

THE LEGAL FRAMEWORK FOR GUARANTEES IN BRAZIL

Systematization of Law No. 14.711/2023

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1. THE PURPOSE AND LOGIC OF THE REFORM

Law No. 14,711/2023 emerged from a practical observation: in Brazil, recovering a defaulted credit used to be a slow, expensive, and uncertain process, which raised the cost of borrowed money for society as a whole. Known as the **Legal Framework for Guarantees** ("*Marco Legal das Garantias*"), the statute reorganizes the rules on the treatment of credit and creates out-of-court paths for creditors to recover what is owed to them, without depending exclusively on the Judiciary. The economic premise is straightforward: the safer and faster the enforcement of a guarantee, the lower the risk of lending tends to be and, consequently, the interest charged (Cf. Brasil, 2023, art. 1).

Picture a bank that must wait eight years to repossess a property given as a guarantee. This cost of waiting is built into the interest rate of every client. The law seeks to break this cycle by moving collection stages out of court and by allowing a single guarantee to serve several loans, making better use of the debtor's assets.

2. THE IMPROVEMENT OF GUARANTEE RULES

2.1 Fiduciary alienation and the reuse of real estate guarantees

In **fiduciary alienation of real estate**, the debtor (called the **fiduciant**) transfers to the creditor (the **fiduciary**) the resolvable ownership of the property as a guarantee, recovering it fully upon settling the debt. The major innovation lies in the possibility of **fiduciary alienation of supervening ownership**: the debtor may pledge as a guarantee a property that is not yet fully theirs, registering the transaction from the outset, with effectiveness conditioned upon the cancellation of the prior fiduciary ownership. When there are successive guarantees over the same asset, the rule of temporal priority applies - the older one prevails, and subsequent creditors are subrogated into the price obtained (Cf. Brasil, 2023, art. 22 of Law No. 9,514/1997).

The law also enshrines the **cross-default clause**: the breach of one obligation guaranteed by the property authorizes the creditor to declare all other debts tied to that same asset due. A practical example: if you have three loans guaranteed by the same house and stop paying one of them, the bank may demand, all at once, the totality of the three (Cf. Brasil, 2023, art. 22, § 6, of Law No. 9,514/1997).

2.2 The out-of-court foreclosure procedure: default, consolidation, and auction

The heart of the system is the **out-of-court foreclosure** procedure (*"excussão extrajudicial"*) - the repossession of the asset without a judicial action. Once the debt is due and unpaid, the debtor is summoned by the **real estate registry officer** to purge the default within **fifteen days**, paying the overdue installments and charges. If settled, the contract is reinstated; if not, **ownership is consolidated** in the creditor's name (Cf. Brasil, 2023, arts. 26 and 26-A of Law No. 9,514/1997).

The reform modernized the **summons**, allowing electronic contact informed in the contract, with a minimum of fifteen days' notice before any summons by public notice (*"edital"*). It also created a practical rule for properties in different jurisdictions: it suffices to summon a single registrar, provided the totality of the debt and the properties is reported (Cf. Brasil, 2023, art. 26, §§ 1-A, 3, and 4-B, of Law No. 9,514/1997).

Once ownership is consolidated, the creditor takes the property to **auction** within sixty days. In the first auction, a bid equal to or higher than the property's value is required; in the second, the highest bid covering debt, expenses, and charges is accepted - and, failing that, the creditor may, at their discretion, accept a bid of at least half the appraised value (Cf. Brasil, 2023, art. 27, §§ 1 and 2, of Law No. 9,514/1997).

2.3 Protections for the debtor: preference, surplus, and residual debt

The law balances speed with safeguards for the debtor. The **right of preference** arises: until the second auction, the fiduciant may repurchase the property for the value of the debt plus expenses. If there is a **surplus** after the auction (value exceeding debt and charges), it must be returned to the debtor within five days (Cf. Brasil, 2023, art. 27, §§ 2-B and 4, of Law No. 9,514/1997).

There is, moreover, an essential distinction. In financing of the debtor's **own residential property**, if the second auction fails, the debt is fully extinguished, with reciprocal discharge - the debtor does not remain owing the balance. In other operations, however, the debtor remains bound by the **remaining balance**, collectible through enforcement. Example: a family that loses its financed home does not carry a residual debt; a company that loses a commercial warehouse does (Cf. Brasil, 2023, arts. 26-A, § 4, and 27, § 5-A, of Law No. 9,514/1997).

After repossession, the creditor has the right to **preliminary reinstatement of possession**, with a sixty-day deadline for vacating, and to an **occupancy fee** of 1% per month on the property's value, due from consolidation until effective delivery (Cf. Brasil, 2023, arts. 30 and 37-A of Law No. 9,514/1997).

2.4 The guarantee agent and the improved mortgage

The Civil Code gained the **fiduciary guarantee administration contract**, the figure of the **guarantee agent**: a third party designated by the creditors to constitute, register, manage, and enforce the guarantee in their own name, but for the benefit of all. They hold a **fiduciary duty** and are liable for their acts. Think of a syndicated loan involving several banks - instead of each one administering its share, a single agent centralizes the management of the guarantee (Cf. Brasil, 2023, art. 853-A of the Civil Code).

The **mortgage** was also revitalized with the **extension of the mortgage**: the owner may expand an existing mortgage to guarantee new debts with the same creditor, preserving the original registration. Here, too,

the cross-default clause and the subrogation of the creditor who pays prior mortgages apply (Cf. Brasil, 2023, arts. 1,477, 1,478, and 1,487-A of the Civil Code).

2.5 Extension of fiduciary alienation and new enforceable instruments

Following the logic of reusing guarantees, Law No. 13,476/2017 came to admit the **extension of fiduciary alienation**: an already-constituted fiduciary ownership may guarantee new and autonomous credit operations, provided they are with the same creditor and without a guarantee to a different creditor over the same property. Settling one operation does not require settling the others (Cf. Brasil, 2023, arts. 9-A to 9-D of Law No. 13,476/2017). In the procedural field, the **Civil Procedure Code** came to recognize as an **out-of-court enforceable instrument** ("*título executivo extrajudicial*") the counter-guarantee contract of the insurer against takers of **surety bonds** ("*seguro-garantia*") (Cf. Brasil, 2023, art. 784, XI-A, of the CPC).

3. THE OUT-OF-COURT SEARCH AND SEIZURE OF MOVABLE ASSETS

Decree-Law No. 911/1969, which governs the fiduciary alienation of movables (typical of vehicle financing), received an entire out-of-court procedure. Where there is an **express clause in highlighted form** and default is proven, the creditor may consolidate ownership before the **registry of titles and documents** ("*cartório de registro de títulos e documentos*"), instead of filing the traditional judicial search and seizure. The officer notifies the debtor to pay within **twenty days** or to present documents proving the charge is undue (Cf. Brasil, 2023, art. 8-B of Decree-Law No. 911/1969).

If the debt is not paid, ownership is consolidated and the creditor may sell the asset. If the debtor does not voluntarily deliver the asset, **out-of-court search and seizure** applies, with a circulation restriction on the vehicle and entry into the registries' electronic platform. Once the asset is seized, the debtor still has five business days to pay everything and recover it. In the case of vehicles, there is the alternative of processing the enforcement before state traffic agencies (Cf. Brasil, 2023, arts. 8-C, 8-D, and 8-E of Decree-Law No. 911/1969).

4. THE OUT-OF-COURT ENFORCEMENT OF MORTGAGE-SECURED CREDITS

Perhaps the greatest innovation of the law: for the first time, mortgage credit may be enforced **outside the Judiciary**. Once the debt is due, the debtor is personally summoned by the registry officer to purge the default within fifteen days. If the default persists, the commencement of foreclosure is recorded and a **public auction** is held within sixty days, with minimum-bid rules similar to those of fiduciary alienation (Cf. Brasil, 2023, art. 9, §§ 1 to 6).

The debtor retains the **right of redemption** ("*remição*") (to settle everything before the sale) and the return of the surplus. If the second auction fails, the creditor may appropriate the property at the minimum value or sell it directly to a third party within 180 days. As in the other scenarios, financing of the debtor's own residential property exonerates the debtor from the remaining balance. It is a **requirement of validity** that the mortgage instrument expressly provide for this procedure (Cf. Brasil, 2023, art. 9, §§ 7 to 15).

5. THE OUT-OF-COURT ENFORCEMENT OF THE REAL ESTATE GUARANTEE IN A COMPETITION OF CREDITORS

When a single property guarantees **several credits**, the law organizes the **competition of creditors** ("*concurso de credores*") out of court. The registry officer simultaneously summons all creditors to register their credits within fifteen days, presenting an updated calculation and supporting documents. Next, a **schedule of creditors** is assembled that defines the degrees of priority according to the **seniority of the real credit**, and the enforcing creditor distributes the proceeds respecting that order (Cf. Brasil, 2023, art. 10).

6. THE PRIOR NEGOTIATED SETTLEMENT BEFORE PROTEST AND THE IMPROVEMENT OF PROTEST

Law No. 9,492/1997 gained **conciliation** mechanisms. Even before the protest, the creditor may offer the debtor a **negotiated settlement proposal**, with a response deadline of up to thirty days and a possible discount; if the negotiation fails, it is converted into a protest for the original amount. After the protest, room opens for the **renegotiation of protested debts**, with a possible reduction of fees. Summons were modernized, allowing electronic means and messaging applications (Cf. Brasil, 2023, arts. 11-A, 14, 15, and 26-A of Law No. 9,492/1997).

7. NOTARIAL SERVICES, COURT-ORDERED PAYMENT CERTIFICATES, AND REMAINING CHAPTERS

The law also addressed matters connected to credit. **Notaries public** (*"tabeliães de notas"*) came to be able to communicate to the court the negotiation and assignment of **court-ordered payment certificates** (*"precatórios"*), granting security to these transactions, and gained powers such as to mediate, conciliate, and arbitrate disputes, as well as to receive and transfer funds in a segregated account (Cf. Brasil, 2023, arts. 6-A, 7-A, and 39 of Law No. 8,935/1994; art. 167 of Law No. 6,015/1973).

The final chapters address financial-market matters and specific adjustments: the **early redemption of the Financial Bill** (*"Letra Financeira"*) tied to credit rights (Law No. 12,249/2010); rules on **income tax** for investment funds with shareholders abroad, reaching sovereign funds (Law No. 11,312/2006); the simplification of the **debenture issuance procedure**, allowing resolution by the board and the unbundling of rights (Law No. 6,404/1976); and the presentation of **electronic statements** for movable assets (Law No. 14,382/2022). Finally, there was an adjustment to **FUNDEB** to enable the payment of education professionals by different financial institutions (Law No. 14,113/2020) (Cf. Brasil, 2023, arts. 13 to 17).

- **LOGIC OF THE THEME (LEGAL FRAMEWORK FOR GUARANTEES - LAW NO. 14,711/2023)**

The logic that stitches the entire law together is the **dejudicialization of credit recovery** combined with the **efficient reuse of guarantees**. It starts from an economic diagnosis: a guarantee that is hard to enforce is a guarantee of little value, and this raises the cost of credit. The normative response moves in three linked movements.

First, the law shifts the axis of collection from the judge to the **registry**: summons, purging of default, consolidation of ownership, and auction come to occur outside the lawsuit - in fiduciary alienation (already existing, now improved), in the **mortgage** (a major innovation), and in the search and seizure of **movables**. Second, it allows the same asset to work harder: the **extension** of the mortgage and of fiduciary alienation, and **supervening ownership**, multiply the use of the guarantee, while the **cross-default** protects the creditor against partial defaults.

Third, the system is balanced with safeguards for the debtor - **purging of default, right of preference/redemption, return of the surplus**, and, above all, the **extinction of residual debt in the debtor's own residential property**. The guiding thread, therefore, is to trade legal certainty and speed for cheaper credit, without suppressing the minimum protection of the debtor nor the residual access to the Judiciary.

- **SYNOPTIC TABLE**

Theme	Explanation of the institute
Object of the Law (art. 1)	Improves the rules on credit and guarantees and creates out-of-court recovery measures. Its purpose is to reduce the cost of credit through greater security and speed in enforcing guarantees.
Supervening ownership	Allows pledging as a guarantee a property not yet fully acquired. Registration occurs from the celebration, but effectiveness depends on the cancellation of the prior fiduciary ownership.
Cross-default	The breach of one obligation guaranteed by the property authorizes the creditor to declare the other debts tied to the same asset due. It must appear in a contractual clause and in the summons.
Out-of-court foreclosure (fiduciary alienation)	A repossession procedure without judicial action. It comprises registry summons, a 15-day period to purge the default, consolidation of ownership, and an auction within 60 days.
Purging of default	The debtor's faculty to pay overdue installments and charges within the legal period. Once settled, it reinstates the contract and prevents consolidation.
Right of preference	Until the second auction, the fiduciant may repurchase the property for the value of the debt plus expenses. It protects the debtor against the definitive loss of the asset.
Extinction of residual debt	In financing of the debtor's own residential property, the failure of the second auction extinguishes the entire debt, with reciprocal discharge. In other operations, a collectible remaining balance persists.
Occupancy fee (art. 37-A)	A value of 1% per month on the property's value, owed by the fiduciant from consolidation until vacating. It compensates the creditor for the use of the already-reposessed asset.
Guarantee agent (art. 853-A, CC)	A third party designated by the creditors to manage and enforce the guarantee in their own name, but for the benefit of all. They hold a fiduciary duty and are liable for their acts.
Extension of the mortgage (art. 1,487-A, CC)	The expansion of an existing mortgage to guarantee new debts with the same creditor, keeping the original registration. It respects the priority of prior obligations.
Out-of-court search and seizure (movables)	Allows consolidating ownership of a movable asset at the registry of titles and documents, through an express clause. It includes notification, a 20-day period, and the sale of the asset.
Out-of-court enforcement of the mortgage (art. 9)	An innovation allowing mortgage credit to be enforced outside the Judiciary, with summons, auction, and minimum-bid rules. It requires express provision in the instrument as a requirement of validity.
Out-of-court competition of creditors (art. 10)	When a property guarantees several credits, it organizes simultaneous registration and the schedule of priorities. It adopts the seniority of the real credit as the ordering criterion.

Prior negotiated settlement before protest	Allows the creditor to offer a settlement before the protest, with a deadline and a possible discount. If it fails, it is converted into a protest for the original amount.
Expanded notarial powers	Notaries public come to mediate, conciliate, arbitrate, and communicate assignments of court-ordered payment certificates. They may receive and transfer funds in a segregated patrimony.
Debenture issuance (Law No. 6,404/76)	Simplifies the procedure, admitting resolution by the board and the unbundling of interest and rights. It aims to give agility to corporate financing.

- **PRECEDENTS**

Item	Explanation of the precedent
RE 627,106/PR (STF)	Court: Federal Supreme Court. Reporting Justice: Min. Dias Toffoli. Theme 249 of General Repercussion. It discussed the constitutionality of the out-of-court enforcement procedure provided for in Decree-Law No. 70/1966. The STF recognized the rite's compatibility with the Constitution, provided the adversarial principle and subsequent judicial control were ensured, establishing a relevant theoretical basis for the out-of-court procedures of Law No. 14,711/2023.
RE 860,631/SP (STF)	Court: Federal Supreme Court. Reporting Justice: Min. Luiz Fux. Theme 982 of General Repercussion. It dealt with the validity of out-of-court enforcement in fiduciary alienation of real estate (Law No. 9,514/1997), holding that the procedure does not violate due process of law because it does not exclude access to the Judiciary. A precedent directly connected to the logic of dejudicialization broadened by the new law.

- **REFERENCES**

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BRASIL. **Lei nº 10.406, de 10 de janeiro de 2002**. Institui o Código Civil. Brasília, DF: Presidência da República, 2002.

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BRASIL. **Lei nº 8.935, de 18 de novembro de 1994.** Regulamenta os serviços notariais e de registro. Brasília, DF: Presidência da República, 1994.

BRASIL. **Lei nº 6.404, de 15 de dezembro de 1976.** Dispõe sobre as Sociedades por Ações. Brasília, DF: Presidência da República, 1976.