SIMPLEX – PROBLEMS OF WAIVER OF THE USER LICENSE

The housing crisis has long been a problem, which is now being sought to be resolved through various measures, namely through SIMPLEX, which promises to solve part of the national housing problems.

The User License, a document that, until then, was mandatory, with SIMPLEX it is no longer required.
The User License is a document issued by the City Council where the Property is located, which includes the licensing of housing structures, proving compliance with construction rules.

However, this new possibility, of not presenting the User License, when signing the Final Dees, could bring several risks for those who wish to acquire a property in Portugal, as it could easily be a property that presents legal restrictions to its acquisition.

Even though, as a rule, a Promissory Purchase and Sale Contract is signed prior to the Deed, as the delivery of the usage license is not mandatory, there may be an increased risk of losing the deposit, generally between 10% and 30%., if a bank credit is at stake and this same Promissory Contract does not fully safeguard the buyer.

This is because if there is no user license, there is no guarantee that the property in question complies with legal regulations, which means it will also be more difficult to obtain a bank credit loan for its acquisition, if necessary.

Another factor to consider is the possible devaluation of the Property. This is because if the Property actually does not hold a license at all, the sale may be more complex and difficult, considering the knowledge of more attentive and experienced buyers.

One of the consequences of acquiring a property without this license, in case of involving illegal constructions or alterations, even partially, may be the effective order for their demolition by the competent authorities. This could drastically affect the property and its value, if it involves, for example, the installation of an in-ground swimming pool, or a substantial construction increase.

This is not the first time that this type of legal regulation has come into force in Portugal. A similar regime also operated previously, with several victims suffering from the above terms, which is why that system was revoked.

Thinking from a preventing perspective, what can and should be implemented from now on, is the use of a survey, in order to ensure that the construction contained in the construction plans and licenses is equivalent, in all its points, to the current and existing construction on site, avoiding future surprises.

Even though the presentation of the Use License is merely optional, for the purposes of the Promissory Contract, its presentation should be required, for greater security for the buyer.

If the property is still under construction, it will not be possible for the seller to present the user license, however, it will always be possible to request the construction license, and the buyer may, until the date of the Deed, request for the user license and consider to proceed, or not, with the purchase, in case the builder/seller does not present it.

It is, therefore, increasingly essential to have professional support in legal procedures, so that any decision is conscious and informed, reducing or even completely eliminating any risk, whether as a buyer or as a seller.

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