be well documented, indexed and widely and openly available to the public at a reasonable price.

Principle 9

Social housing should be considered as an integral and complementary part of the real-estate market and a means to promote economic growth, urban development, reduction in housing pressure and informal settlements.

Rationale:

Social housing may offer development opportunities for the real estate market and housing sector and it may be a stabilizing factor for economic development. An innovative social housing policy may contribute to recover and reconvert crumbling or underused buildings and to stabilize housing production with the enforcement of multi-year plans for the construction of new housing units. It can also facilitate urban development and regeneration, implement ecologically sound standards in new construction and refurbishment, stabilize migration flows and altogether contribute to an integrative society. In several western countries, aids to social housing are implemented; a great number of these countries spend 1-2% of GNP on the promotion of housing policies. It is considered that an excessive percentage of property houses (that are estimated around 80%) may be a disincentive to housing mobility for labor relocation or study reasons. Basic preconditions for all this are multi-year strategies, the establishment of institutions and an economic environment that stimulates continuity and long-term investments.

Guidelines:

1. A house is a basic requirement for everyone, which may not always be fulfilled with direct access to the real-estate market, although supported by very-long-term loan opportunities. As a result, every country should develop social housing policies that may respond to the requirements of the population.
2. National and local administrations should – according to local housing requirements – implement long-term plans for soft-loan house leasing either by recovering the existing buildings or by constructing new ones. The implementation of social housing plans usually take 4-8 years from the first initiative to the time they take effect on the markets and buildings are actually let to the subjects they were constructed for.
3. Awareness should be raised on the importance of state commitment and intervention to promote social housing. Awareness should be also raised on the fact that that the provision of social housing for those in need is an obligation of the government.
4. The development of a policy of long-term housing strategy should be tackled. In view of the multiple options, such a challenge should be based on international best practice.
5. There should be a comprehensive set of laws in force regulating rents, condominiums, management and maintenance, subsidies and social housing.
6. Public-Private Partnerships in housing provision have shown convincing results in many European and Asian countries. Initiatives should be developed in compliance with the UNECE Guidebook on Promoting Good Governance in Public-Private Partnership (New York and Geneva, 2008).
7. Social housing (public housing, PPP housing, cooperatives) should be developed as integrative parts of housing markets. Social housing should not target only the most vulnerable groups, because this immediately creates social exclusion and fragmentation of urban spaces. Instead, social housing should compete with private markets to dampen and stabilize price development.

Principle 10

To guarantee an efficient real estate market characterized by high quality of professional services and building products, investment should be made in training, qualification, upgrading and continuous professional skill development for all those subjects who, in the various functions, are involved in the supply chain.

Rationale:

Training and qualifications at every level in the real estate sector should be considered as a strategic factor and therefore a key element for the development and implementation of adequate, economic policies and a range of professional services in line with the ever-growing expectations of the users of those services.

New know-how and technological resources that contribute to the continuous re-definition not only of the underlying basis, but also of the planning, realization and management of building projects and services all require specific attention to be paid to training. This includes not only to basic training at a high level, but also to continual development and professional refresher courses in the interest of the client/consumer who desires the quality of building products and professional services to be in line with international standards.

Guidelines:

1. Training of adequately prepared higher qualified, up-to-date professionals in the real estate sector is needed.
2. Access to the various levels of training should be guaranteed/encouraged to support the transition from university and post-graduate training to the real estate professional world.
3. Professional refresher courses should be encouraged not only as a prerequisite for top quality professional services, but also as a contribution to mobility within the sector.
4. Adequate training is essential in order to achieve, and in some cases to reinforce the culture of high standard services, top quality production, efficient management and maintenance of real estate, to contribute to innovative construction processes and to the evolution of real estate products.
5. The implementation of the standardization of methodologies and language should be promoted.
6. A larger community of experts of the real estate supply chain should be involved, that can contribute to develop innovative solutions.
7. The planning and design of effective and reflective systems to monitor and evaluate implementation and results should be fostered.

