

Spanish Mortgages Are Null And Void. Who Says?: The Ecuadorian Parliament

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Several Ecuadorian political parties have introduced a new draft bill in the Ecuadorian Parliament which explicitly manifests that “no legal validity will be given in Ecuador to financial arrangements made to acquire the property of houses (viviendas) in Spain and the judicial acts which may have been derived from such arrangements because the latter have been made under conditions of illegality and fraud”. Another paragraph of this draft bill introduces criminal sanctions for those responsible of entities which try to seize property for this reason in Ecuador (<http://www.librerred.net/?p=13006>).

The present Spanish economic doom commenced with a real estate crisis. As in the US case, many mortgages were arranged on the basis of the belief that the economic situation would remain stable and the real estate prices would continue to rise. Nevertheless, when the bubble exploded, thousands of families saw how the price of the house which guaranteed their loan began to decrease while their interests continued to increase. Furthermore, apparently, many immigrants contend that they had no idea about the Spanish foreclosure system, where the mortgagor (typically, the bank) can auction the house (often obtaining much less than the market price) and still having to pay the remaining part of the secured debt.

Ecuadorians amount to more than 11% (approximately 360.000) of the total amount of immigrants in Spain (Wikipedia). In 2010, Correa, the populist

president of Ecuador had already made a public statement in the sense that debts whose creditors were Spanish banks would not be enforceable in Ecuador (El País.com 18/10/2010).

Spain has no bilateral treaty with Ecuador for the recognition and enforcement of foreign judicial decisions. Therefore, decisions made by Spanish tribunals seeking recovery of debts from assets located in Ecuador would be at the mercy of the Ecuadorian legal system and, hypothetically, the new bill would be applicable. It deserves to be noted that the new draft bill not only amends the Ecuadorian recognition and enforcement system in such a way that all those with assets in Ecuador would be able to benefit from it, but it also declares Spanish mortgages null and void by reason of fraud, with a clear extraterritorial reach which would have no effect whatsoever in Spain but may have effects in, for instance, other Latin American countries. Criminal sanctions promised would be of less interest for private international lawyers, but they may scare plenty of bank officials, given the great presence that Spanish banks have in those countries.

We will inform you of any forthcoming events related to this bizarre new law.