

## **Transfer of development right in Brazil: limits and outlooks**

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This paper advocates the idea that the City Statute (Federal Law 10.257/2001) provides urban limitations on the right to build. The junction of the urban law in regional urban planning field are elementary to analyze the socio-legal phenomena in the use of property rights in light of certain construction that exceeds the constructive potential. Other factors, such as implementation of urban facilities, areas of preservations and land regularization, also restrict the exercise of citizenship recreating ways of living and surviving in the cities. In this reasoning, the idea of urban property exceeds various aspects so that you can reach current notion that is linked to a social function. Thus, what was once seen as an exclusive right over the years has evolved to assign it a social role, which is, focused on the interests of society. The Charter of Embu, of December 12, 1976 was decisive to understand that the property exceeds the level of basic use of land named artificial soil. So the construction potential boundary is related to the basic floor area ratio of the property, whose limit can also be called natural soil. With this, found that urban property owner, private or public, need an upper limit to build your property, there may be an additional right to build, which belongs of public authority and as a consequence of this extension goes on to rise up the artificial soil or soil created with a limit called the maximum utilization coefficient. Question is, what is the legal nature of the constructive potential? Is it possible to address this potential as an instrument of urban sustainability? The Property Law and the Right to Build, but, after all, can you dissociate them? In this way, the general aim of this work is to understand the limitations to the right to build in urban instrument called the Transfer of Development Right (TDR) in Brazil. This instrument has the purpose to ensure the

economic use an immovable asset to the property owner located in an area where there are limitations, i.e. where buildings are not available till the basic coefficient limit set for that portion of the territory. The specific objectives of this study are aimed to grasp how this urban instrument foreseen in the City Statute before and after the 1988 Brazilian Constitution came up, clarify the distinction between Property Rights and the Right to Build and demonstrate that the incidence of cases stipulated in the federal legislation which are limitations of public law. The Strategic Master Plan of São Paulo, Law 16.050 of 31 July 2014, after an intense innovated debate around its content, highlighting the TDR, articles 122 and 133, bring with them new features that so far in most Brazilian municipal master plans do not provide, such as the full and/or partial transfer of the utilization coefficient, the possibility of which is restricted to the cases where the construction potential subject of transfer exceeds 50,000 square meters, the transfer of the amount exceeding this limit will occur gradually in ten annual installments, plus incidents hypotheses to the execution of road improvements for implementing bus lanes, implementation of planned parks, three forms of calculations when there is no originator of property donation, real estate donation cases or expropriation friendly and TDC with or without donation. The methodological approaches are not only based on literature reviews, such as Victor Carvalho Pinto, Arthur Nelson, Rick Pruetz, Doug Woodruft, but above all in the legislative analysis, which provides a basis for the theoretical construction of this article. These results are relevant, to state that the transfer of development right have in their own hypotheses limitations of public law, as well as the two types of interventions in the State on property namely, restrictive and suppressive, brings forth a third mode and may be called mixed intervention. In addition to these contributions, it has as a major reaffirm that the degree of utilization of basic land must be as a premise an equalization of rights in a legal urban planning process that aims to reduce the great social contrasts within the city limits. However, reality shows that there's no a fair distribution of burdens and benefits generated by the urbanization, consequently still remains in knowing what best method that you should consider in property value to be adopted, some argue for the use of more generic indicators, for example, the market value of property or a percentage of this value in order to facilitate this procedure; others conclude that the

adoption of general criteria can lead to a decrease in sales figures, as the market values are admittedly lower than those charged by the real estate market. The results and contributions mentioned, finally, make us reflect that the lack of adequate urban infrastructure in its spatial distribution in order to avoid social inequality, the fundamental right to housing, the low density of the urban land use, increasing distances, preserving the environmental and cultural property are some of the basic characteristics of the urbanization process in Brazil. This inordinate control requires a flow of investments, since there is an intense need to demand services, urban infrastructure and special protection areas in Brazilian cities. In this sense, the legislature established the transfer of development right as a mean of ensuring a better quality of life for populations, especially those who do not have access to urbanized land.