

# **BUILDING ACT**

## **Act 38/1999 of 5th November 1999**

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### **Preamble**

The building sector is one of the main economic sectors with obvious repercussions on society as a whole and on the cultural values involved in its architecture, which is nonetheless lacking a regulation befitting such significance.

Thus, the traditional land planning regulations contrast with the lack of a legal concept for the construction of buildings, basically established in the Civil Code, and in a variety of regulations which, as a whole, suffer from serious gaps in the regulation of complex building construction processes, both in respect of the identification, obligations and responsibilities of the agents intervening in the process and in respect of the guarantees in place to protect users.

Moreover, citizens are demanding increasingly high levels of quality in the construction of buildings and this has an effect on the structural safety and fire protection as well as on other aspects linked to the well-being of citizens, such as noise protection, thermal insulation or accessibility for disabled people. In any event, the building process, due to its direct influence on the configuration of these spaces, always implies a commitment of functionality, economy, harmony and environmental equilibrium of obvious relevance from the point of view of the general interest. This is foreseen in the EC Directive 85/384/EEC which states that “the architectural creation, the building quality, its harmonious insertion in the environment, its respect for natural and urban landscapes and for public and private property are of the public interest”.

Responding to this order of principles, the need to give continuity to Act 6/1998 of 13 April on Land Planning governing the construction of building and to remedy, in the other hand, the discrepancy existing between current legislation and the reality of insufficient regulation of the building process as it stands, as well as to establish a general framework within which to promote overall building quality, and finally the commitment to provide users with sufficient guarantees against possible damages, as one more contribution of the General Users and Consumers Defence Act 26/1984 of 19 July, are the motives which clearly justify this Building Act, the basic contents of which are as follows:

1. The primary objective is to regulate the building process by updating and completing the legal concept of the agents involved in the process, establishing their obligations in order to determine their responsibilities and cover the guarantees to users based on a definition of the basic requirements to be met by buildings.
2. In doing so, the legal concept of building has been technically defined and the essential principles and scope of the Act which must govern this activity have been delimited, specifying both the new building works and works on existing buildings to which these regulations shall apply.

In view of increasing demands for quality on the part of citizens, the Act establishes the basic requirements to be met by buildings so that the guarantee protecting users are based not only on technical building requirements but also on the establishment of surety and property damage insurance.

These requirements cover both the functional and safety aspects of the buildings as well as those referring to habitability.

The concept of project is established as a requirement for the development of the works affected by the provisions of this Act, specifying the co-ordination required between the partial projects and the documentation to be provided to users for the correct use and maintenance of the building.

The reception of the works is likewise regulated hereunder, in view of the importance of the commencement of liability periods and the prescription periods established by the Act.

3. The Act establishes the obligations of each and every one of the different agents participating in the building project, and the liability derived therefrom, considering the developer as the individual or legal entity taking the initiative for the entire process and the one obliged to guarantee the building against potential property damages. Under the heading of building activities, special mention is made of the Construction Manager as well as the obligation to formalise any part of the works which may be subcontracted.

The Act also delimits the scope of the activity of the professionals, designer, the Works Director and the Director of Execution of the Works, clearly establishing the specific scope of their intervention based on their professional qualifications.

4. The different agents will be personally and individually liable for property damages to the buildings caused by their own acts as well as by the acts of others for whom they are legally responsible under the Act.

They will be jointly liable when the responsibility for the damages cannot be attributed to any one individual or entity or when there is a concurrence of guilt but it is not possible to determine the influence which each agent involved may have had on the damage.

The developer is regarded on the same level as the administrators of co-operatives or homeowners' association or similar associations which are becoming increasingly frequent in economic property management.

5. The liability periods are established for terms of one, three and ten years, depending on the different damages caused to the buildings. The builder is responsible for all property damages derived from deficient construction for a period of one year; the other agents involved in the construction of the building are liable for all property damages caused to the building by faults or defects affecting its habitability for a period of three years, and for a period of ten years for the damages resulting from faults or defects which affect the building's structural safety.

Legal actions to demand such liability prescribe within two years, as do repetitive actions against the presumed responsible parties.

6. With regard to legal guarantees, the Act stipulates a mandatory insurance or surety policy for a period of one year to cover property damages, which may be replaced by the developer withholding 5 percent of the cost of the contract to cover the property damages caused by defective execution.

The Act furthermore stipulates for buildings used as housing that developers must take out an insurance policy to cover the property damages caused to the building by the failure to comply with habitability conditions or which affect the building's structural safety, for three and ten year terms, respectively.

The Act establishes the regulations governing such mandatory insurance as well as the minimum amounts guaranteed for the one, three and ten year terms, respectively.

No deductibles may be applied to the property damages covered under one-year policies and such deductibles may not exceed 1 percent of the insured capital in the case of the other two.

In addition, and in order to prevent buyers from being deceived, certain requirements have been established for proving that the compulsory insurance policies have been taken out prior to public deeds being registered and developers being paid.

7. The Act contains seven additional provisions. The first establishes that the collection of down payments on residential buildings is extended to include co-operatives and homeowners' associations.

The second additional provision stipulates that the compulsory guarantee requirement referred to in article 19 of the Act will be staggered over time to allow the sector to adjust to the new Act. Thus, the ten year guarantee against property damages caused by faults or defects in structural elements, also known as decennial insurance, will be required once the Act comes into effect for those buildings used primarily for housing. Subsequently, and based on the circumstances of the building and insurance sectors, other guarantees may be made mandatory by Royal Decree, i.e., the three-year insurance covering the damages caused to constructive elements or to the services affecting habitability, also known as triennial insurance, and the one-year insurance covering property damages due to faults or defects in finish works.

The third provision excludes members of the Armed Forces Engineering Corps from the provisions of this Act relative inasmuch as it delimits their actions in the Defence area.

The fourth provision specifies the academic and professional qualifications to be possessed by Health and Safety Co-ordinators for construction works.

8. A transitory provision is used to establish the application of the provisions of the Act to works for whose project is applied a building license once the Act has come into effect. Finally, the first of the last four provisions invokes the precepts under whose protection is exercised the competence of the state in matters regulated by Act; the second authorised the Government to pass a Technical Building Code within two years which development the basic requirements to be fulfilled by the buildings mentioned in article 3; the third urges the Government to adapt the regulation of the Forced Expropriation Act to the modifications introduced in the fifth additional provision and the fourth addresses the matter of the Act coming into force.

In short, the Act attempts, within the framework of the Government's powers, to promote quality by stressing the basic requirements and the obligations of the different agents taking part in the different activities involved in the construction of a building, in order to establish the liabilities and the guarantees which protect users and to fulfil the constitutional right to a dignified and habitable dwelling. In this regard, the Act updates the regulation of one aspect of the legislation on forced expropriation which is in dire need of a revision to adapt it to the dynamics of our times. This aspect, which is of such importance that haste should be made to update it, refers to the right of reversion, a right which has been classified by the Constitutional Court as a legal configuration

## CHAPTER I

### General Provisions

#### Article 1. Purpose

1. The purpose of this Act is to regulate the essential aspects of the building process by establishing the obligations and responsibilities of the agents who intervene in said process as well as the guarantees needed to ensure that the process is conducted appropriately and to ensure quality through the compliance with certain basic building requirements and to protect users interests.
2. The obligations and responsibilities relative to the prevention of occupational hazards at construction sites are governed under separate legislation.
3. When the Public Administration and the organisations and entities subject to legislation on Public Procurement act as agents in the building process, they shall be governed by the legislation on government contracts and by the provisions of this Act for any matters not covered under the former, with the exception of the provisions on compulsory guarantees.

#### Article 2. Scope

1. This Act applies to building processes, understood as the actions and results of constructing a permanent public or private building, the principal use of which falls into one of the following categories:
  - a) Administrative, health, religious, residential, educational and cultural buildings.
  - b) Aeronautics, agriculture and livestock; energy; hydraulics; mining; telecommunications (referring to the telecommunications engineering); land, ocean, fluvial and air transport; forestry; industry; naval; plumbing and hygiene engineering; accessories to engineering works and the operation thereof.
  - c) All other buildings whose uses are not specifically indicated in the preceding groups.
2. The following shall likewise be considered buildings for the purposes of the Act and shall require a project as established in article 4:
  - a) Works of Newly constructed buildings with the exception of those of little constructive significance and technical simplicity which are not be used, either temporarily or permanently, as residences or public buildings and which are composed of a single floor.
  - b) Works of Extensions, modifications, reforms or rehabilitation works which alter the architectural configuration of the buildings, understood as those involving a total or partial intervention that causes an essential variation in the general external appearance, the volumetric composition or the overall structural system or the objective of which is to change the characteristic uses of buildings.
  - c) Works involving a complete intervention in buildings which are classified as being of historical-artistic importance or protected under environmental regulations and partial interventions affecting such protected elements or any part thereof.
3. The permanent services and equipment of the building are considered part of the building as are the urban landscape elements ascribed thereto.

## CHAPTER II

### Technical and Administrative Building Requirements

#### Article 3. Basic Building Requirements

1. In order to guarantee people's safety, society's well-being and the protection of the environment, buildings must be projected, constructed, maintained and conserved in such a way as to satisfy the following basic requirements:

a) Functional Requirements:

a.1) Utility, to ensure that the arrangement and dimensions of the spaces and the fitting out of the services allow the building to be used for its intended purpose.

a.2) Accessibility to ensure that disabled (with impaired mobility and communication) people are able to access and move about the building under the terms foreseen in the specific regulations.

a.3) Access to telecommunications, audio-visual and information services pursuant to the provisions of the specific regulations.

b) Safety Requirements:

b.1) Structural safety, to insure against damages to the building or any part thereof originating in or affecting the foundation, supports, beams, framework, load-bearing walls or other structural elements which could jeopardise the building's mechanical resistance and stability.

b.2) Safety in case of fire, to insure that the occupants may evacuate the building safely, that the fire may be stopped from spreading inside the building and to neighbouring buildings and that fire extinguishing and rescue services may operate.

b.3) Safety of use, to insure that the normal use of the building poses no risk of accident to people.

c) Habitability Requirements:

c.1) Safety, hygiene and environmental protection to acceptable levels of healthiness and water tightness inside the building and to prevent any damage to surrounding environment, guaranteeing appropriate management of all kinds of waste.

c.2) Noise protection to ensure that noise levels do not threaten people's health and allow them to carry out their activities normally.

c.3) Energy savings and thermal insulation to ensure the rational use of the energy needed for the building to be run properly.

c.4) Other functional aspects of the constructive elements or services which allow the building to be used satisfactorily.

2. The Technical Building Code is the regulatory framework which establishes the basic quality requirements for buildings and services which allow them to comply with the preceding basic requirements.

As soon as this Act comes into effect, the basic building requirements and other compulsory technical requirements shall be the applicable technical regulations until the Technical Building Code is approved as foreseen in the second final provision of this Act.

The Code may be supplemented with other requirements and regulations dictated by the competent authorities and will be updated periodically in accordance with the evolution of technology and society's demands.

#### **Article 4. Project**

1. The Project is the set of documents which define and determine the technical requirements of the works mentioned in article 2. The Project must provide technical justification for the proposed solutions based on the mandatory specifications of all applicable legislation.

2. When the Project is composed of or supplemented by partial projects or other technical documentation dealing with specific technologies or the building's services, all such projects or documentation will be co-ordinated in such a way as to prevent the duplication of documentation or of the fees received by the persons responsible for preparing it.

#### **Article 5. Administrative Requirements and Permits**

The construction of buildings, the execution of the works involved in such construction and building occupancy will be subject to the granting of all legally required administrative licences and permits.

#### **Article 6. Reception of the Works**

1. The reception of the works is the act whereby the builder, once the works is complete, delivers the works to the developer, who accepts the works. The reception may take place with or without reservations and shall apply to all completed works or phases, as agreed by the parties.

2. The reception will be recorded in a document to be signed by the developer and the builder which will indicate the following:

- a) The parties involved.
- b) The date of the final certificate of all of the works or phases completed.
- c) The final cost of the material execution of the works.
- d) The declaration of the reception of the works with or without reservations, specifying these, where applicable, objectively and the deadline by which any observed defects must be remedied. Once remedied, a separate certificate will be drawn up and signed by the parties involved in the reception of the works.
- e) Any guarantees required from the builder to insure the fulfilment of responsibilities.

In addition, the final building certificate signed by the Works Director and the Director of the Execution of the Works will be included.

3. The developer may refuse to accept the works if he considers that it is incomplete or does not comply with the contractual conditions. In any event, the reasons for such refusal must be given in writing in the certificate along with a new date of the reception of the works.

4. Except where otherwise agreed, the reception of the works will take place within thirty days of the completion of the works, as accredited in the final building certificate, which period shall be determined starting with the written notification to the developer. The works shall be understood as tacitly

received if the developer has not stated his reservations or given his reasons for refusing to receive the works in writing within said thirty-day period.

5. The liability and guarantee periods established in this Act shall commence on the date on which the reception document is signed or on the date of the tacit reception as described in the preceding part.

#### **Article 7. Documentation on the Works Performed**

Upon completion of the works, the Works Director will provide the developer with the building project along with all duly approved modifications, for processing of all administrative formalities.

This documentation will be accompanied, at the very least, by the reception certificate, a list identifying all of the agents involved in the building process, as well as the instructions for using and maintaining the building and its services, as required by all applicable legislation.

All of the documentation referred to in the preceding parts shall be part of the Building Book to be provided to the end users of the building.

### **CHAPTER III**

#### **Building Agents**

#### **Article 8. Concept**

All individuals or legal entities intervening in the building process are considered building agents. Their obligations shall be determined by the provisions of this Act, all other applicable provisions and the clauses of the contract governing their intervention.

#### **Article 9. The Developer**

1. Any individual or public or private legal entity which individually or collectively decides, promotes, plans and finances the building, with its own resources or those of third parties, for itself or for its subsequent disposal, delivery or transfer to third parties under any heading.

2. The developer's obligations include:

a) Being the titleholder to a right to build on the land in question.

b) Providing all prior documentation and information needed to prepare the project and authorising the Works Director to make all subsequent modifications thereto.

c) Applying for and obtaining all required government licences and permits and signing to the building certificate.

c) Arranging for the insurance policies described in article 19.

e) Providing the buyer with documentation on the building works or any other documentation required by public authorities.

## **Article 10. The Designer**

1. The Designer is the agent who is engaged by the developer to design the building, in conformity with all applicable technical urban development requirements.

Partial projects or supplementary parts of project may be drawn up by other professionals in co-ordination with the designer.

When the project is developed or supplemented by partial projects or other technical documents as foreseen in part 2 of article 4 of this Act, each designer shall be the owner of his project.

2. The Designer's obligations include:

a) Holding the pertinent academic and professional degrees in architecture or engineering, whichever applies, and meeting the conditions established for practising the profession in question. In the case of legal persons, appointing a professionally qualified person to draw up the project.

When the project in question refers to the construction of buildings to be used for the purposes set out in group a) of part 1 of article 2, the academic and professional qualifications will be those of an architect.

When the project in question refers to the construction of buildings to be used for the purposes set out in group b) of part 1 of article 2, the academic and professional qualifications will, generally speaking, be those of an engineer, technical engineer or architect, depending on the legal provisions applicable to each profession according to their respective specifications and competencies.

When the project in question refers to the construction of buildings to be used for the purposes set out in group c) of part 1 of article 2, the academic and professional qualifications will be those of an architect, technical architect, engineer or technical engineer, depending on the legal provisions applicable to each profession according to their respective specifications and competencies.

The same criteria shall be followed in respect of the building projects referred to in parts 2.b) and 2.c) of article 2 of this Act.

In any event, for all of the groups and for all of the specific aspects of their specialities and competencies, and particularly in respect of the complementary elements referred to in part 3 of article 2, other qualified professionals may also participate in the architectural and engineering aspects of the project, subscribing their works and acting in co-ordination with the designer. Such specialised interventions shall be mandatory where established by the legal provisions regulating the sector of activity in question.

b) Preparing the project in accordance with the legislation in force and under the terms of the contract and submitting the project with all approvals as required.

c) Reaching an agreement, where applicable, with the developer regarding the engagement of partial collaborators.

## **Article 11. The Builder**

1. The Builder is the agent who enters into a contractual agreement with the developer wherein he undertakes to use his own human and material resources or those of third parties to execute the works or any part thereof according to the project and the contractual terms.

2. The Builder's obligations include:

a) Performing the works in compliance with all applicable legislation and following the instructions of the Director of the Works and the Director of the Execution of the Works in order to achieve the level or quality stipulated in the project.

b) Possessing the professional degrees or qualifications enabling him to meet the conditions established for acting as a builder.

c) Appointing a Construction Manager to act as the builder's technical representative and whose qualifications or experience enable him to act in such capacity based on the characteristics and complexity of the works in question.

d) Assigning the required human and material resources to the works.

e) Formalising the subcontracting of different parts or services with the limits specified in the contract.

f) Signing the ground plan or commencement document and the certificate of reception of the works.

g) Providing the Works Director with all of the information need to prepare the documentation on the executed works.

h) Subscribing the guarantees foreseen in article 19.

## **Article 12. The Works Director**

1. The Works Director is the agent who, as part of the professional project management team, directs the development of the works in all technical, aesthetic, urban planning and environmental aspects according to the project, the building license and other compulsory authorisations and to the contractual conditions in order to ensure its suitability for its intended purpose.

2. Other professionals may direct parts of the project in co-ordination with the Works Director.

3. The obligations of the Works Director include:

a) Holding the pertinent academic and professional degrees in architecture, technical architecture, engineering or technical engineering, whichever applies, and meeting the conditions established for practising the profession in question. In the case of legal entities, appointing a professionally qualified person to act as the technical Works Director.

When the project in question refers to the construction of buildings to be used for the purposes set out in group a) of part 1 of article 2, the academic and professional qualifications will be those of an architect.

When the project in question refers to the construction of buildings to be used for the purposes set out in group b) of part 1 of article 2, the academic and professional qualifications will be those of an engineer, technical engineer or architect, depending on the legal provisions applicable to each profession according to their respective specifications and competencies.

When the project in question refers to the construction of buildings to be used for the purposes set out in group c) of part 1 of article 2, the academic and professional qualifications will be those of an architect, technical architect, engineer or technical engineer, depending on the legal provisions applicable to each profession according to their respective specifications and competencies.

The same criteria shall be followed in respect of the building project referred to in parts 2.b) and 2.c) of article 2 of this Act.

b) Verifying the ground plan and the suitability of the projected foundation and structure to the geotechnical features of the land.

c) Resolving the contingencies which arise at the construction site and recording in the Book of Orders and Attendance the instructions required for a correct interpretation of the project.

d) Preparing, at the request of the developer or with his consent, eventual modifications to the project as required by the progress of the works, provided always that such modifications comply with the legal provisions observed when the original project was drawn up.

e) Signing the ground plan or commencement certificate and the final certificate, and approving the partial certifications and final settlement of the units of works performed, with all of the required approvals.

f) Preparing and signing the documentation on the works performed to be provided to the developer, with all of the approvals which may be required.

g) Those listed in article 13 in those cases where the Works Director and the Director of the Execution of the Works are the same professional, if this option is chosen in conformity with the provisions of part 2.a) of article 13.

### **Article 13. The Director of the Execution of the Works**

1. The Director of the Execution of the Works is the agent who, as part of the professional project management team, undertakes the technical function of directing the material execution of the works and of controlling the building and the quality of the works from a quantitative and qualitative perspective.

2. The obligations of the Director of the Execution of the Works include:

a) Holding the pertinent academic and professional degrees and meeting the conditions established for practising the profession in question. In the case of individuals, appointing a professionally qualified person to act as the technical Director of the Execution of the Works.

When the project in question refers to the construction of buildings to be used for the purposes set out in group a) of part 1 of article 2, the academic and professional qualifications will be those of a quantity surveyor. The same qualifications will likewise be required for works pertaining to group b) directed by an architect.

In all other cases, the direction of the execution of the works may be performed by professionals holding either architectural or engineering degrees, without distinction.

b) Verifying the reception of building materials at the works site and ordering the required test and trials.

c) Directing the material execution of the works, confirming ground plans, materials and the correct execution and arrangement of the constructive elements and services according to the project and following the instructions of the Works Director.

d) Noting the pertinent instructions in the Book of Orders and Attendance.

e) Signing the ground plan or commencement certificate and the final certificate, and preparing and signing the partial certifications and final settlement of the units of works performed.

f) Collaborating with all other agents in preparing the documentation on the works performed and submitting the results of the controls performed.

#### **Article 14. Quality Control Laboratories and Entities**

1. The quality control entities, inasmuch as the building is concerned, are those qualified to provide technical assistance in verifying the quality of the design, the materials and the execution of the works and its services, pursuant to the project and to all applicable legislation.
2. The quality control laboratories, inasmuch as the building is concerned, are those qualified to provide technical assistance through the performance of trials or tests on the materials, systems or services used in the building works.
3. The obligations of quality control entities and laboratories are as follows:
  - a) To provide technical assistance and submitting the results of their activities to the agent who engages their services and to the Director of the Execution of the Works.
  - b) To justify the sufficient capacity in terms of human and material resources needed to perform the works in question and, where applicable, to present the official accreditation granted by the Autonomous Communities with authority on the subject.

#### **Article 15. Product Suppliers**

1. The manufacturers, wholesalers, importers and vendors of construction materials are considered product suppliers.
2. Product supplies are understood as those which are made for the purpose of being permanently incorporated into the construction works and include all materials, semi-finished elements, components and works or any parts thereof, both finished and in progress.
3. The supplier's obligations are as follows:
  - a) To supply the products according to the order specifications and to be responsible for their origin, identity and quality and to comply with all technical regulations which may apply.
  - b) To provide, where required, instructions for the use and maintenance of the products supplied along with all quality guarantees for inclusion in the documentation on the completed works.

#### **Article 16. Owners and Users**

1. The owners and users are obliged to keep the building in good condition through proper use and maintenance and to receive, preserve and transmit the documentation on the completed works and the insurance and guarantees covering said works.
2. The users, whether or not they are the owners, are obliged to use the building and any parts thereof properly in accordance with the instructions for use and maintenance contained in the documentation on the completed works.

## CHAPTER IV

### Responsibilities and Guarantees

#### **Article 17. The Civil Liability of the Agents who intervene in the Building Process.**

1. Without prejudice to their contractual responsibilities, the individuals or legal entities who intervene in the building process are liable to the owners and third party buyers of the building or any parts thereof, should the building be divided, for the following property damages caused to the building within the specified times, starting on the date of the reception of the works without reservation or starting on the date of the correction of such reservations:

a) For a period of ten years, for the property damages caused to the building by faults or defects affecting the foundation, supports, beams, framework, load-bearing walls, or other structural elements and which directly jeopardise the building's mechanical resistance and stability.

b) For a period of three years, for the property damages caused to the building by faults or defects in the constructive elements or services which result in the building failing to meet the habitability requirements mentioned in part 2, letter c) of article 3.

The builder will likewise be liable for the property damages due to construction faults or defects affecting elements of the finish works for a period of one year.

2. Each agent will be individually liable for his own acts or omission and for those of the persons for whom he is legally responsible according to law.

3. Notwithstanding this, when the cause of the property damages cannot be individualised or when there is a concurrence of guilt but it is not possible to determine the influence which each agent involved may have had on the damage, they shall be held jointly liable. In any event, the developer will be jointly liable with all other agents involved to the buyers for the property damages to the building caused by construction errors or defects.

4. Without prejudice to the governmental intervention measures which may apply, the developer's liability as established hereunder shall extend to the individuals or legal entities which, based on their contracts or on their decision-making role in the development, act as the developers or managers of co-operatives or homeowners' associations or other analogous concepts.

5. When more than one designer are engaged to design the project, they will be jointly liable.

Draughtsmen who engage other professionals to prepare calculations, studies, expert reports or other reports shall be directly liable for the damages derived from the insufficiency, errors or inaccuracies contained therein, without prejudice to any recourse they might have against the authors of such works.

6. The builder will be directly liable for the property damages caused to the building due to faults or defects derived from lack of skill, lack of professional or technical qualification, negligence or non-compliance with the obligations of the Construction Manager and the other individuals or legal entities reporting to him.

When the builder subcontracts with other individuals or legal entities for the performance of certain parts or services, he shall be directly liable for the property damages due to faults or defects in the execution of such works, without prejudice to the recourse he might have against subcontractors.

The builder will likewise be directly liable for the property damages caused to the building by deficiencies in the construction products acquired or accepted by him, without prejudice to his legal recourse.

7. The Works Director and the Director of the Execution of the Works that sign the Final Certificate shall be liable for the veracity and exactitude of said document.

He who agrees to direct a building project for which he himself has not drawn up the project shall assume the liability derived from any omission, deficiencies or imperfections in the project, without prejudice to his right to recourse against the designer.

When the direction of the project is contracted jointly with more than one professional, they shall be jointly liable regardless of how they distribute their responsibilities amongst themselves.

8. The agents who intervene in the building process shall not be held liable if it can be proven that the damages were caused by a fortuitous event, force majeure, third party acts or by the very person or entity suffering the damage.

9. The responsibilities referred to in this article are understood without prejudice to the liability of the sellers of buildings or any parts thereof to the buyers under the pertinent purchase-sale agreement and pursuant to article 1.484 of the Civil Code and all other legislation applicable to purchase-sale arrangements.

#### **Article 18. Prescription periods**

1. The legal actions to demand the responsibilities foreseen in the preceding article for the materials damages caused by faults or defects shall prescribe within two years of the occurrence of the damages, without prejudice to the legal actions which may be available for breach of contract.

2. The recourse which may be available to any agent intervening in the building process against all other agents or to insurance companies against such agents will prescribe within two years of the date of the signing of the legal ruling condemning the responsible party to indemnify the damages or two years from the date on which an indemnity was paid under an out-of-court settlement.

#### **Article 19. Guarantees Against the Property Damages Caused by Construction Faults or Defects**

1. The guarantees required for building works as described in article 2 of this Act shall be made effective on the basis of the provisions of the second additional provision hereunder, taking the following guarantees as a reference:

a) A property damage or surety insurance policy to guarantee for a period of one year the compensation of the property damages due to execution faults or defects which affect the finish works or elements, which can be replaced by the developer withholding 5 percent of the contractual price of the works.

b) A property damage or surety insurance policy to guarantee for a period of three years the compensation of the property damages due to faults or defects in constructive elements or services which result in the non-compliance of the habitability requirements set out in part 1, letter c) of article 3.

c) A property damage or surety insurance policy to guarantee for a period of ten years the compensation of the property damages caused to the building by faults or defects originating in or affecting the foundation, supports, beams, framework, load-bearing walls, or other structural elements and which directly jeopardise the building's mechanical resistance and stability.

2) The property damage insurance policies will meet the following conditions:

a) The builder will be considered the policyholder in the case of part 1.a and the developer in the case of parts 1.b) and 1.c); the developer and the subsequent buyers of the building or any part thereof shall be considered the insured. The developer and builder may specifically agree that the builder will be the policyholder on the developer's behalf.

b) The premium must be paid when the works is received. Nonetheless, if the payment of the premium is broken down into instalments during periods subsequent to the date of reception, then the failure to pay the next premium instalment shall not entitle the insurer to cancel the contract, nor will the contract be cancelled, nor will the insurer's coverage be suspended, nor will the insurer be released from its obligations if the insured must call the guarantee.

c) The regulation of the coverage of extraordinary risks to persons and things contained in article 4 of the Act 21/1990 of 19 December shall not apply.

3. The surety insurance policies shall meet the following conditions:

a) Those indicated in parts 2.a) and 2.b) of this article. With regard to part 2.a), the insured will always be the buyers of the building or any part thereof.

b) The insurer undertakes to indemnify the insured on first demand.

c) The insurer may not object to paying the insured based on the exceptions which may apply against the policyholder.

4. Once the insurance coverage takes effect, it may not be cancelled or terminated by mutual agreement until the term foreseen in part 1 of this article has expired.

5. The minimum amount of insured capital shall be as follows:

a) 5 percent of the final cost of the material execution of the works, including professional fees, for the guarantees under part 1.a) of this article.

b) 30 percent of the final cost of the material execution of the works, including professional fees, for the guarantees under part 1.b) of this article.

c) 100 percent of the final cost of the material execution of the works, including professional fees, for the guarantees under part 1.c) of this article.

6. The insurer may choose between paying a cash indemnity for the amount of the damages or repairing the damage.

7. The failure to comply with the preceding regulations on compulsory insurance policies shall imply responding personally to the obligation to provide such guarantees.

8. In respect of the guarantees referred to in part 1.a) of this article, clauses introducing deductibles or any limitation whatsoever of the insurer's responsibility towards the insured will not be admissible.

In the event that the insurance contracts referred to in parts 1.b) and 1.c) of this article establish a deductible, said deductible may not exceed 1 percent of the insured capital for each registered unit.

9. Except where otherwise agreed, the guarantees referred to in this Act do not cover:

- Act.
- a) Bodily injury or economic damages other than the property damages guaranteed by the Act.
  - b) The damages caused to neighbouring or adjacent property to the building.
  - c) The damages caused to movable property located in the building.
  - d) The damages caused by modifications or works on the building after its reception, except where such modification or works is done to remedy defects.
  - e) The damages caused by improper use or maintenance of the buildings.
  - f) The cost of maintaining the building once it has been received.
  - g) The damages caused by fire or explosion, except in the event of faults or defects in the building's services.
  - h) The damages caused by fortuitous events, force majeure, third party acts or by those affected by the damage.
  - i) The losses originating in parts of the building in respect of there are reservations noted on the reception document, until such time as the remedies have been made and which remedies are reflected in a new certificate signed by the signatories of the reception certificate.

#### **Article 20. Requirements for Deeds and Registration**

1. The public deeds on the new buildings to which this Act applies shall not be authorised nor enrolled in the Land Register until such time as the guarantees referred to in article 19 can be accredited and testified to.

2. Upon expiry of the prescription periods for the actions referred to in Article 18, the page opened on the individual developer in the Mercantile Register will not be closed nor will the settlement of the development companies be inscribed without their previously accrediting to the Registrar the constitution of the guarantees established hereunder in respect of each and every one of the buildings they have developed.

### **ADDITIONAL PROVISIONS**

#### **First. The Collection of Payments on Account during the Building Process**

The collection by developers or administrators of payments on account during the building process shall be guaranteed under an insurance policy which indemnifies the breach of contract in a similar way as foreseen in Act 57/1968 of 27 July on the collection of payments on account while homes are being built and sold. Said Act and its complementary provisions shall apply to all new homes, with the following modifications:

- a) The Act shall apply to the development of all types of housing, including those built under systems of homeowners' associations or co-operatives.
- b) The guarantee established in said Act 57/1968 shall extend to the amounts paid in cash or by any other means, which amounts shall be deposited into a special account set up for such purposes as foreseen in the Act.

c) The guaranteed repayment will include all amounts paid plus the legal interest at the rate in force at the time of the repayment.

d) The fines for non-compliance referred to in paragraph 1 of article 6 of the Act will be imposed by the Autonomous Communities in amounts equalling up to 25 percent of the insured repayment amounts for each infraction, or according to the particular provisions of each Autonomous Community.

#### **Second. The Obligatory Nature of Guarantees against Property Damages caused by Construction Errors or Defects**

One. The guarantee against the property damages referred to in part 1.c) of article 19 of this Act shall apply, once the Act comes into effect, to buildings to be used primarily as housing.

Two. The obligatory nature of subscribing the guarantees foreseen in parts 1.a) and 1.b) of the aforementioned article 19 for buildings to be used primarily as housing may be determined by Royal Decree. Likewise, the obligatory nature of subscribing any other guarantees foreseen in article 19 for buildings to be used primarily for purposes other than housing may also be determined by Royal Decree.

#### **Third. The Intervention of the Armed Forces Engineering Corps in the Defence Building Projects**

The members of the Armed Forces Engineering Corps, when they participate in the construction of buildings or installation for the Defence Department, shall be governed in respect of their professional qualifications by Act 17/1999 of 18 May on the Armed Forces Personnel and the regulations in development thereof.

#### **Fourth. Health and Safety Co-ordinator**

The academic and professional qualifications for acting as the Health and Safety Co-ordinator on building projects will be those of an engineer or architect during the preparation of the project and the execution of the works, depending on the respective specifications and competencies.

#### **Fifth. Regulation of Reversion Rights**

Articles 54 and 55 of the Act on Forced Expropriation of 16 December 1954 read as follows:

”Article 54.

1. In the event of the works or service which motivated the expropriation not be executed or implemented, or in the event of their being any surplus of expropriated property or if the encumbrance is lifted, the former owner or his assignees may recover all of the expropriated property or any surplus by paying the owner an indemnity as determined in the following article.

2. No reversion rights shall be in order in the following cases:

a) When, simultaneously with the disappearance of the purpose which justified the expropriation a new appropriation is justifiably agreed for another purpose which has been declared to be of public use or social interest. In these cases, the Administration will publicise such replacement and the former owner or his assignees may make whatever allegations they deem appropriate in defence of their right to reversion if they believe that the legal requirements have not been met, and may request that the valuation be updated if the originally projected works or service is not executed.

b) When the appropriation for the purpose which justified the expropriation or another one declared to be of public use or social interest is prolonged for more than ten years from the completion of the works or the establishment of the service.

3. When reversion is in order pursuant to the preceding part of this article, the former owner or his assignees shall have three months to apply for such reversion, starting from the date on which Administration notifies makes known the expropriation, the release of the encumbrance on the expropriated property or right, or its decision not to perform the works or implement the service.

In the absence of such notification, the right to reversion may be exercised by the former owner and his assignees under the following circumstances:

a) When there is an expropriation surplus or the expropriated right or property becomes disencumbered no more than twenty years of taking possession thereof.

b) When, five years after taking possession of the expropriated right or property, the works has not begun or the service has not been implemented.

c) When the execution of the works or the actions for implementing the service are suspended for more than two years for reasons attributable to the Administration or the beneficiary of the expropriation without any specific actions being taking to resume the works.

4. The competence for deciding on the requested reversion shall fall to the Administration in possession of the right or property or to whom the beneficiary of the expropriation is connected when the reversion is requested.

5. The inscriptions in the Land Register of ownership and other real rights to the property acquired by forced expropriation will make note of the preferential rights of reversion of the original owners against possible third party buyers for recovering the expropriated right or property pursuant to the provisions of this article and the next one, without which record the right to reversion may not be successfully argued against third party buyers who have registered their ownership of the respective right pursuant to the provisions of the Mortgage Act.

#### Article 55.

1. It is assumed that the exercise of one's right to reversion shall involve the restitution of the expropriatory indemnity received by the expropriated owner, updated on the basis of changes in the Consumer Price Index for the period between the date of the initiation of the valuation and the exercise of the right to reversion. The amount of such restitution shall be determined by the Administration in the same agreement wherein the right to reversion is recognised.

2. Exceptionally, if the expropriated property or right experiences changes in its legal classification which condition its value or if improvement have been made which can be used by the titleholder to the right or if its value has been impaired, then a new appraisal of the right or property will be made referring to the date on which the right is exercised and determined according to the provisions of Chapters III of Title II of this Act.

3. The taking possession of the reverted property or right may not take place prior to the payment or consignment of the indemnity determined as described in the preceding parts. Said payment or consignment must take place no later than three months from the Administrative decision under penalty of the right to reversion expiring and without prejudice to the filing of an appeal. In this case, the any differences resulting from the sentence handed down shall also be paid or reimbursed, whichever applies, along with interest at the rate in force on the date of the first payment within three months of the notification of the sentence, under penalty of the right to reversion in the first instance expiring”.

#### **Sixth. Common Infrastructures in Buildings for the Access to Telecommunications Services**

Article 2, part a) of Royal Decree-Law 1/1998 of 27 February on common infrastructures in buildings for access to telecommunications services shall herewith read as follows:

"a) To all buildings or real estate developments where there is a continuity of construction to the buildings used for residential or other purposes, new or otherwise, which are included or should be included under the system of horizontal property governed by Property in a condominium Act 49/1960 of 21 July, modified by Act 8/1999 of 6 April.

**Seventh. Application for an Order to Notify Other Agents.**

Anyone sued for liability based on the obligations resulting from his intervention in the building processes foreseen in this Act may request, within the period granted by the Civil Procedures Act to respond to the lawsuit, that any other agents who have intervened in the process in questions be notified of the lawsuit.

The notification will be made as established for the summoning of plaintiffs and will include an express warning to the agents summonsed that in the event that they do not appear the sentence dictated will be practicable against them.

## **TRANSITORY PROVISIONS**

**First.**

With the exception of the provisions dealing with forced expropriation which shall be governed by the second transitory provision, the provisions of this Act shall apply, as from its coming into effect, to all new building and to all works on existing buildings for which a building permit is requested.

**Second.**

The contents of the fifth additional provision shall not apply to the rights and properties in connection with which an application for reversion has been filed as of the date on which the Act comes into effect.

## **DEROGATORY PROVISIONS**

**First:**

All provisions of an equivalent or inferior rank which are in opposition to the provisions of this Act are hereby derogated.

**Second:**

Articles 64 through 70 of the Regulations Governing the Forced Expropriation Act approved by the Decree dated the 26th of April 1947 shall remain in effect to the extent that they are not incompatible with or in opposition to the contents of the fifth additional provision.

## **FINAL PROVISIONS**

**First. Constitutional Basis**

This Act has been passed in conformity with the State's authority as determined in the following articles of the Constitution:

- Article 149.1.6, 8 and 30 in relation to civil and mercantile matters addressed in Chapters I and II and in relation to the obligations of the agents involved in the building process and the authorities derived

from practising the professions established in Chapter III, without prejudice to the civil, autonomous, or special rights which may exist in certain Autonomous Communities.

- Article 149.1.16, 21, 23, and 35 for article 3.
- Article 149.1.6, 8 and 11 for Chapter IV.
- Article 149.1.18 for the fifth additional provision.

The provisions of this Act shall apply without prejudice to the legislative and executive powers which have been assigned to the Autonomous Communities in this area.

### **Second. Authorisation for the Government to Approve a Technical Building Code.**

The Government is hereby authorised to approve, by means of a Royal Decree within two years of this Act coming into force, a Technical Building Code which establishes the requirements to be met by buildings in relation to the basic requirements established in parts 1.b) and 1.c) of article 3.

Until such approval, the Basic Building Regulations - NBE ( Normas Básicas de la Edificación) regulating the technical requirements for buildings as listed below shall be used to satisfy such basic requirements:

NBE CT-79	Thermal Conditions in Buildings.
NBE CA-88	Acoustical Conditions in Buildings.
NBE CA-88	Actions in Buildings.
NBE FL-90	Resistant Brick Walls.
NBE QB-90	Waterproofing of Roofs made of Bituminous Materials
NBE AE-95	Steel Structures used in Buildings
NBE CPI-96	Fire Protection Conditions for Buildings

Likewise, the rest of the mandatory technical regulations governing any of the basic requirements established in article 3 shall apply.

### **Third. Adaptation of the Regulations of the Forced Expropriation Act.**

Within six months, the Government will adapt section 4 of Chapter IV of Title II of the Regulations of the Forced Expropriation Act to provisions of this Act.

### **Fourth. Validity.**

This Act shall come into effect six months from being published in the "Official Gazette", except for the fifth additional provision, the second transitory provision, the first derogatory provision referring to the legislation on matters of forced expropriation, and the second derogatory and third final provision which shall come into effect the day after such publication.

(Enacting words)

Madrid, the 5th of November 1999

JUAN CARLOS I KING OF SPAIN

The President of the Government  
JOSE MARIA AZNAR LOPEZ