

**SIGNIFICANT ISSUES ARISING FROM THE IMPLEMENTATION OF  
LAW 4014/2011  
RE BUILDING CODE INFRACTIONS**

With its most recent law 4014/2011, as amended and currently in force, the Greek state is engaged in a profound effort to effectively deal with the complicated and perennial issue of building code and zoning infractions. Aside from the evident social and economic impact, there are grave environmental considerations. Considerable import is afforded with this legislation to establishing a viable environmental balance.

The provisions of this present law absolutely forbid any and all construction not under permit. This, to the end and for the purpose of efficient and effective environmental protection, which has now become a very necessary and urgent priority; so much that it is delegated by the Greek Constitution.

However, despite its good intentions, this legislation presents a number of inconsistencies, cul de sacs and contradictions. This has predicated severe obstacles and serious concerns to all involved parties, including but not limited to property owners, engineers, notaries participating in any capacity in transactions and work having to do with existing buildings; this with respect to the legality of any transaction regarding an immovable and the executability of its provisions.

In accordance with article 24 of Law 4014/2011, the owners or occupants of illegal constructions or buildings, are granted the opportunity to “settle” their properties by declaring whatever discrepancies and contraventions and paying a consolidated special fine/levy/tax as settlement. Further, this “settlement” entitles them to proceed to concluding all issues with the utility companies, thus

allowing for respective building approval to allow them valid access to these services.

First off, it must be made very clear that the applications of this law are not selective; that is to say that submitting to the requirements to declare infractions are not for the declarant to decide upon, but are, in fact, obligatory. In accordance with Law 4014/2011 any building or structure not conforming with building codes remaining “unsettled”, as above, under the requirements of Law 4014/2011 is classified as “off-market”. This is made explicitly clear in article 23 par.1, according to which **ANY AND ALL TRANSACTION (I.E. SALE, PARENTAL ALLOWANCE, DONATION ETC.) OF IMMOVABLE PROPERTIES WHICH CONTAIN OR INCLUDE STRUCTURES FOUND TO BE ENTIRELY OR PARTIALLY, OUTSIDE BUILDING CODE PROVISIONS IS STRICTLY PROHIBITED-** (ex. sale, parental grant, donation e.t.c.).

By the above provision, all the illegal real properties, which have not been submitted to the present law, are, in fact, literally excluded from any and all real estate transactions.

To ensure observance of this provision, article 23 par. 4 of the same law stipulates that the presiding notary acts (title, deeds of sale, donations, gifts etc. etc.) must be accompanied (as attachments) by a binding declaration of the owner and an engineer’s certification, stating and confirming respectively that the subject property does not contain illegal structures of any kind, which may affect its total structure, footprint and height and is not being illegally used.

Consequently, the first step for any property owner or administrator is to instruct a civil engineer to examine the property’s adherence to building codes in order to be informed of any illegal constructions or alterations of use, of which in many cases the owner may not be aware, since they are not that obvious, but may be found following a thorough examination of the built constructions, taking into consideration the figures permitted by the respective construction/building license.

To be more specific, the property owner should promptly (within the time-limit provided for by the above law) appoint an engineer with access to the electronic records system maintained by the Society of Engineers (TEE), in order to be informed whether his property does in fact contain illegal construction and/or structures exceeding the boundaries and specifications of the existing construction/building license, in order to proceed accordingly to the submission of such property under the provisions of the subject law.

It should be noted that the time-limit set for this purpose expires at the end of February 2012, unless an extension is given.

The appointed engineer, following the building's examination and in case of negative findings, informs the owner accordingly and when a notary act of real transaction (i.e sale and purchase) is about to be executed, issues a respective certification, which should be attached to the above notarial document.

The aforementioned certification states that: "... the property does not include any building or, in the case of divisible ownership (i.e. condominium/horizontal division or vertical division) property with the exception of the common areas, such property does not include any illegal constructions affecting the total structure, the coverage and the height of the property and that the same is not being used for illegal or unauthorized purposes..."

Furthermore, in the event that any illegal constructions are confirmed following on-site inspection of the property, the engineer, on written instructions of the owner, files the respective application for the submission of the said property under the provisions of law 4014/2011.

The procedure for such submission is being electronically initiated by duly appointed engineers, members of the Society of Engineers (TEE) and is comprised of a number of steps. Payment by the owner of a special fee is a required to initiate this procedure, the conclusion of which requires payment of

the Consolidated Special Fine, which is being assessed on the basis of the declared illegal constructions.

As provided in article 24 par. 11 of the above law, following the full payment of the Consolidated Special Fine, a permit, by exception, is granted to the owner of the property and is valid for a period of thirty years. This permit entitles the owner to transfer or constitute any real rights over the subject property that bears illegal constructions or is being used for illegal or unauthorized purposes.

The provision of article 24 par. 17 of the above law, is considered to be very significant with respect to the trading value of the properties having illegal structures which have been submitted to the said law and settled accordingly, as it also permits, superceding all other building code rules, laws and regulations in force, to execute all construction necessary to conclude building or repair for the purpose of completing a structure to make it usable or to improve it for aesthetic purposes, health and sanitary purposes and restoration.

Above law further excludes certain cases of illegal buildings and provides that they may not be settled under any terms or for any reason. Such are illegal buildings situated within protected or special areas, namely:

- a) in forests and set out and designated for reforestation,
- b) in locations in the city specifically set out and designated as common areas,
- c) in a security zone alongside international, national, regional, municipal or community roads,
- d) in land owned by the state,
- e) in what is designated and confirmed as a heritage or traditional settlement following the provisions of par. 24 of the same article
- f) in an archaeological site, historic location, coastal or beach zone, river or other areas protected under article 19 of law 1650/1986 (re environmental protection).

However, even in the above cases where it is apparent that illegal construction/building cannot be made legitimate under the conditions of this legislation, it is strongly advised that the concerned parties have the issue attended addressed to by professionals (engineers, lawyers etc.) because of the complicated and often contradicting legislative provisions; this for the purpose of thorough examination of the city-planning/construction and ownership regime governing the illegal construction to see to the possibility of allowing the structure under the exceptional regulations of this legislation.

Excluded from this legislation are:

- A) properties evidenced to be built prior to year 1955.
- B) properties excluded from demolition according to Law 1337/83.
- C) properties made legitimate in accordance with the provisions of either Law 1337/83 or Law 1577/85.
- D) properties the demolition of which has been suspended according to the provisions of articles 15, 16, 17, 20 and 21 of Law 1337/83.

The aforementioned exceptions also include properties for which the procedure of maintenance of the existing illegal constructions has been fulfilled, according to the provisions of Laws 3775/2009 (State Gazette (FEK) Section A' 122) and 3843/2010 (State Gazette (FEK) Section A' 62) for a time period of forty (40) years (in relation to the settlement of partially open-air spaces or partially covered areas ("imiypaithrioi") that were renovated and "closed", thus altering them as areas designated for main use as fully covered space.

Specifically, article 24 of law 4014/2011 describes in detail the necessary documentation, the procedure of submission and the way of assessment of the Consolidated Special Fine concerning the illegal construction or the illegal alteration of use.

Inconsistency is noted in the case where the illegal property is jointly owned (i.e. ownership in indivisible shares), as to the manner by which one would submit declaration; that is to say, would submission by one of the joint owners regard

the other joint owners and questions regarding the fines due and how the liability to pay these would be calculated is not specified.

Moreover, there is no provision regarding the issue of illegal buildings that have been built on a joint-ownership (under indivisible ownership regime) part of a lot, for which no statute of separate ownership exists (i.e. there is no condominium/horizontal division or vertical division of ownership), a practice that is very common for areas located beyond the approved city plan. This case is one of the most difficult to regulate, due to the fact that the procedure to “legitimize” illegal buildings built by one co-owner may adversely affect the building rights of the others joint-owners of the property who have not committed an infraction.

Furthermore, a provision of great importance for trading purposes is that of article 24 par. 6c, which refers to building set out for industrial or manufacturing use (i.e. factories) as well as hotels and structures designed for tourist purposes and tourist accommodations. For such buildings, it is provided that the Consolidated Special Fine be offset or otherwise credited against other, prior dues, charges or fines, already evidenced as paid by virtue of previous law provisions, which governed their operation at the time of their initiation or start of business activity.

It should also be noted that in case of constructions or uses, for which a building permit may be issued in accordance with the provisions of article 22 par. 3 of Law 1577/1985, on the strict proviso that the respective fee, which is anywhere between 500 euros and 6.000 euros depending on the illegal building’s type or category, is being paid and the party concerned produces the construction license within three years following the said payment, no other fine will be imposed and legal consequences will apply (i.e legitimate sale and transfer etc. may occur).

Additionally, article 24 par. 22 provides that all illegal constructions and alterations regarding the use of a property that are excluded from the above

penalties, thus have been submitted to the provisions of the present law, will be released from all social security contributions and any other tax retroactively due, as well as of any type of fine and due or levy, such as the real estate property tax, municipal tax or utility bills whether reciprocal or other.

Article 24 par. 15 also provides that the cases brought before the Courts for offences related to the violation of the provisions for illegal construction, which have not been finally and incontestably adjudicated, are considered to be closed and removed from the Court docket. These cases, at the request and petition of the involved party, following the decision of the competent authority based on the certification of the City-planning Service, certifying that the illegal construction has been declared and the special fine has been paid according to the above, will be archived and that all judicial process of these will cease.

It should also be noted that specific directions from the competent Ministries of Environment, Justice and Economics concerning the taxation treatment of the illegal buildings settled as per the procedure described above, have not been given yet.

Furthermore, and regarding the legal perspective and the interpretation of the provisions of the present law, which are obviously connected with civil law matters and in order to eliminate any danger of legal uncertainty during the respective transactions, the proper Administration Authorities should clarify the regulative range of article 23 par. 4, in terms of which real transactions should compulsory bear the engineer's certification as above.

It is the legal opinion of this author that the special engineer's certification is not necessary in the following notary acts, although until today there is no specific formal instruction:

- a) the acceptance of inheritance, which is a contract by reason of death.
- b) the revocation of resolatory clauses.
- c) the estate transfers by forced sale.
- d) the contracts according to Law 1221/1981 (re creation of parking areas)

e) the registration and the removal of lien of mortgage prenotation or in mortgages that were imposed by virtue of a court judgment or a warrant of payment and in general in every contract which is not related to the transfer or constitution of real rights as strictly defined in the Greek Civil Code .

It is obvious that that the aforementioned provisions oblige the owners or the administrators of a property to require the services of a competent engineer and an experienced lawyer in order to resolve all issues that may arise following the submission of an illegal construction to Law 4014/2011.