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"New Institutions, Old Organizations:

Legal Reforms in the Brazilian Housing Finance"

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1. Introduction

In the last decades, several countries have undertaken institutional reforms in their national housing finance systems. These changes aimed at ensuring higher legal security for investors, with the intention of substituting state-owned resources to private financing, based on the capital market. The reforms, processed by the enactment of laws and regulatory frameworks, settled forth new contractual rules and eviction procedures, thus favoring the formation of a mortgage market in several national economies. Data collected by Buckley; Chiquier; Lea (2009, pp. 3-4), demonstrates an exponential growth of this market in several countries, such as China, India, Hungary and the Baltic states.

At the end of the 1990s, the Brazilian government, inspired globally by the institutional isomorphism pervasive in this industry and supported domestically by real-estate associations, implemented an ambitious change in the housing sector. In 1997, the Congress enacted the Law 9514, instituting the Real Estate Financial System – SFI. The new SFI sought a different model of financing based on the creation of a mortgage market through securitization of debts and fundraising via capital market. In contrast, the former Housing Finance System - SFH was a state-led arrangement, relying on directed credit policies, public subsidies and the performance of state-owned banks. The reform kept both systems working in parallel, but it envisioned a gradual replacement of SFH for SFI.

Following the housing reforms implemented in other developing countries, the Brazilian policymakers also targeted the constitution of new legal provisions to increase local credit security. Among others, this is the case of the introduction of the deed of trust, which is a modality of mortgage that offers further contractual guarantees to creditors. Besides, the reform established new rules of civil procedure, ensuring the possibility of extrajudicial eviction against defaulters.

Twenty years after these changes took place, this paper aims at assessing both their output and outcome. The reform's output is the provision of legal security, which is, according to the literature, a critical variable to the effectiveness of a mortgage market. The reform's outcome, in turn, is the degree of privatization achieved in the housing finance, i.e., the extent to which the SFI replaced the SFH.

The initial hypothesis that underpinned this research was that, by changing contractual rules and mitigating the access to courts, the Brazilian legal reform would

have ensured a higher guarantee to creditors. Accordingly, it would enable the constitution of a new model of housing finance, in which the mortgage market would be the prevalent feature. The findings, however, lead to a different conclusion. The paper's main argument is that, though the reform's output (legal security) is moderately positive, its outcome (privatization) is slightly unclear.

Indeed, the legislative changes have strengthened credit security, there is a low volume of legal disputes, and the judiciary branch tends to favor creditors. On the other hand, regarding the outcomes, the indicators point to limits on the Brazilian transition towards private housing finance. Instead of a capital market substituting the state players, the reform's most visible effect is the rearrangement of state agents in the market, i.e., a composition of new institutions and old organizations.

Three pieces of evidence sustain this conclusion: (i) the Caixa Econômica Federal (CEF, Brazilian Federal Savings Bank), a state-owned bank, is still the leading provider of housing finance; (ii) a large part of mortgage market's liquidity relies on resources stemming from the SFH; and (iii) CEF has benefited from the new legal security mechanisms and it employs them even in social programs like that of Programa Minha Casa, Minha Vida, (PMCMV, "My House, My Life Program").

Beyond the direct findings, this paper also contributes to the literature on institutional reforms and privatizations, particularly for housing finance legal reforms. This paper sustains that the liberal economic reforms, designed to provide legal security to private agents, may be necessary but not sufficient to foster a market order. Thus, the case study corroborates some of the arguments introduced by the literature on privatization, according to which those reforms do not lead to a clear-cut transition from the state to the market.

Moreover, the paper adds another possible track to these reforms. In this case, not only the transition reveals a more nuanced accommodation between state and market, but also it indicates that the state-owned enterprises might play an active role in the privatization process. It can occur either by the adaptation of its strategies to the new institutional framework or by grabbing benefits from the new market order. In other words, besides confirming that privatization is more a continuous process than a single event, the paper recognizes the state as a leading player in this transformation.

This article has other five sections. The next one introduces a description of the method and the research design. The third section discusses the literature on

contract models and types of housing finance arrangements, which underpins the legal reforms. The fourth's describes the transition Brazil has strived for since 1997 and analyzes the reform's output and outcome. The fifth section discusses the research findings, placing them in the debate on reform and institutional change. Finally, the sixth section brings the final considerations.

2. Research Design and Methodology

This research combines quantitative and qualitative methods. It utilizes quantitative method to measure the reform's output, i.e., the enforcement of the new legal frameworks introduced by Laws 9514 and 10931. The law and finance literature claims that courts' decisions might be debtor-biased and can undermine creditors' rights, thus jeopardizing the financial development (La Porta et al, 1997; 1998; Arida, Bacha, Lara Resende, 2005; Castelar, 2009). For this reason, the paper takes judicial enforcement of financial contracts as a proxy of sought institutional changes. To this end, the research examined 10 (ten) courts; 5 (five) of them being the Regional Federal Courts (TRF), which are responsible for deciding cases involving the CEF, and 5 (five) Courts of Justice (TJ) located in the same states that host the Regional Federal Courts[1]. The sample gathered 1007 judicial rulings.

Besides quantitative data, the paper also employs qualitative methods, more precisely the single outcome modality of case study, to analyze the outcome of housing finance reform (Gerring, 2006). The goal is to understand in what measure the legal reform altered the former state-led financial organization in the Brazilian panorama. In this sense, the paper assessed three proxies: (i) CEF's market share on housing finance; (ii) the type of funding mechanisms; (iii) the voluntary extension of new legal provisions beyond SFI limits. These proxies measure the resilience of old organizations and the success of new institutions.

[1] The research was built on the following keywords: "SFI", "Real Estate Finance System", "Fiduciary Title of Real Estate", and "Law 9514/97". The "clearing" consisted in excluding from the database all rulings not concerning the SFI. Due to the small quantity of lawsuits on the topic, in most courts this procedure could be done manually by reading sentences' summaries. Only one court demanded a different procedure: the Court of Justice of São Paulo (with over 800 suits). In this case, the sample was filtered three times. The search filters were applied on the summaries using text search; rulings that did not include at least one of the four research expressions were removed. They were: "SFI", "Real Estate Finance System"; "Fiduciary title of real estate"; and "9514/97".

3. Housing finance: contract models and types of financial arrangements

The housing industry presents critical characteristics to the financial environment, due to its extended period of loan maturity, the value of undertakings and the profile of borrowers, which are individuals or families. Recognizing these features, Carneiro; Goldfajn (2000, pp. 6-7) and Carneiro; Valpassos (2003, pp. 6-7) map several types of risks associated with housing finance, such as credit risk, mismatch risk, liquidity risk and prepayment risk. All of them are highly permeable to the economic and institutional conditions prevalent in different countries.

To mitigate part of these risks, the literature identifies several contractual alternatives that are adjusted to the different economic realities of countries (Lea, 2009, pp. 50-62). In more stable economies, less prone to macroeconomic oscillations, a typical contract has fixed interest rates, so that financial repayment conditions are defined at the moment one enters into the contract. That is the case of the housing contractual model prevalent in the United States, in which the mortgage provides fixed-rate interests – FRM (fixed-rate mortgage) (Lea, 2009, pp. 50-52). In less stable economies, in turn, the fixed interest rates can make the contract too rigid in the long-term, which is why the literature identifies adjustable-rate mortgages – ARM as being more appropriate for them (Lea, 2009, pp. 52-56). Finally, in very vulnerable and even more unstable economies, the frequent types of mortgage are dual index mortgages – DIM; in this case, the indexers update the monetary value of installments, as well as the outstanding balance. The limit of DIM model is that, if both indexes (those of the installment and balance sheet) are incompatible, the monthly repayments may not be able to liquidate the incurred debts, which makes the settling of the outstanding balance exorbitant. This was precisely what happened to the SFH (Housing Finance System) during Brazilian hyperinflation, in the 1980's, which provoked the bankrupt of the leading state-owned bank for housing finance – the BNH (Aragão, 2007).

Additionally, to the readjustment forms, another important element of financing contracts is the procedure for eviction in case of default, which ensures credibility for the contract. There are two possibilities for the enforcement of a defaulted contract: judicial and extrajudicial proceedings. The literature acknowledges the first one as being prevalent in developed countries, where courts are perceived to

run more effectively (Chiquier; Hassler, Butler, 2009, pp. 106-112). In these cases, it is up to the creditors to engage the debtors through the judiciary branch, thus establishing a process that will result either in settling the debt or recovering the asset. This is the case of the United States and the United Kingdom, among others.

In developing countries, in turn, the perception that courts are inadequately run, slow and uncertain, has led to an isomorphic reformism that has disseminated the extrajudicial enforcement model (Dübel; Walley, 2009, p. 148).[2] As Chiquier, Hassler, and Butler (2009, 106-112) report, through this alternative, existent mainly in countries such as Croatia, Sri-Lanka, Pakistan and Brazil, notaries handle the debt enforcement and are charged with notifying the debtor and ensuring the recovery of the asset in a short period of time. In these economies, the judicial branch is no longer the most important locus of arbitration for mortgage-related issues.

Though the ways of enforcement are typically a procedural matter, their conformation tends to be associated with mortgages' several substantive layouts. Judicial enforcements are convergent with those debt contracts in which the credit holder becomes the owner of the financed asset, while the asset is recorded as a real guarantee assigned to the creditor to ensure the payment. The judicial process of debt collection will thus consist of enforcing the real guarantee. This is what happens in a conventional mortgage.

However, extrajudicial enforcements converge with a variety of mortgage in which the asset's ownership remains with the creditor (usually the bank), which grants the use of the asset to the credit holder. This modality is known in the literature as a "deed of trust" or "lease-purchase contract" (Lea, 2009, pp. 50-62). Creditors understand this type of mortgage as being safer, because in the case of default the creditor has only to consolidate the ownership the debtor or leaser owned temporarily. Overall, the ownership consolidation is obtained through extrajudicial proceedings. As Chiquier, Hassler and Butler (2009)[3] point out, adjustments of this kind have been

[2] According to Dübel and Walley: "clearly, inability to enforce efficiently through the courts – and parallel absence of meaningful pre-foreclosure arrangements – is a main reason behind the predominance of lease-purchase contracts in many emerging markets. In Brazil, approximately three-quarters of new housing transactions take place through lease-purchase; in Egypt, the share is approximately 90 percent." (Dübel; Walley, 2009, p. 148).

[3] For Chiquier, Hassler and Butler, "this device has been observed on a large scale in most emerging countries such as Brazil or Turkey, where mortgage markets have not been developed through banks, as developers need to commercialize their production" (2009, p. 101).

used extensively in developing countries such as Russia, Thailand, Turkey, and Brazil. The table below outlines the types of adjustments in mortgage contracts.

Table 1. Types of contracts and forms of enforcement

Degree of Courts' Effectiveness \ Degree of Economic Stability	Stable Economies	Unstable Economies
Effective Courts	Fixed-rate mortgage Judicial enforcement	Double-indexed mortgage Judicial enforcement
Ineffective Courts	Fixed or Adjustable-rate mortgage Extra-Judicial enforcement	Double-indexed mortgage Extra-Judicial enforcement

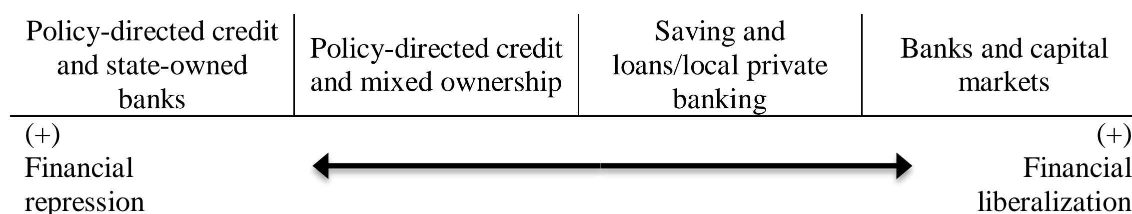
Drafted by the authors

The various kinds of mortgage contracts are handled in a variety of diverse financial arrangements. Such models are constituted by three nuclear elements: the kind of savings, the type of credit allocation, and the profile of agent charged by the financial intermediation. There are two types of savings: voluntary and compulsory. Compulsory savings are based on a forced resource extraction, similarly to what happens in tax collection, whilst voluntary savings are those obtained voluntarily, by the savers' willingness. Credit also comes in two types: it can be freely allocated, when financial agents decide on its application based on risk and return assessments, or it can be directed by laws and regulations, in which case the credit allocation aims to meet public policy purposes (Calomiris; Himmelberg, 1994). Finally, the agents responsible for the intermediation between savers and holders can be state-owned banks, savings and loans associations, private banks, and the capital market (Lea, 2009, pp. 29-47; Chiquier, Hassler, Lea, 2009, pp. 293-323; Hassler, Renaud, 2009, pp. 243-275).

Based on Lea's (2009, pp. 30-47), Hassler and Renaud's (2009, pp. 249-261) and Green and Wacther's (2007) descriptions, the composition of these elements can be sorted in a continuous scale of four kinds of financial arrangements: (i) policy-directed credit and state-owned banks; (ii) policy-directed credit and mixed ownership; (iii) saving and loans associations or local private banks, and (iv) systems that integrates banks and capital markets. In this scale, the types of organizations are

laid out between two opposites of highest repression and highest financial liberalization.

Table 2. Types of financial systems



Policy-directed credit and state-owned banks	Policy-directed credit and mixed ownership	Saving and loans/local private banking	Banks and capital markets
(+) Financial repression	⟵	⟶	(+) Financial liberalization

Drafted by the authors

The state-owned banks drive the financial intermediation allocating forced savings through policy-directed credit. Rather than risk and return criteria, it is the policy options buttressed on the respective regulatory markers of monetary authorities that mediate financial destinations. In this model, savings are not only obtained compulsorily, but interest rates are defined by the monetary authorities discretionarily, thus resulting in values that are generally inferior to those of the market. Potentially, this arrangement suffers from a lower funding restriction, i.e., it holds higher financial elasticity. On the other hand, the model can undergo distorted financial allocations and, at worst, exhibit default problems stemming from the credit's political directing.

The policy-directed credit and mixed ownership directs credit following the state regulation as well, but the financial intermediation combines public and private banks. In this arrangement, both voluntary and compulsory forms of savings are present. The feasibility of resource directing by means of voluntary savings requires greater attention when policymakers set the directing rules, since in this type of system these resources require a competitive return. This model tends to be as elastic as the latter, due to the composition of savings' resources, which rely on an ample base (both forced and voluntary savings.) Nevertheless, its operation can be equally vulnerable to distortions in financial allocation. Moreover, the need of return demanded by voluntary investors can favor a regressive credit allocation, in which the financial resources prioritize a client base with higher purchasing power, to the detriment of poorer consumers.

Unlike the previous models, saving and loans associations or local private banks hinges only on voluntary savings and free credit allocation. There are two kinds of intermediaries in this system: associations and banks, whose differences imply

higher or lower financial restrictions. Compared to the previous models, savings and loans associations face higher financial restrictions (lower elasticity), insofar as their savings base is restricted to their associates. That is why banks are an alternative to these associations. Banks rely on voluntary savings and free allocation as well, but a more diversified financial base upholds them. Consequently, banks tend to experience fewer financial mismatch risks than associations.[4] Even so, banks also suffer from financial restrictions on some level, since deposits are short-term and loans (particularly housing loans) are long-term.

Finally, the fourth kind of financial configuration is the integration between banks and the capital market. In this model, the bank financial contracts, structured through mortgages, are securitized and they commercialized in the secondary market. Integrating bank credit with capital market represents a gain in financial elasticity for capital providers, because the banks' loaning capability is no longer restricted to its own financial base, to the extent that yielding credit to the securitizing company works as an alternative-funding source. In relation to the first and second arrangements, this model can guarantee a less distorted allocation, to the extent that it does not count on policy criteria. On the other hand, it can fall into an exacerbated financialization of housing system, due to the seeking of returns, which might relegate housing funding to a secondary role.

Crucially, there is a strong link between the varieties of financial arrangements and the contractual rules. Despite the fact that legal security matters for all financial systems, the more the arrangements drift away from financial repression and get closer to financial liberalization, the more relevant credit security attributes start to be. Particularly, in systems that integrate banks and capital market, contract predictability is a critical variable, since all the financing chain is structured based on the expectation of receivables' return. That is why financial reforms leaning towards liberalization are associated with legal reforms of credit security, aiming the outline of contractual guarantees and the defaulters' form of enforcement. That was precisely what happened in the case of SFI, in Brazil.

4. Brazilian Housing Reform: From Developmentalism to Neoliberalism?

[4] A financial *mismatch* is the inconsistency between the long-term deadline for return of the funding granted by financial institutions and these institutions' present need for liquidity to settle their current financial operations.

The institutional reforms that took place in the housing finance systems in several countries sought to favor a transition from a state-based arrangement to a market-oriented one. Putting it differently, these institutional reforms pursued a transition that would replace the model of financial repression by a configuration of financial liberalization. The Brazilian reform was part of this broader financial change. The following sections summarize that process and highlight the credit security legal instruments introduced by Laws 9514/1997 and 10931/2004.

4.1. From SFH to SFI

Prior to the SFI, Brazilian housing finance relied on the SFH (housing finance system), which was instituted in 1964 through the enactment of Law n. º 4380. The system exhibited features of a developmental state, relying policy-directed credit and mixed ownership.

In terms of funding, the SFH counted with two parallel savings modalities: voluntary and forced ones. Voluntary savings, also disciplined by Law n. º 4380, gathered resources from Brazilian Savings and Loans System (SBPE, acronym for "Sistema Brasileiro de Poupança e Empréstimo"), while the compulsory system, regulated by Law n. º 5107/1966, consisted of a tax-like extraction of resources, according to which companies should pay a percentage of worker's income to a governmental fund (FGTS, Portuguese acronym for "Fundo de Garantia por Tempo de Serviço"). Both resources constituted the funding of SFH's disbursement in housing loans.

Besides the funding, the two other components of SFH were the financial institutions and the BNH (Housing National Bank). The financial institutions, usually banks, private or state-owned, disbursed resources to credit holders, and the BNH performed the regulatory functions. Under this system, BNH had two main regulatory functions. First, it determined the amount of savings, raised voluntarily or compulsorily, that private or state-owned banks should drive to housing loans. This regulation shaped the policy-directed credit and ensured the channeling of a minimum plateau of resources to housing. Second, the BNH worked as quasi-Central Bank agency. As Aragão (2007), the last chairman of the BNH, explains, BNH played the role of lender of last resort by providing liquidity for the system's financial institutions – which is a feature typical of the Central Banks.

The SFH was considerably successful. Data collected by Royer (2009, p. 65) reveal that, between 1964 and 1986, this arrangement financed about 4,5 million units. Comparatively, the previous government-led initiatives in this area, such as Welfare Institutions (IAPs) and the "Fundação da Casa Popular" (FCP), active between 1930 and 1964, built about 170 thousand (new or second-hand) residential units (Aragão, 2007, pp.).

In the 1980s, however, due to the wage policy and inflationary surge, wage readjustments were out of sync with housing finance, which gradually compromised the system's financial sustainability. The crisis' peak came with the judicialization of the conflict between mortgagors and the BNH, which created a mass litigation, a true legal battle, in Aragão's words (2007, pp. 276-429). Both the Federal Court of Appeals and the Superior Court of Justice (STJ) afterwards decided in favor of the "pacta sunt servanda" principle and ruled out the legality of the monetary correction defined by the BNH in the 1980s, questioning even its normative power due to an understanding of the non-delegation doctrine (Aragão, 2007, pp. 276-429). Combined, the tribunals' decisions and the inflationary losses precluded the prolongation of BNH's activities. The Federal Government discontinued BNH in 1986 (Azevedo, 1988, 108-109), leaving the SFH institutionally adrift.

For more than a decade, despite the high deficit of housing in urban areas, there was not an overarching rearrangement of the system. The SFH suffered successive incremental reforms aimed only at enabling the maintenance of the minimum financing to housing policy. As a part of this reactive reformism, the CEF (Caixa Econômica Federal) has inherited great parcel of the BNH's urban development bank attributions. The National Monetary Council, which is the Brazilian monetary authority, has assumed the regulation of directed credit policies, and the Central Bank, which functions under Monetary Council supervision, has been in charge of lend of last resort's attributions. A more ambitious reform only took part in the last years of that decade, when the civil construction sector mobilized political resources and led the formulation of a new framework to the sector (Maricato, 1998; Gomes, 2015).

The creation of the SFI, in 1997, had the purpose of building an alternative institutional arrangement to substitute the SFH. Disciplined by Law n. ° 9514, the SFI favored the financial liberalization and it had the following law in books characteristics: (i) articulation between real estate financing and capital market

activities; (ii) freedom of contract between parties without subsidies or directed credit policies; (iii) preference of private financial institutions over state-owned banks (Carneiro and Valpassos, 2003; Royer, 2009; Gomes, 2015; Fix, 2009). The creation of SFI has not revoked the SFH, since the reform had the strategy of gradually replace the latter by the former. The following excerpt of the bill's explanatory statement, which resulted in Law 9514, summarizes the model:

> This bill complies with the economy's deregulation guidelines and with the modernization of the instruments and mechanisms that finance productive activity. Its main goal is to establish the minimum required conditions for the development of a real estate finance market, for which it creates new instruments and mechanisms allowing for free credit operation in the sector and for the mobilization of capitals required for its revitalization. The creation of a new characteristic negotiable instrument, destined for secondary market operations, stands out. The creation of this new instrument accompanies the definition of the legal conditions for the effective securitization of real estate credit, provided there are rigorous safety mechanisms and investor protection. Thus, unprecedented perspectives for the operation of a real estate credit secondary market and for fundraising operation structuring can enable strengthen housing finance (Brasil, 1997, pp. 23-24).

Far from being trivial, however, the intent of combining real estate financing and the capital market demanded a deep reform in contract rules. Among others, the new system required the constitution of a higher legal security standard than the one available in the Civil Code. The Law 9514/97, enacted along with several initiatives on credit market protection (Fabiani, 2011), settled forth a new type of mortgage and a specific procedure for eviction.

The new type of mortgage is the *deed of trust* that alters bargaining power between the creditor and the credit holder. While in standard mortgages the credit holder is the property owner and constitutes it as guarantee of the debt, in the *deed of trust* the creditor is the property owner and the credit holder has the right to use it. Therefore, if the debt is not paid, the financer takes possession of the property directly, leading it to auction in order to recover the due amount.[5] In addition, Law n. º 9514

[5] Articles 26 and 27 of Law 9,514/97.

prescribes that eviction shall be processed via extrajudicial enforcement. In case the borrower should default, the notary has only to consolidate the property in favor of the creditor’s name.[6]

Moreover, Law n. º 10931 brought a new rule that reinforces this extrajudicial process. Its article 50 imposes a sort of entry barrier in the judicial system by determining that in the judicial fillings the plaintiff must specify clearly which is the disputed amount. In other words, if there’s a dispute concerning the owed amount throughout the financing, it is the plaintiff’s burden to objectively circumscribe the disputed amounts and keep the payment of the undisputed parcel. Besides, as Gomes (2015) underlines, article 49 of the same Law (10931), strengthens the article 50 by ruling that an injunction granted in favor of the debtor can be revoked should the latter not opportunely pay the undisputed amounts. These rules combined curb the use of the judiciary branch as a debtor’s protective arena. Behind that arrangement is the SFI’s regulatory frameworks attempted to move away from the BNH’s institutional precedent, in which the Courts played the role of a mediator of housing political issues.

Finally, Law n. º 9514 has also introduced a new legal provision to this industry in order to ensure higher protection to the investors. It is the case of fiduciary regime that segregates real estate's assets from the corporate finance. According to this rule (Article 9 of Law 9514/97), the bonds issued by securitization companies stand out from the company’s assets themselves, thus enabling protection against company’s solvency problems. Additionally, Law n. º 10931 instituted also the possibility of the real estate projects’ segregation in relation to the building company’s assets. Thus, the investors, whether they are the acquirers of real estate unities or buyers of financial bonds backed by real estate contracts, are safeguarded in any case of bankrupt of the building company (Royer, 2009, pp. 117-121). The table below outlines all legal provisions.

Table 3. SFI’s New Legal Provisions

	SFH (pre-reform)	SFI
Substantive rules	Conventional mortgage	Deed of trust
	–	Fiduciary regime

[6] Unlike mortgage contracts within Law 4,380, in fiduciary titles of real estate the amount collected in the auction settles the debt, even if the amount received by the creditor is lower than the outstanding balance – it is a *non-recourse loan* modality.

Procedural rules	Judicial eviction judicial and exceptionally extrajudicial	Extrajudicial eviction
	Courts played a central role	Courts have higher barrier to entry

Drafted by the authors

All in all, the substantive and procedural rules have ensured the creditors' right and thus have supported the funding model drafted by SFI. In the stead of the SBPE and the FGTS, the SFI's design advocated for the formation of a mortgage market, such that real estate contracts would act as backing for securities' issuance, of whose trade on the market the resources for new ventures would arise. In this operation, a bank-financing contract is onerously yielded to a securitizing company, which, through a securitization note, issues a CRI – real estate receivable certificate, to be offered on the capital market. The premise of the system is anchored in legal predictability and certainty of legal vindication, otherwise the investment chain become unsustainable. Therefore, all legal novelties, such as the deed of trust, extrajudicial eviction, and the fiduciary regimes have had the purpose of insulate investors and attract new players to the interplay between the capital market and the real estate. The bill's explanatory statement summarizes the proposed funding model:

> The primary funding for these operations are both funds the aforementioned bodies obtain in the finance market and securities. The funds are raised through these bodies' own means such as mortgage notes and debentures, among others. These bodies can fund real estate in general, according to market conditions, using, thus, contractual modalities already defined in civil and trade law. (…) This bill defines a new company modality to leverage the secondary market of real estate credit – the real estate securitizing company, organized like a stock company, following a model that was successful in other countries. This company will be run through the acquisition of real estate credit alongside the companies issuing these credits, that is, those that grant loans for real estate acquisition or production (BRASIL, 1997, p. 24).

4.2. The Reform's Output

This section assesses the reform's output, i.e., the extent to which the new legal tool improved the legal security of financial contracts. There is an ample literature claiming that Courts are less effective in developing countries, particularly, in Brazil (La Porta, Lopez-de-Silanes, Schleifer, Vishny, 1997; 1998). According to this point of view, the lack of enforcement leads to the underdevelopment of financial sector or to negative externalities, such as higher interest rates. In the Brazilian case, the so-called judicial uncertainty (Arida, Bacha, Lara Resende, 2005) can be explained by the judges' inclination of protecting debtors over creditors, in the sense that they behave as a sort of "legal robin hood", equalizing inequalities instead of enforcing the law. The consequence of that would be a legal inconsistency of courts' decisions, which affects the proper functioning of business. According to these authors, the unpredictability of law explains the shortage of credit, that is equivalent to 50% of Brazilian GDP, and the comparatively excessive cost of credit (Arida, Bacha, Lara Resende, 2005; Pinheiro, 2009).

The housing finance reform tackles the problem of legal uncertainty as a vital condition to the consolidation of the SFI's mortgage market. As described by the previous sections, two main tools attempted to circumvent the legal inconsistency: the substantive rules that favors the creditors' right and the procedural ones that increased the cost to debtors accessing courts. The policy behind the law, therefore, was tying the hands of judges in order to better protect the investors' property rights.

This analysis examines how the reform achieved this output. It is not aimed at assessing the quality of courts' decisions. The purpose is to measure the extent to which the courts confirmed the legislative promise of legal security to the creditors.

In this regard, a first hypothesis of the analysis concerns to the amount of resources found in the courts. Since housing reform laws established severe limitations to judiciary branch access, the judicialization rate of this public policy was expected to be comparatively lower than in other social rights fields. This hypothesis was confirmed: although the constitutional norm states in its article 5, item XXXV, that ample access to the judiciary branch shall be ensured in all policies controversies, the stock of appeals found in 10 tribunals after 20 years of SFI's enforcement (1007) is not high regarding Brazilian scenario. This is a first indication that legal security policy was successful at establishing "barriers to the entry" in the judiciary branch.

The analysis below classified these 1007 appeals in two main sets: (i) appeals lodged by banks (creditors), that is, appeals in which financial institutions were featured as plaintiffs in the suit and (ii) appeals lodged by debtors, that is, appeals in which banks were featured as defendants in the suit.

Financial institutions featuring either as plaintiffs or defendants in the appeals found in the courts are an indicator either of success (bank as defendant) or failure (bank as plaintiff) of the creditor in the first judicial decision. In other words, if the bank has appealed, the paper assumes that the first judicial decision favored the debtor; if the debtor appealed, it means that the first decision favored the banks. Thus, the second hypothesis was that the most frequent position should be banks featuring as defendants, which would point to their success in the first judicial decision. In this sense, it was also expected that the Court ruling would be favorable to the creditor (banks). Accordingly, if the banks featured more as defendants rather than as plaintiff of appeals and if they have more favorable decision in these appeals than debtors, it would confirm that the reform achieved its output.

The data sustains both hypotheses. As the table below points out, the banks overwhelmingly appear as defendants, both in interim appeals and final appeals. In the case of interim appeals, the banks figured as defendants in 341 of them, against 101 in which they were plaintiffs. The trend was replicated among the final appeals: banks appealed in 99 cases and they were appellees in 466. As has been emphasized, these data indicate that banks have been more successful than debtors in first instance rulings. The results in the courts also highlight a primacy of creditors over debtors. Among the 442 provisory appeals analyzed, banks have won in 287 rulings, against 155 positive results for debtors. Among the 565 final appeals, banks have won 433 rulings, against 132 appeals favorable to debtors.

Table 4. Bank Appeals

		Interim Appeals (AG)				Appeals (AP)			
		Bank as Plaintiff		Bank as Defendant		Bank as Plaintiff		Bank as Defendant	
Courts	**n.º**	**Granted**	**No**	**Granted**	**No**	**Granted**	**No**	**Granted**	**No**
TRF 1	**46**	**0**	**0**	**0**	**1**	**2**	**7**	**7**	**29**
TRF2	**198**	**4**	**2**	**2**	**25**	**6**	**8**	**16**	**135**
TRF 3	**255**	**9**	**14**	**4**	**112**	**1**	**9**	**3**	**103**
TRF 4	**300**	**4**	**12**	**60**	**83**	**7**	**28**	**18**	**88**
TRF 5	**40**	**2**	**2**	**1**	**4**	**3**	**4**	**4**	**20**
TJSP	**150**	**13**	**35**	**21**	**26**	**6**	**9**	**12**	**28**
TJRJ	**5**	**0**	**0**	**0**	**0**	**1**	**4**	**0**	**0**
TJRS	**6**	**4**	**0**	**1**	**0**	**0**	**0**	**0**	**1**
TJDF	**7**	**0**	**0**	**1**	**0**	**2**	**2**	**1**	**1**
		36	**65**	**90**	**251**	**28**	**71**	**61**	**405**
		101		**341**		**99**		**466**	
Total	**1007**	**442**				**565**			

Drafted by the authors

In addition to a general analysis on the rulings, this research also conducted a legal security assessment by means of a second measure, i.e., a security coefficient, aiming at pondering the positions of each court. The coefficient combines four elements:

a) Court Active Litigation Rate (CALR): obtained by the ratio between total appeals in which financial institutions are plaintiffs and the number of appeals (interim appeals/appeals) concerning the SFI in the same court. This rate measures the participation of banks as plaintiffs concerning the SFI in court and shows an abnormal behavior according to stipulated expectations that creditors do not need to appeal to the judiciary branch to assert their rights.

b) Court Passive Litigation Rate (CPLR): obtained by the ratio between total appeals in which financial institutions are defendants and the number of appeals (interim appeals/appeals) concerning the SFI in the same court. This rate measures the participation of banks as defendants concerning the SFI in court. This rate confirms the hypothesis that creditors do not need to appeal to the judiciary branch to assert their rights

c) Active Success Rate (ASR): obtained by the ratio between total appeals (interim appeals and appeals) ruled in favor of financial institutions as plaintiffs of the appeal, in relation to the total number of court appeals in which banks were the plaintiffs. This rate seeks to measure the number of appeals in which banks have won in court and it considers the number of appeals lodged by the banks themselves as a benchmark.

d) Passive Success Rate (PSR): obtained by the ratio between total appeals (interim appeals and appeals) ruled in favor of financial institutions as defendants of the appeal, in relation to the total number of court appeals in which banks were defendants. This rate seeks to measure the number of appeals in which banks reverted the previous unfavorable decision.

Thus, rates (a) and (b) measure, in each Court, the SFI's rate of judicialization by considering the participation of financial institutions in lawsuits as plaintiffs and defendants. Indexes (c) and (d) measure the rate of success in the lawsuits involving

banks as one of the parties, since judicialization was unavoidable. The expectation was that the bank success rate would be higher than the failure rate. After the indexes are defined, the SFI's security coefficient is calculated as following:

SFI Security Coefficient = (CALR – CPLR) + (ASR – PSR)

***(TLA and TLP > 0)**

In the table below, each index (a; b; c; d) ranges from zero (0) to (1). Therefore, the SFI security coefficient ranges on a scale from -2 (minus two) to 2 (two)[7]. The closer it gets to -2, the higher the security of the creditor (the safer the court is); whilst the closer it gets to 2, the lower the security of the creditor (the more unsafe the court is). Based on this table and on the numbers obtained on the security coefficient calculation, the courts were classified into one of the following 7 types: extremely secure; very secure; secure; relatively secure; insecure; very insecure; extremely insecure.

Table 5
Security coefficient classification scale

Range	Classification
[-2 to -1,5]	Extremely secure credit (lowest insecurity)
]-1,5 to -1,0]	Very secure
]-1 to 0]	Secure
]0 to 0,5]	Relatively secure
]0,5 to 1,0]	Insecure
]1,0 to 1,5]	Very insecure

[7] Since the equation's validation rule is that the TLA and TLP be higher than zero, we know the maximum number will never precisely reach the highest values, -2 or 2; it could, mathematically and in extreme situations, at most reach a value that is very close to these limits. However, we have chosen to establish these fictional limits due to their proximity with the values prone to be reached and to simplify the interpretation of the coefficient.

]1,5 to 2]	Extremely insecure (highest insecurity)

Drafted by the authors

Table 6

Court legal security classification

Courts	Total lawsuits	Legal Insecurity Coefficient	Classification
TJRJ	5	0,80	Insecure
TJRS	6	-0,50	Secure
TJDF	7	0,17	Relatively secure
TRF 5	40	-0,28	Secure
TRF 1	46	-1,20	Very secure
TJSP	150	0,08	Relatively secure
TRF 2	198	-0,40	Secure
TRF 3	255	-0,27	Secure
TRF 4	300	0,09	Relatively secure

Drafted by the authors

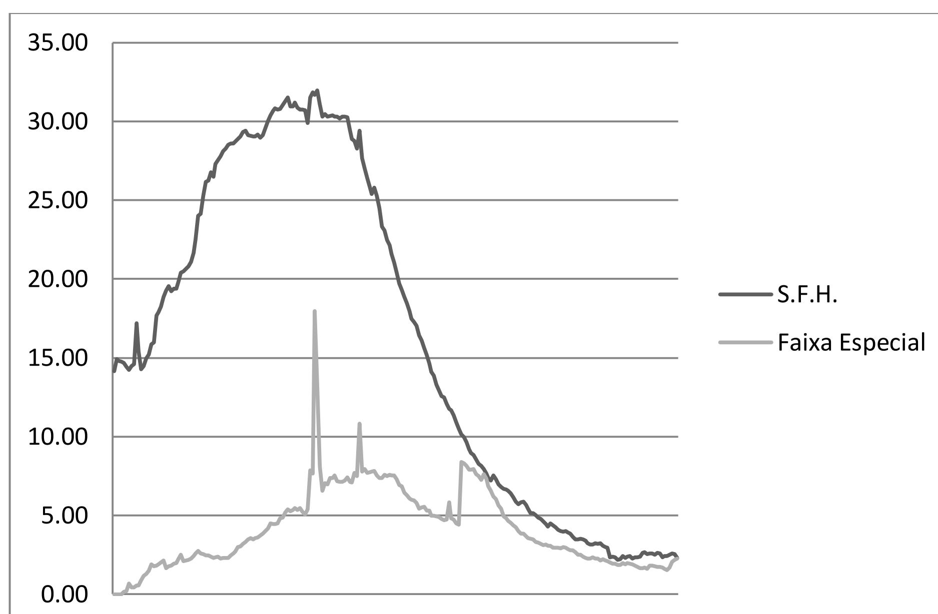
According to the collected data, five out of nine courts ensure security for financial institutions. Four of these courts are TRFs (*Federal Regional Courts*) and one of them (TRF5) stands out as it is considered very safe. These courts account altogether for over 53% of lawsuits. Since disputes involving the (CEF) fall under the authority of TRFs and not of TJs (*Courts of Justice*), it is possible to claim that the CEF holds higher legal security comparatively to its private competitors. The only

exception was TRF4, which, according to the scale, falls under the "relatively secure" classification; however, with a very low coefficient number (0,09) that places it very near the "secure" range.

The TJSP (Court of Justice of São Paulo) has a very low insecurity coefficient and also figures near the "secure range". The sum of TRF4 and TJSP's data show that 44% of the appeals were held in a "relatively secure" environment, very close to the "secure" range. Consequently, it can be concluded that the banks (private or state-owned) litigated with legal security in approximately 97% of the appeals involving the SFI, and in this universe the legal security of 53% of appeals reaches the "secure" and "very secure" ranges.

The data obtained in the sample are backed by Central Bank data concerning housing finance defaults. A contractual installment with payment overdue for over 90 days is considered a default. The chart below shows the sharp drop in defaults in financing contracts signed within the SFH's range as of 2004. Though the data concern SFH contracts (not exactly SFI), since the contractual standard of SFH is the same used by the SFI (deed of trust), the chart also indicates the improvement of credit security within the SFI.

Chart 1
Default in SFH Contracts



Source: Central Bank

Due to the lack of control of other variables, such as labor and income data, which may be associated with the default rate, the cause of this drop on default cannot be attributed only to contractual rules. Nevertheless, this datum coupled with the results obtained by the courts allow to justifiably infer that the legal environment constituted by housing finance reforms is correlated to a security level for creditors.

4.3. The Reform's Outcome

After analyzing the reform's output, this section assesses its outcome, i.e., the extent to which the institutional change achieved a higher degree of privatization in housing finance. Though the introduction of the SFI did not revoke the SFH, the purpose of the reform was to dilute that duality by expanding the SFI over the SFH's market share. Thus, twenty years later, the expectation was finding the phasing out of SFH and the spreading of SFI.

The exam of this qualitative aspect involved three parameters: (i) the market share of CEF in the housing finance after the creation of the SFI; (ii) the change or maintenance of SFH's funding mechanisms; (iii) the level of new legal provisions' universalization. The items "(i)" and "(ii)" assesses the resilience of old organizations and the item "(iii)" evaluates the diffusion of new institutions. Having increased the legal security, the hypothesis was that CEF's market share would be reduced, the

main funding mechanism would be related to securitization and the deed of trust as well as extrajudicial eviction would be the leading legal tools in housing finance.

Contrarily, however, the data collected indicate that the CEF still plays a prevalent role in housing credit provision. Most housing finance, whether SFH or SFI-led, has the state-owned bank as a creditor, which accounts for a market share equivalent to 70%[8]. An econometric research conducted by Martins, Lundberg and Takeda (2011) corroborates this interpretation. The authors tested the effects of Law n. º 10931/04 to diversify the housing financial channels, and they conclude that, despite the Law, the most relevant housing finance instruments are still state-owned banks and directed credit policies.

Furthermore, CEF's participation has posited a substantial increase with the implementation of the My House, My Life Program (PMCMV) since 2009. Settled forth by Law n. º 11977, the PMCMV is focused on low-income families, that is, families with a monthly income limited to US$ 2,000.[9] The CEF is, in the terms of the program regulations, its operating agent. Thus, it acts as a financer both of the mortgagors that can afford to pay the installments and of the lower-income beneficiaries (range 1) that cannot rely on the possibility of paying for the funding.[10] The resources for this subsidy, which grants houses for lower-income beneficiaries, arise from the financial availabilities of the FGTS (non-repayable investment)[11]and also from the governmental budget (Royer, 2009, pp. [--])· Among the higher ranges, 2 and 3, the CEF does not directly cover unit construction, but it establishes funding with subsidized interests, from 6% to 7%, for range 2, and from approximately 8%, for range 3[12].

[8] The information obtained in 06.02.2018 went thusly: "we inform that the CAIXA housing portfolio's market share is 69,02% in Dec/2017", CAIXA's National Operations, Housing and Processing Superintendence – Citizen Information Service.

[9] In 2017, PMCMV underwent changes and the limit was expanded to US$ 3,000.

[10] The PMCMV is divided into 4 ranges according to the beneficiary family's income. In range 1, the CEF hires the enforcement of the real estate project and subsidizes up to 90% of its acquisition. The beneficiary families pay a monthly installment for ten years where the amount due does not exceed R$ 270.00 without interests. Range 2 (originally, families with income from 3 to 6 wages; currently up to R$ 4 thousand) and in range 3 (income from 6 to 10 minimum wages, currently up to R$ 9 thousand), families can count on subsidizes interest rates. See Acosta (2013) on PMCMV.

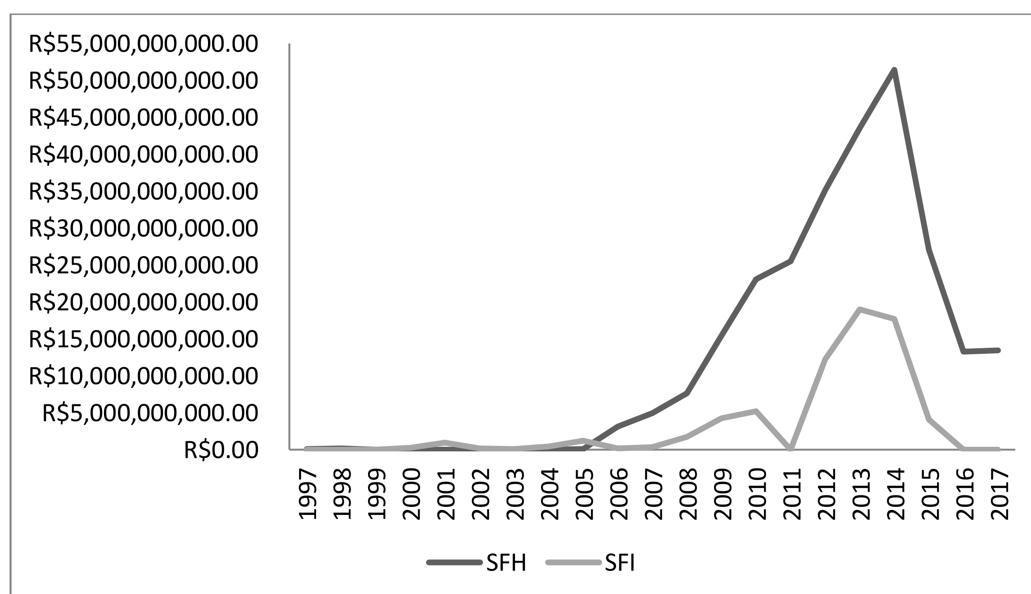
[11] Royer, Luciana. *Financeirização da Política Habitacional: limites e perspectivas*, op. cit. pp.

[12] Ministry of Cities Information, available at https://www.cidades.gov.br/habitacao-cidades/programa-minha-casa-minha-vida-pmcmv. See also Rolnik (2010).

The program's performance is comparable to the results reached by the BNH in the 1970s. Between March 2009 and September 2015, the PMCMV either financed or subsidized 2.4 million units.[13] The program has also been comparable to the BNH's performance not only for its quantitative merits, but also for urbanistic impact problems. Just like housing developments built in the 1960s and 1970s, PMCMV properties are located in areas with little public equipment. In any case, for this paper's analytic purposes, the program points to CEF's prominence a decade after the SFI's creation.

The volume of contracted resources in the SFH and SFI systems corroborates this evidence. The graphic below illustrates the amount of resources contracted within the scope of SFH and the SFI, showing that the volume of SFH is much larger than the one allocated via SFI. It means that despite the intentions of policymakers, the housing reform was not able to substitute the previous financial system for the mortgage market. In other words, the mortgage revolution verified in other countries did not obtain the same extent in Brazilian economy, despite the implemented legal reform.

Chart 2
SFH and SFI in Financing Volume



Source: CEF

[13] Data available at: http://www.brasil.gov.br/infraestrutura/2015/09/minha-casa-minha-vida-entregou-2-4-milhoes-de-moradias.

Regarding funding mechanisms, they also indicate the prevalence of SFH's instruments, such as compulsory savings (FGTS) and directed credit regulations. Since 1999, due to the National Monetary Council's resolution n. º 2623/99, the mortgage market relies partially on resources of directed credit. The resolution authorized state-owned and private banks to account CRI (certificates of real estate receivables) investment operations as directed credit. Thus, whatever banks spend on CRI is computed as a compulsory allocation of housing resources (Royer, 2009; Gomes, 2015, p. 110). As has been mentioned, the CRI is a security issued by securitizing companies and backed on land charges contracted by borrowers through banks. Strictly speaking, the idea underlining the SFI's constitution was to allow debt securitization to provide resources to the housing industry, as is the case, for instance, in the North-American market (Carrozzo, 2005). The rule of CMN 2623/99, however, represents a sort of communicating vessel between the old state-owned system and the new market-oriented one.

In 2002, the interaction between the SFI and the SFH's financial bases was expanded. Another National Monetary Council resolution, CMN n.º 3005, amplified the possibilities of directed credit use. Since then, directed credit can also be allocated to the acquisition of other securities, namely, real estate credit notes – LCI and real estate credit certificates – CCI. Both investments started to equally count as directed credit liabilities, that is, they count as if they were housing finances. On the same vein, the FGTS Board of Curators, through resolution n. º 375/01, authorized the fund to acquire the CRI (Gomes, 2015, p. 110). The CRI market gained further elasticity with the input from these sources.

Still regarding the funding, the reform introduced a relevant segment: the securitizing companies in charge of issuing CRIs. The sector is constituted of 9 major companies, which together account for approximately 90% issuance, they are: Cibrasec; RB Capital; Brazilian; Gaia; Ápice; Barigui; PDG; Habitasec; Novasec.[14] Among those cited, the two largest issuing entities are Cibrasec and RB Capital, responsible for about 50% issuance.[15]

[14] Data obtained at CVM (Brazilian Securities and Exchange Commission) regarding 1999 and 2016.
[15] Data obtained at CVM (Brazilian Securities and Exchange Commission) regarding 1999 and 2016.

CEF and other state-owned banks are also players in this market, performing as partners of the main securitization companies. Cibrasec, which came to be the first company constituted in this segment, has state-owned banks as its shareholders, such as: Banco do Brasil; BB Banco de Investimentos S.A.; Caixa Participações S.A (Caixapar); Banco do Estado do Rio Grande do Sul (Banrisul); Banco de Brasília (BRB) and Banco do Estado do Espírito Santo. The Banco Panamericano was acquired by CEF and has corporate stakes in Brazilian Finance Real Estate and Brazilian Securities.

The third element of this qualitative analysis is the spread or restriction of the new contract models. As has previously been mentioned, Law n. º 9514 introduced new legal possibilities, but did not make them mandatory. The legal framework prescribes that housing finance can be handled both within the terms of Law 9514 and within the terms of legislation ruling conventional mortgages.

Even so, deed of trust is now the standard contract widespread throughout the market in all income brackets, even for social programs, as it is the case of My House, My Life Program. CEF, which accounts for the largest market share in the housing sector, corroborates the latter assertion by reporting that the bank only employs deed of trust in all its housing contracts:

> ...We inform that: 3 Currently, there are no other real estate credit contract forms, for natural person clients, other than deed of trust. (Citizens Information Services).

Overall, the gathered evidence points out that, despite credit security, there was no a full-fledged substitution of the state-led financial system for the market-led one. The three parameters of the analysis suggest that the gradual privatization glimpsed in the proposition of the model was not fully achieved. CEF is still the main housing finance agent and the SFH's finance instruments were interlinked to the SFI. On the other hand, CEF absorbed the SFI contract model, which granted safer operating conditions, thus reinforcing its incumbent's competitive advantages.

5. New Institutions, Old Organizations

Empirically, the case study reveals that the combination of output with outcome gave way to an arrangement different from that policymakers have envisioned. Theoretically, how can one interpret this result? The answer to this question would benefit from a contrast between the Brazilian housing reform pathway and the institutional reform literature. This way, it is possible to scrutinize what variety of institutional change has taken place in this situation.

Supposedly, the real-estate finance system (SFI) would overlap the former housing finance system (SFH), and it would progressively replace that. However, twenty years later, the current stage of this process reveals a different result: instead of being gradually substituted, the former state-players occupied the new institutional framework. In other words, the SFI introduced a new legal order, but the same incumbents have been filling it. This interpretation deviates from the two prevalent perspectives on the Brazilian housing reform, the optimistic and pessimistic views. Both standpoints, though opposites, converge in equally identifying this process as a full-fledged institutional transition between the two models of housing finance.

The optimistic view has a market-oriented sway, and it is put forward by authors such as Carneiro; Valpassos (2003); Carneiro; Goldfajn (2000); Aragão (2007), and Otto (2015). From that perspective, inflation and other legal fragilities had severely affected SFH, and its abandonment was inevitable. To them, SFI would represent a profound institutional reorganization, by guaranteeing less state intervention, higher freedom of contract, and a positive articulation with capital market activities. For these authors, legal security provisions would be a necessary and sufficient condition to allow for the formation of a mortgage market, as occurred in several developed countries, especially in the USA. According to this view, credit security and financial liberalization would pave the way for a housing finance expansion until the vicinity of low-income consumers (Carneiro; Valpassos, 2003). Put it differently market mechanism would universalize the access to housing.

The pessimistic view, shared by authors such as Royer (2009), Fix (2011) and Rolnik (2012), has a policy-oriented bias and identifies the reform as a way of financial capture on housing policies. The SFI would thus be a sort of surrender, the subjection of policy purposes to market domination. Though some of these authors acknowledge the preservation of SFH mechanisms at the core of the SFI (Royer, 2009; Fix, 2011), their conclusions converge in the interpretation that the housing

reform represents the colonization of global finance over local housing. In this sense, even though negatively, they also interpret the legal redesign as an overarching process of institutional change.

This paper, however, departs from both conceptual streams and sustains a more nuanced interpretation of this reform. Instead of a complete transition from a state-led arrangement to a neoliberal model of housing finance, it claims that the most obvious finding is the combination of the new institutional frameworks with the old state-owned instruments. In the case study, the recombination of state and market override the sweeping privatization.

In a broader sense, one can categorize the models of institutional reform employing the Schumpeterian typology for innovation analogously. As well as there are radical and incremental kinds of innovations, the reform process also admits abrupt and gradual possibilities. Following this comparison, if radical innovation breaks the economic cycle introducing new process and products, the abrupt institutional change implies a brusque disarrangement of the previous institutional equilibrium, or "radical shifts" (Pempel, 1998). Similarly, if incremental innovations provoke continuous but smoother economic transformations, the gradual reforms generate a long-standing transition to the previous legal-political order (Streck; Thelen, 2015).

Bearing these types in mind, one can recognize that the Brazilian reform strategy fits into the gradual model. The reformers have come up with a new arrangement without dismantling the old one, indicating a preference for a transition that minimized clashes and uncertainties. More precisely, this model of reform resembles what Streeck; Thelen (2015, pp. 16-33) call by "layering," i.e., a sort of gradual reform that consists of putting forth a new institutional layer above the prevalent arrangement. This way the former institutions fade away in a steady movement, while the new layer slowly takes their place

Nevertheless, in this case, the "layering" presented two particular characteristics. Firstly, the reform has set forth the SFI as a new layer, but the SFH has not faded away. The composition mirror more a merger-like composition between the new institutions and the old organizations than simply a gradual replacement of the former by the later. Secondly, in this merger, the old organizations are also in movement. The state mechanisms have changed as well, and they have benefited from

market incentives. Among others, it is the case of new investment opportunities to saving funds that now might profit from capital market operations. Moreover, the improvement of legal security in mortgage transactions has also favored the CEF, which has been enjoying safer conditions than it had before. Comparatively, with private banks, the courts' decisions indicate that CEF has been more legally protected, to the extent that it is the only financial agent that operates under "very secure" conditions (table 6).

These findings shed light on the institutional reform dynamics, mainly on those that involve privatization or market-oriented mechanisms. They review the expectation that incumbents will always oppose the reforms as a self-preservation instinct. Based on the Brazilian housing reform, one can hypothesize that state-players can envisage market reforms, not as a handicap, but as leverage that might empower them within the state. It converts the vision on state actors from entrenched interests able to block reforms into a potential supporter of institutional changes. If policymakers recognize this possibility, they can strategize the reforms in a way that they might count with path dependence in favor of their goals, as it suggested by Trebilcock; Prado (2009). In other words, if state-owned banks are key players in the financial arrangement, the economic reforms tend to be more successful to the extent that those banks are understood to be part of the solution and not part of the problem.

Additionally, these findings not only corroborate some studies on institutional reforms, but also add a contribution to that literature. These pieces emphasize the continuous character that informs economic reforms, which tend to be more gradual-like than that of one-stop type (Pistor; Turkewitz, 1996; Trebilcock; Prado, 2009; Andrews, 2013, pp. 35-64). In particular, Pistor; Turkewitz (1996), in research on Eastern Europe's privatizations, highlight that the transition from state to market did not happen in a single round, with the market abruptly substituting the state. Accordingly, privatization is not a clear-cut process, but a transformation that accommodates inside an interval between state and private property. This interval is itself dynamic, and the state and market can reposition their places over time.

To this literature, the case of housing finance reform adds another type of dynamic in the privatization taxonomy. In this case, beyond having gradual privatization, the more salient aspect is the fact that the state has become a player in the new market arrangement. In other words, this reform not only shows that

privatization is a continuo, but it also indicates that the state might play an active role in determining the process and its result. It is privatization aligned to the state.

Regarding the next steps of Brazilian housing finance, one wonder if the "new institutions with old organizations" is a definitive outcome for this reform? If institutions involve permanent accommodations (Streeck and Thelen, 2015, pp. 1-33), one can assume that the interplay between new institutions and old organizations might suffer late rounds of transformations. Although it is impossible to predict the future, it is feasible to recognize the main driving forces that are capable of conducting the arrangement to a new equilibrium.

Following the housing finance trajectory, it is possible to envisage two potential scenarios, beyond the possible stasis of this interplay: (i) the stronger colonization of market forces over policy purposes; (ii) the dominance of discretion-based mechanism over market incentives.

In the first scenario, financial regulation on directed credit can increase the possibilities settled by Resolution CMN n. º 2623/99 and thus activate a higher use of these resources to provide liquidity to the CRIs market. In this case, a more substantial articulation between state and market might imply a loss of revenue for the housing industry. It is because the CRI might be issued to support housing finance or any other type of real state enterprise, so the deviation of direct credit to this market can benefit corporate investment at the expense of housing priorities. Moreover, the Brazilian Securities and Exchange Commission (CVM) has been smoothing the connection between CRI issuance and housing finance. Following recent decisions, the security can be issued to support financial operations that are slightly linked even to real estate market. It is the case of companies in the real estate business that issue CRI for corporate finance purposes, but not related to the housing itself.

In this scenario, Brazilian institutional dynamics could result in an opposite failure to that seen in the American market. While in the USA the surplus of liquidity induced the mortgage market to cater to low-income clients (subprimes), in Brazil the market could appropriate direct credit resources to cater to high-income clients – the superprimes. In this case, low-income clients would have suffered a double loss: they would not be absorbed by the possible "free rides" of a real estate credit market's expansion, like in the USA; and they would still overwhelmingly lose the support of the former developmental state, including the access to the Judiciary branch as a conflict mediation body.

The second scenario could be brought forward conversely to the previous ones. In this case, state mechanisms override the market, and a possible source of that are the courts. Until now, precedents ensure the constitutionality of the extrajudicial enforcement in the case of default mortgages, but the Supreme Court will decide again on this issue. In Brazil, the precedents abide less the courts than it does in developed countries, and a changing in this judicial position can happen without high constraining. Also, the Constitution also supports a different understanding in this field, to the extent that it makes sure that all right-based claims can be judicialized. Following this interpretation, the extrajudicial procedure could be considered unconstitutional. If it happens, investors will be subject to significant legal risks, and they will have fewer incentives for housing financing.

6. Final Remarks

The reform that instituted the SFI twenty years ago envisaged the integration of banks and capital markets through a gradual, layered reform. Inspired by the mortgage revolution that stemmed from the *Emergency Finance Home Act*, enacted in the 1970s in the United States, the SFI intended to strengthen credit legal security mechanisms and thus constitute the institutional bases needed to transform real estate contracts into capital market's commodities. To this end, the reform relied on the introduction of legal innovations such as (i) new rules for mortgages contracts; (ii) rules of fiduciary business, and (iii) introduction of entry barriers to the judiciary branch.

Regarding the output of this reform, the collected data of the examined sample, corresponding to 1007 court decisions, point to the satisfactory success of these measures. First, the universe of lawsuits found is considerably small for the Brazilian panorama, which shows that the strategy of limiting the judicial access was successful. Second, in this sample, creditors succeeded more than the debtors, which suggest that the judiciary confirmed the policy behind the law. Finally, the Central Bank's data concerning housing finance default point to a substantial decrease in the number of late contracts, what indicates higher credit security.

However, concerning the reform's outcome, the achievement is different. The more robust legal security has not provided a complete financial transition from the developmental model to a neoliberal one. The integration between banks and capital

markets has not become the prevalent layout. Both in contract numbers and in resource volume, the state-led arrangement (SFH) is still the key player in the housing finance. It has had a higher market share than the SFI in the last two decades. Besides, CEF is the most crucial financial provider of housing credit, and it also plays an active role in fostering the securitizing company market. On top of that, the regulatory resources inherited by the SFH, like directed credit, are relevant sources for the CRI market, ensuring liquidity in its operations.

Therefore, the most apparent effect of the reform is a repositioning of old organizations in the new institutional frameworks, notably CEF in the housing market. Such conclusion sheds light on the debate on institutional reforms and privatizations by suggesting that credit security might be an over-valued variable in political agendas. Moreover, the paper emphasizes that state-owned banks could be players in the privatization processes, which allows them to influence the results of the transformation process. At most, privatization is not necessarily a clear-cut transition between two models, rather than a political process and, as such, subjected to different organizations between factors of resilience and institutional transformation.

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