

International Housing Coalition

IHC

Housing for All

It All Depends:

Buying and Selling Houses in Rio's Favelas

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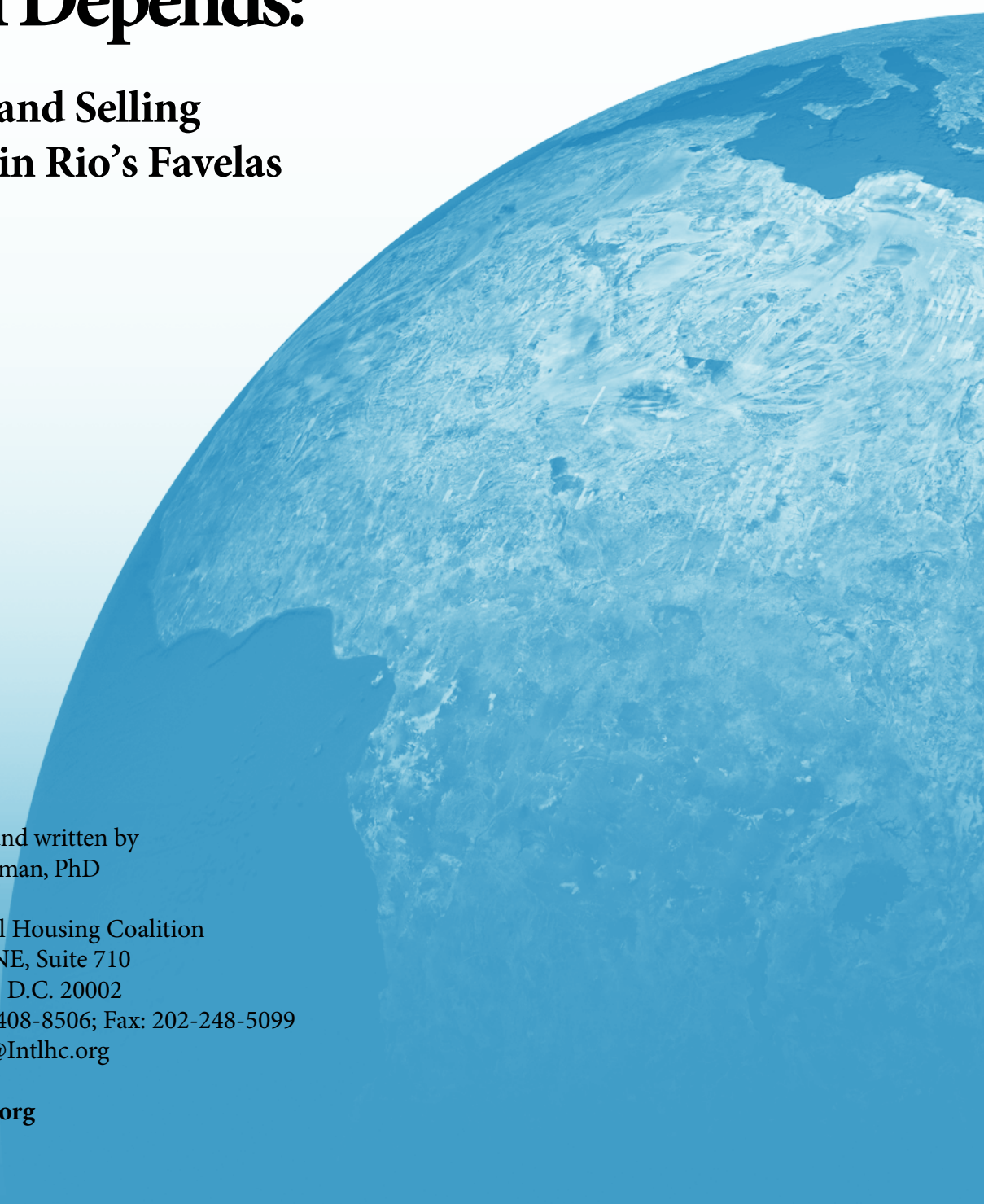


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Preface

This paper examines how property markets function in the favelas of Rio de Janeiro. The study compares and contrasts the formal and informal property markets, concluding that while there are many differences between them, all property transactions in the favelas carry a certain amount of informality and risk. The level of risk, however, varies greatly depending on the specific circumstances of the property and parties involved in the transaction.

This study was sponsored by the International Housing Coalition (IHC) and funded by a grant from the Reaume Foundation. The IHC is a non-profit advocacy organization located in Washington D.C. that supports “Housing for All” and seeks to raise the priority of housing and slum improvement on the international development agenda. The IHC supports the basic principles of private property rights, secure tenure, effective title systems and efficient and equitable housing finance systems—all essential elements to economic growth, civic stability and democratic values. To learn more about the IHC visit its web site at: www.Intlhc.org. The views expressed in the paper are those of the author and do not necessarily reflect those of the International Housing Coalition.

About the Author

Dr. Perlman’s most recent book, *FAVELA: Four Decades of Living on the Edge in Rio de Janeiro* will be published by Oxford University Press in June 2010. It is a follow-up to her seminal work: *The Myth of Marginality* (1976, UC Press). Dr. Perlman is the recipient of a Guggenheim Award, Fulbright Award, the C. Wright Mills Award and the Chester Rapkin Award. The research for Favela was supported by the Tinker, Ford, and Kellogg Foundations, the World Bank, the British Department for International Development and the Dutch Trust Fund.

Professor Perlman is President and CEO of the Mega-Cities Project, a global non-profit organization founded in 1987 to share approaches that work among cities facing common problems. She was a tenured professor in the Department of City and Regional Planning at UC, Berkeley and has taught at Columbia, NYU, the Federal University of Rio de Janeiro, the Institute of Brazilian Municipal Administration and the Getulio Vargas Foundation in Rio de Janeiro. Dr. Perlman holds a B.A. from Cornell University in Anthropology and a Ph.D. from MIT in Political Science—International Development, Public Policy and Urban Studies. She is currently consulting and doing program evaluations and policy research.

Sources and Acknowledgements

The information for this report is based on the author’s previous research in the favelas of Rio de Janeiro and on original field work conducted between June and October 2009 in 12 favelas. In each of these communities, the author conducted interviews with the Residents Association Presidents, officers and members and with recent and would-be buyers and sellers. She visited several cartorios and real estate agencies and conducted interviews with planners, practitioners, researchers, policy-makers, lawyers, architects, developers and real estate agents.

Interviews with research scholars included: Profs. Pedro Abramo; Mariana Cavalcanti; Marcelo Burgos; Paulo Knauss; Mario Brum; and Mauro Amoroso. Interviews with consultants, construction companies, architects, investors and financial advisors included: Teresa Lobo; Nadia Reboucas; Paulo Ferraz; Tania and Michele Kurc; Flavia Oliveira; Antonio Carlos Vidigal; and Clara and Jacob Steinberg. Interviews with policy-makers from city, state and national government included: Lu Peterson; Alfredo Sirkis; Arlindo Daibert; Sergio Magalhaes; and Wanda Engel Aduan. Interviews with non-profit organizations included: IBASE; ISER; Viva Rio; Roda Viva; and the Observatorio das Favelas.

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Executive Summary

In this paper the author examines the real estate markets in Rio de Janeiro, comparing the way property is bought and sold in the formal city and the informal city. The informal city, consisting of favelas (squatter settlements) and illicit/illegal subdivisions, is often referred to as the *morro* (the hillside) as opposed to the *asfalto* (the paved city.) The main distinction is that the residents of informal settlements do not have official title to the property they live on, even though they may have developed the land and built their houses on it fifty years ago. The favela communities exist outside the purview of land-use, zoning, and construction regulations; of density, health and safety standards; and of the laws of private property. Nevertheless, there are thriving real estate markets in the favelas. Buyers and sellers come to agreements on value, procedure and payment and local Residents' Associations validate the transactions.

The Perlman study found active real estate markets functioning in Rio's favelas (now numbering 1,025) from the most recently settled to the oldest and most consolidated. Real estate transfers in the formal city are conducted through "*Registries of Assets and Properties*," which require proof of ownership, thereby excluding all favelas. In the most desirable locations, a handful of favelas have informal "real estate agencies" (un-certified,) but for all the rest, sales are advertised through word-of-mouth and posted on the walls of the local Residents' Associations. Created by city government mandate in the 1960s, these Associations serve as liaisons between the favela communities and the government and are authorized to act with some degree of public authority within their own territories.

The majority of property transactions inside favelas take place among residents or between friends and family of residents, although some buyers come from other favelas or directly from the countryside. Property values are determined by the same general criteria as in the formal sector – supply and demand based on location, size, security, and quality. Building codes and permits, occupancy and health standards, and zoning regulations do not exist in favelas. There is no housing finance system for favela residents. Even government mortgage programs designed to reach low-income populations exclude virtually all favela residents due to their inability to prove ownership, to meet minimal income criteria, or to provide proof of stable income. Purchases are generally made by full cash payment at the point of sale. These sales are documented in the Residents' Associations where they are signed by both parties, at least two witnesses, and the President of the Association. A degree of formality is sometimes conferred to the transaction when the President's signature is verified at the region's "*Registry of Titles and Documents*" where a copy of the signature is kept on file.

Despite the apparently clear distinctions between real estate practices in the formal and informal sectors, the lines begin to blur upon closer examination. The procedures vary according to circumstance, location, political connections and money. Even in the formal city, there exist myriad exceptions to every rule – building and zoning codes are often ignored, clandestine constructions are not registered, and property taxes not collected. Neither the formal nor informal real estate markets could function without a strong dose of Brazilian *jeito* (a knack for making things happen and getting around the rules.) In the words of one downtown real estate agent, "absolutely nothing is impossible in Rio real estate—it all depends."

Introduction

This report is based on two original research studies conducted by the author in Rio de Janeiro. The most recent study is of real estate transactions in the city of Rio—including the formal city of the privileged and the informal city of squatter settlements, known as *favelas* or *communities*. This distinction is often expressed as the *morro* and the *asfalto*, or the hillsides and the pavement. This research on housing markets was conducted from June through October 2009 under a contract from the International Housing Coalition with funding from the Reaume Foundation.

The second source is a longitudinal multi-generational study conducted between 1969 and 2009, during which the author lived for six months each in three of Rio's favelas and interviewed 250 people in each. Thirty years later the author returned to re-study the communities and the people, interview the surviving original study participants and their children and grandchildren. These study findings form the core of Perlman's most recent book, *Favela: Four Decades of Living on the Edge* (Oxford University Press, 2010.)

The objective of this study is to understand how real estate markets function in the favelas of Rio de Janeiro, including how property values are determined and how houses are transferred from sellers to buyers.

The question of housing and community development in the cities of developing countries is a critical one as the world's poor continue moving from the countryside to the city. United Nation (UN) projections indicate that the growth of the world's population in the coming decades will be almost entirely urban, will take place in the cities of the global South (Asia, Africa and Latin America,) and will be concentrated primarily in squatter settlements. These self-built communities, called favelas in Rio, have different names in different cities, but almost everywhere they are classified by local governments as "irregular or subnormal agglomerations" set apart from the rest of the urban fabric. In their myriad forms, they are collectively called "informal settlements" or part of "the informal city."

In Rio, favelas are highly stigmatized urban spaces and the word *favelado* has acquired pejorative connotations. Favela residents generally use the word "community" in referring to where they live.² These self-built communities were originally settled by rural migrants to the city of Rio who gave up all they had in search of better opportunities for themselves and their children. They built their homes on lands (public and private) that were vacant—usually on hillsides too steep for conventional construction or in swamps or riverbeds subject to periodic flooding. Some of these areas were vacant because municipal building codes prohibited their development, others due to neglect by the rightful title holders.

The first favela in Rio that dates back more than 100 years was on the Morro de Providência near the downtown port area. Since that time, efforts have been made to prevent, restrict, and remove favelas. However, research in the 1960s conducted by this author and others demonstrated that they were not *problems*, for the city but—on the contrary—*solutions* to the housing needs of hundreds of thousands of new urbanites who could not afford to buy or rent in the "formal city."³

The squatter settlements, tenement houses, and clandestine subdivisions that comprise the "*informal city*" are often absent from city maps. The places that house some 40 percent of all urbanites in the cities of the developing world appear as unoccupied green spaces. They were historically "off the grid," and not included in the coverage area of urban services provided by city government.⁴

1 For more detail on this earlier study see Janice Perlman, *Favela: Four Decades of Living on the Edge*, (2010, Oxford University Press) and *The Myth of Marginality: Urban Politics and Poverty in Rio de Janeiro* (1976, UC Press.)

2 See Janice Perlman, *Favela*, Chapter 1 for a detailed discussion of terms, definitions and distinctions regarding favelas and an explanation of the difference between favelas and slums.

3 See John Turner, *Housing as a Verb*; Lisa Peattie, *On Informality*; and Janice Perlman, *The Myth of Marginality*.

4 In Rio, this began to change in the mid 1980s when Municipal authorities began extensive cadastral surveys and maps of the favelas and of irregular subdivisions. These became the basis of upgrading programs such as "Programa Mutirao (1984-1988) and later Favela-Bairro (1994-present).

In the case of Rio, the vacant lands where favelas arose tended to be either on hillsides too steep for conventional construction, along the silted fringes of the bay, or in mosquito-infested swamps on the urban fringe. When these settlements began to emerge in the 1890s, they were seen as threats to the urban order and attempts were made to evict the residents and eradicate their dwellings. In the 1970s, the city, state and national governments succeeded in removing more than 100 favelas in Rio, forcing nearly 100,000 people to resettle in housing projects. The possibility of eviction is much lower since the return to democracy in 1985 following 21 years of military dictatorship, but in the past five years the issue has been raised again. As recently as 2009, the Mayor of Rio declared that with regard to favela policy, “nothing is off the table.”

Over time, the oldest favelas have improved in physical condition. The scrap housing materials were gradually replaced by brick and mortar (precarious shacks grew into four-story residences, often with rental units) and the people demanded urban services from the local government, tapped into the electric grid (illegally) and built their own infrastructure where they could. The favelas that have existed for 50 or 60 years, referred to as “consolidated” favelas,⁵ now have nearly universal access to electricity and running water, partial separation of drainage and sewerage, paved access roads and stairways and thriving commercial areas.⁶

This constant, incremental improvement in the conditions and services in the older favelas means that the classic definitions of favela, based on a series of **deficits**—in housing and urban services—are no longer useful. The operational dividing line is legitimate versus illegitimate land occupation. In Rio, most of the favelas occupy land owned by the government, the military or the church. Like the formal and informal economies in cities, the informal and formal cities are intertwined and in many cases interdependent, but only the formal sector ownership is recognized in the eyes of the law.

This report makes a distinction between how real estate transactions occur in the *formal city* where land titles are legally documented and registered and the *informal city* where settlements that began as land invasions have never been regularized. Despite housing being improved and being passed down through generations, the properties remain in legal limbo. **There are thriving real estate markets in favelas, but the process of buying and selling houses is not the same as it is in the rest of the city.**

The research question is then: **what is the difference between real estate transactions in the informal city (the favelas) and the formal city (the city of privilege)?** This would be colloquially phrased as what is the difference between the *morro* (hillside) and the *asfalto* (paved city)?

Research findings showed that these differences are clear in some respects, but blurry around the edges. It all depends on the circumstances, the location, the timing, political ideology and resources. Neither the formal nor informal real estate markets could function without a strong dose of Brazilian “jeito” (an ability to get around legal red tape.)

The research results in this report show how buyers and sellers find each other, how sales prices are established, how payment is made, what role is played by real estate brokers, how transactions are documented and how they are enforced. In the concluding section, the issues of real estate markets and informality are related to the question of housing and land rights and the larger issue called the “Right to the City.”

5 For more on the concept of consolidated favelas, see Mariana Cavalanti, (2007) “Of Shacks, Houses and Fortresses”, PhD dissertation, University of Chicago Press.

6 The improvements were due to a combination of self-help efforts, and a shift in government policy towards in situ upgrading along with greater cooperation between public authorities and public service providers (CEDAE, COMLURB, LIGHT) and line municipal departments (Secretarias de Educacao, Saude, Secretaria de Habitacao, Secretaria de Desenvolvimento Social and IPLANRIO).

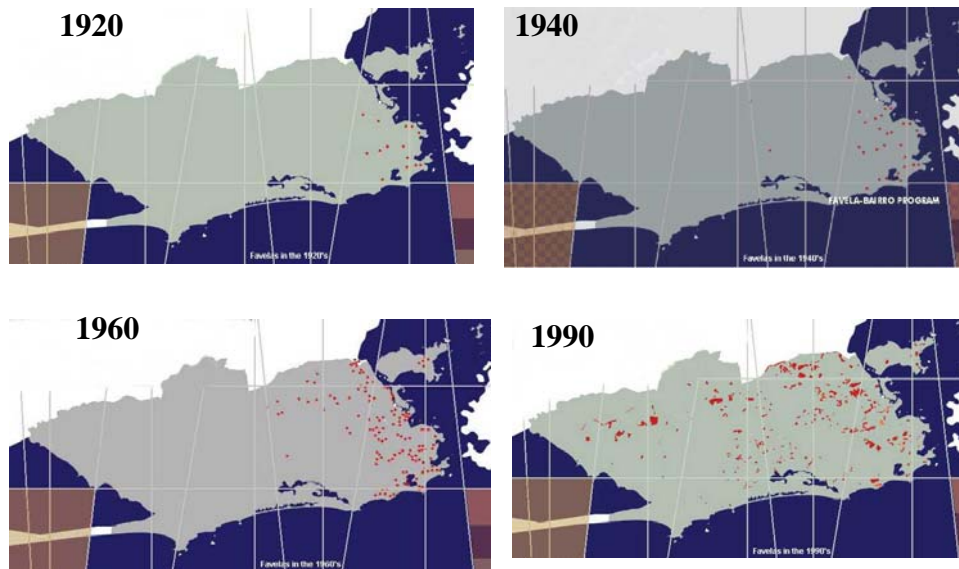
Part I: Overview of Favelas in Rio de Janeiro

Population Growth. According to 2009 data from the Instituto Perreira Passos (IPP), the Planning Department of the City of Rio, there are more than 1,025 *favelas* in the city. The current estimate is that they house more than 20 percent of the municipal population. The informal sector also includes clandestine or irregular subdivisions (*loteamentos clandestinos/irregulares*)⁷ that account for another six percent of the city's population, meaning that a quarter of Cariocas (Rio residents) live in informal housing.

Population figures for favelas vary dramatically from 1.5 to 2.5 million people and above, depending on what definitions are used, how the numbers are calculated and what percent is adjusted for an undercount.⁸

The city is divided into zones: the upscale South Zone; the Center City; the industrial and working class North Zone; and the West Zone, which is the least dense, the newest, the poorest, and has the highest growth rate of informal settlements. In the South and North Zones, the favelas are consolidated and the growth rates low. The vast majority of housing in these zones is constructed with permanent materials, is often several stories high, has almost universal access to electricity, running water and some form of sanitation and garbage collection, and has access to schools and clinics.

Since the first hillside settlements appeared in Rio more than 100 years ago, there have been consistent attempts to remove them, prevent their growth and prohibit improvements in building materials and housing conditions. All of these attempts failed as shown in the four maps below that track the consistent growth of favelas in Rio de Janeiro over time.



Fonte: Pró - URB

FAVELA GROWTH IN RIO de JANEIRO

⁷ *Loteamentos clandestinos* or irregulars are areas that are illegally taken over by a person posing as a developer, who subdivides the land and sells it to newly arrived migrants, giving them a phony title and disappearing with their money, abandoning the families without water or electricity and forcing the government to deal with them. The city planning department in Rio also includes the 12 percent of Rio's population living in conjuntos (public housing complexes) as part of the informal sector since they are not part of the urban grid of the formal city.

⁸ There are many reasons for a wide variation in demographic data about the favela and informal sector in Rio. The Brazilian census is conducted only once every ten years so officials are awaiting the 2010 census for more accurate information. A comprehensive discussion of why the estimates vary so dramatically can be found in Perlman, *Favela* (2010, Oxford University Press) Chapter One.

Rapid urban migration in the post WW II period led to a dramatic increase in the number and population of favelas in Rio. In every decade since the 1950s, the favela population has grown faster than the population of the city of Rio.

FAVELAS GROW FASTER THAN CITY OF RIO

Year	Population of Favelas (a)	Total Population of Rio (b)	a/b (%)	Favela Growth Rate by decade	Rio Growth Rate by decade
1950	169.305	2.337.451	7,24%	-	-
1950-'60	337.412	3.307.163	10,20%	99,3%	41,5%
1960-'70	563.970	4.251.918	13,26%	67,1%	28,6%
1970-'80	628.170	5.093.232	12,33%	11,4%	19,8%
1980-'90	882.483	5.480.778	16,10%	40,5%	7,6%
1990-2000	1.092.958	5.857.879	18,66%	23,9%	6,9%

FROM 2000-2005 FAVELAS GREW 6X MORE THAN NON-FAVELAS

Source: IBGE (Brazilian Institute of Geography and Statistics), 2000

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As shown above, the single exception was the decade of the 1970s when more than 100 favelas were eradicated, 100,000 dwellings demolished and close to 700,000 residents displaced. Catacumba, one of the three favelas in which the author lived, was removed in 1970. The author was there in 1969 to witness the eradication of a favela of Praia do Pinto on the opposite side of the lagoon. When the women and children stood in front of their community to prevent the its demolition, the police left, only to set fire to the community during the night. The photograph below taken the next morning shows the devastation as people tried to salvage the remains of their life possessions before being placed in garbage trucks by the helmeted police.⁹



REMOVAL of PRAIA do PINTO

⁹ All photographs were taken by the author, unless otherwise indicated.

Since Brazil's return to democracy in 1985, after 20 years of military dictatorship, the favela removal policies have been gradually replaced by a series of on-site upgrading programs, most importantly Favela-Bairro. (See Appendix 1.) The demands of electoral politics mean that no candidate for local office is willing to risk alienating a fourth of the electorate by threatening favela demolition. However, it does not mean that this cannot or will not change in the future. There is no guarantee.

Meanwhile, favelas have continued to grow upward and outward and new settlements have sprung up as new employment opportunities expand across the Rio municipality and in the Fluminense Lowlands to the North. The volcanic upward thrust of vertical expansion as shown in the photograph below reflects the high demand for space in the South Zone favelas, and the total absence of zoning regulations or construction codes. Rocinha is the largest and most expensive favela in the city.

VERTICAL GROWTH



The aerial photo below shows how Rocinha, has expanded, growing up into the hillsides and out into forested areas.



Land in Limbo. Rio’s favelas are currently in legal limbo as far as land ownership is concerned. The residents have “de facto” security to remain where they are for as long as their votes have electoral clout, but they do not have “de jure” land tenure and the political situation may change. Meanwhile, a quarter of the city population lives under a separate set of rules and regulations, without the full protection of the law.

The city government has delegated many responsibilities including those for real estate to the local Residents’ Associations, but neither the associations nor the drug traffickers comprise a “parallel state.” The government is responsible for providing education, health care, job training and other services and for protecting the lives of its citizens. Favela residents, despite 25 years of post-dictatorship democracy, are still pseudo-citizens. They live under the rule of Residents’ Associations most of which are under the control of the drug traffic, local militias or both.¹⁰

Only recently has a new program, supported by the city, state and national governments, begun to re-claim the favela territories from the traffickers and militias. The new program, called **UPP—Unidades de Policias Pacificadores** (Units of peace-keeping police)—began in 2009 and has been successful in the handful of communities where it has been implemented thus far. Police barracks are constructed within the favelas so that the policemen have a full-time presence to keep out the drug gangs. Specially-trained police are assigned to help deal with conflicts and problems in the communities and—in some cases—reinforced concrete walls are built around the favelas to prevent the entry of drug dealers and protect the surrounding forests from expanding settlement.



The favela, Santa Marta, was the first in the UPP Program. The formal city is illuminated below and Sugar Loaf is visible in the background.

There are 100 favelas currently eligible for the program. The projection is to reach as many favelas as possible in preparation for the 2014 World Cup and the 2016 Olympic Games.

¹⁰ The favela residents have—for the time being—stopped mobilizing for their rights to land ownership, feeling a sense of security and not wanting to incur the additional costs of property taxes. The international development agencies are promoting land title as a form of collateral for loans, but there is very low demand for loans among favela residents because they fear they will not be able to repay. What they want most is a way to earn a decent living doing decent work. Without jobs or incomes they are unwilling to incur any additional debts.

II. Real Estate in the Formal City

To understand how real estate transactions work in the favelas, or the informal city, it is necessary to understand such transactions in the formal city. The following section provides a baseline for comparison between the formal and informal city, or as people in Rio would say, the *morro* (hill-side) and *asfalto* (paved city.)

Even in the formal sector, the processes involved in real estate transactions in Brazil differ significantly from those in the United States or the United Kingdom. Appendix 3 contains a legal guide to inform foreigners interested in purchasing property in Brazil. As this guide makes clear, many of the risks typically associated with informal real estate transactions are also associated with formal transactions.

How Buyers and Sellers Connect

The search for a house or apartment does not begin in a local real estate office. There is not yet a multiple listing service, (although some of the largest agencies have begun to discuss creating such a system) so any one agency only has access to a very small percentage of the total houses for sale at any given time.

Most potential buyers search the real estate section of newspapers, in hard copy or online. The best source is the newspaper *O Globo*—the Sunday section, “Morar Bem” or the Wednesday listings by neighborhood. For upscale properties, people also check *O Estado de Sao Paulo* and for less expensive properties, *O Dia*. The website www.zap.com.br has almost all the listings and is free. The twenty largest real estate agencies in Rio have agreed to create and manage a joint website and have been discussing the benefits of cross-listing. (www.rederiodeimoveis.com.br)

At the neighborhood level, properties for sale are commonly advertised in flyers on the streets and through the grapevine of concierges and doormen on the block. The doormen are one of the main sources for information about properties for sale and they generally receive some payment if they find a buyer, which makes them indirect competitors of the real estate agencies. This is a perfect example of the informal market operating in the formal sector.

Since word of mouth or tips by doormen are transmitted more quickly than printed media, a buyer who has selected a particular neighborhood or block can often beat out potential competitors by getting the inside scoop before the apartment is officially listed for sale.

Among sellers, about 75 percent list with a **real estate agency** or **agent**. It is considered risky for the seller to list directly in print or online as advertising a personal number can be dangerous. As a consequence, the number to call is generally that of the real estate agency or broker with whom the seller has registered. The listings are supposedly all exclusives. In theory, each seller should have an exclusive contract linking the property for sale with a single real estate agency or agent. However, in practice it does not always work that way. Owners tend to give “authorization to sell” to various agencies at the same time. The Regional Council of Real Estate Agents is opposed to this practice, but there is little it can do to prevent it.

Individual real estate brokers (“*corretores de imoveis*”) that are not connected to any agency have the same professional certification as agency brokers, but they conduct transactions on a freelance basis. The fee is supposed to be the same—five percent of the purchase price, but the independent agents accept slightly less because if they were working for an agency, they would pay the agency a fee of 0.8 percent to one percent of the sale price.

In the city of Rio, territorial control has been in the hands of armed narco-traffickers or of self-appointed militias. In an attempt to re-assert control, the state intends to make the favelas as safe and well protected by police presence as any other neighborhood in the urban area. The state has taken a position that it will no longer accept the fact that armed gangs control these areas and control the police as well.

In either case, the freelance agent or the real estate agency takes care of the paperwork and the legal aspects of the property transfer.

How Prices are Determined

Real estate appraisers (*avaliadores*) generally work with the agencies and will come to the seller's house and give an appraisal of the value of the property. It is often the case that friends know friends in the real estate business and they will give their evaluation as well.

As elsewhere, properties are valued according to market demand. Location, size, condition and age of the property are some of the key factors that determine demand, with location foremost. The purchase price is negotiated by the real estate agent and then authorized by the seller. There is a lot of leeway for negotiation. Inspections are not routinely conducted and are not required by law. Homeowners insurance is not mandatory and it is not common practice.

The Housing Finance System in Brazil

From 1964 through 1986, Brazil had a highly developed housing finance system, The National Housing Bank (BNH.) It made moderate and low income housing available using pension funds. When it was closed, its banking functions were assumed by the Caixa Economica Federal and its housing finance for moderate and low income was dropped. Since then, the main beneficiaries of housing finance have been public functionaries and civil servants. They do not need to make any down payment for housing loans, they get a discounted interest rate and they have their monthly payments deducted directly from their salaries.

Home loans for non-government workers are only available for employees in the formal sector (who have signed work cards.) The minimum down payment is typically 20 percent. If financing is approved, the balance of the debt can be paid directly in monthly installments or can be automatically deducted from the worker's retirement fund—the Fundo de Garantia de Tempo do Serviço (FGTS.)

In either public or private housing loans, the monthly payments cannot exceed 30 percent of the family income (as defined by the earnings of up to three family members.) This means that if family income declines, the monthly payments will decline and the balance will be added on to the end of the loan repayment period. The loans are generally for 15 or 20 years.

Payment and Financing

Traditionally, most properties were paid “*a vista*,” meaning the full sales price, at the time of purchase, in cash. Credit was difficult to obtain even for the middle and upper class and non-existent for the lower class. Brazil had—and still has—the highest interest rates in the world. In the past, interest rates were close to 25 percent, plus adjustments for inflation. Now the official interest rate is about 8.75 percent plus inflation correction—still one of the highest in the world. Buyers who borrowed money at these rates often ended up owing the bank more than the property was worth.

It is common practice in Rio for apartments in new buildings and developments to be sold before ground-breaking begins on the construction site. This is especially true in the Barra de Tijuca, which was undeveloped beachfront only a few decades ago and is now filled with modern high rise buildings for the upper and upper middle class. The buyer purchases the property on the basis of a floor plan. An *entrada* (down payment) usually ten percent is paid up front and the monthly payments (*prestacoes*) begin immediately. In most cases, the builders of the new complexes are associated with a bank and they facilitate the loan process through their bank.

Recently Brazil has begun to expand access to credit and to develop a home mortgage system through the *Caixa Economica Federal*. A new program called *Minha Casa, Minha Vida* (My House, My Life) was created to serve low and moderate income families, but is not accessible to the majority of favela residents since the loans can only be for formal sector housing (with land title) and require proof of a fixed family income. (See Appendix 2 for more detail.)

Registration of Sale

All properties and all property transactions (“*compras e vendas*”—buying and selling) must be registered in **Cartórios de Registro de Imóveis** (Real Estate Registries.) There are 11 of them in Rio, all but one of them located in the center city of Rio. Each one is responsible for specific administrative districts within the city. A seller must prove that he or she has title and that the property is legally owned and registered in his or her name at the *Cartório de Registro de Imóveis* for the district in which the property is located. No favela properties are dealt with in these registries, since by definition, favelas are considered irregular dwellings given that they were built without a construction permit, do not conform to building code norms and occupy the land illegally.

In the formal sector, a number of documents are needed to buy or sell a piece of real estate: a *Carteira de Identificação or Identidade* (ID card); a *CPF* – *Certidão de Pessoa Física* (registration card for individuals as opposed to corporate entities); and—if any financing is involved—a *Contra-Cheque* (cashed salary check) which proves how much you earn. This is used to ensure that your loan payments will not exceed one third of your family income.

Enforcement

For homes bought with public financing, if the buyer is more than three months behind in payment of monthly installments, a grace period of six months is given for catching up by paying more each month. If that proves impossible, the buyer can resume regular payments and add the defaulted months to the end of the loan period. For those who default beyond the three months, their home is sold at public auction. This is an added disincentive for low income households to borrow money for home purchase. Even if they might qualify at one point, they are not guaranteed that their family income will remain sufficient for repayments, so they prefer not to put their home in jeopardy.

III. Real Estate in the Informal City – Favelas

Land Ownership

To understand the process of buying and selling houses in favelas, the key point to bear in mind is that the **favela residents do not legally own the land upon which they have built their homes**, except in a few cases. For example, in the first half of the 20th century, a parcel of land or a small farm (*sítio*) may have been purchased from a large landowner, granted to people who worked there by a Baron or even given to a small group of residents by the land owner.¹¹

Later, from the 1980s to 2000, a few public policies attempted to transfer land ownership to favela residents, but these initiatives were sporadic and small in scale and did not have a lasting impact. Thus it is safe to say that **favela real estate transactions do not imply the purchase of land, but only of the house and any other buildings or improvements on that site.**

Even in settlements that have been established on the same site for 60 years and where 150,000 people may live, the vast majority of residents do not have land title and—in most cases—do not have any housing title either. The people with legal title are generally those who have a bill of sale from their own or their parents’ purchase of the house from a previous owner. But most have either an “informal title” which may be a handwritten paper from the community association attesting to their residence, or no title at all.

¹¹ There were three such parcels in the favela of Catacumba, which were purchased or bequeathed in the 1920s and 30’s, well before the post World War II cityward migrants began squatting there. These plots were used to raise chickens, goats, and pigs or to grow vegetables, and the owners shared their produce with one another. The owners had legal title. But when the favela was removed in 1970 and all the families put into distant public housing, the real owners were treated no differently from the squatters. (See Perlman, *Favela*, Chapter Three.)

Most of the land on which favelas are located is owned by the state (federal, state or municipal government); the armed forces (army, navy, or marines); or the church. Privately owned lands, whether individual or corporate, are less likely to have favelas on them because attempts at encroachment were spotted immediately and evicted before a community was established. In some cases, such as the Tuffy Factory in Nova Brasilia, an enterprise ceded part of its land to squatters (but not with ownership rights) in return for an agreement to protect the other part from settlement. This arrangement has worked since the 1950s.

There are favelas in which land ownership of a particular parcel is contested among the descendants of private owners who claim to have historic deeds. Under existing land use laws, these claims have to be adjudicated parcel by parcel and lot by lot, so no overall resolution of land tenure for the entire community is possible. The city office of the Attorney General is in charge of these cases, and has an interminable backlog of pending cases. There is no end in sight until a new system is put into place. So far, that has not happened even with the ambitious squatter upgrading program, Favela-Bairro.

The only place in Rio that low income settlements on privately-owned lands are commonplace is in the West Zone, and that happened in the past two decades. Large landholdings in that region, mostly for grazing or non-intensive agriculture do not have well-guarded perimeters, making it fairly easy to penetrate and occupy the property without detection. Favelas and *loteamentos clandestinos* (irregular or clandestine subdivisions) have been growing at the fastest rate of any informal or formal settlements in Rio, starting in 1990 and continuing through 2007.



Despite many half-hearted and aborted attempts to regularize the issue of land title and land ownership in the favelas, the issue remains unresolved. Its state of legal limbo may explain some of the contradictions uncovered by this research.

How Buyers and Sellers Connect

How Buyers and Sellers Connect

Houses for sale in favelas do not appear in the classified section of newspapers or on the internet. They are mostly found by word of mouth—“boca a boca”—and through the **Residents’ Associations**, to which the city has designated responsibility for all internal transactions. Most Residents’ Associations have a wall or a tack board where community members with homes for sale can post their announcements.

When asked, Marlene, a resident of Rocinha, the largest, best located and most expensive favela in Rio said if she wanted to sell her home, she would advertise it:

...by putting up printed flyers in the street, on walls, light posts, etc. There is also the Residents’ Association where you can lists sales and an “agenciuzinha” (little agency) where you can post notice of what you want to sell. . But using a “corretor” (real estate agent”) isn’t very common because they charge the buyer a percentage of the sale. If you put your own name and number on the flyer, they can contact you directly.¹²

¹² Marlene works as a maid in nearby Gavea and owns a home in Rocinha whose population is estimated at 150,000. It is located in the upscale South Zone, between two of the city’s wealthiest neighborhoods—Gavea/ Leblon/Lagoa and Sao Conrado/Barra de Tijuca. It is highly developed (as seen in the photos in the text), has spectacular views, is just a kilometer from the beach, and serves a huge job market in the vicinity. Whereas some favela residents travel for 4-5 hours a day to get to work in this area, if you live in Rocinha you can walk or take a 10-minute ride on a kombi (a mini-van) that passes every few minutes and costs just a few cents.

Word of mouth works quite effectively since even in the larger favelas, everyone knows everyone else and keeps abreast of what is going on, where and when. If someone needs or wants to sell a house or a floor of their house, or a backyard cottage behind their house, neighbors, friends and relatives know first, then the word spreads and soon the entire community is aware. In addition, the houses will have large “FOR SALE” signs in front of them or in the front window.

The **Residents’ Associations** are the internal arm of local authority, the liaison between the community and the government and the voice of the favela community in public matters. Starting in the 1960s, each favela in Rio was required by city government to create a Residents’ Association which could speak for—and negotiate on behalf of—the community at large. They have “fe publico,” meaning they are authorized to act with some degree of public authority within their own territories.

The headquarters buildings of these associations are usually located near the main entrance to the favela or at a central point of easy access. Up until 1985, the president and officers of the Associations were elected by the community and accountable to the community. From that point on, the drug traffic began to enter the favelas that were “no-man’s-lands,” not protected by the police and full of narrow alleyways making them convenient places to hide.

As the sale of drugs and arms increased, territorial control became very lucrative and the drug gangs began to take over the Residents’ Associations by driving out or killing the elected presidents.¹³ Today, the majority of favelas are under the control of the drug traffic. At the end of 2009, various favelas in the area south of the river were “pacified” by the State Government and the traffickers were expelled. But it is still to be seen whether this reality will hold or what will be its impact on the real estate market. The money at stake is enough to buy off the police, to trump any legitimate job offer for the youth and to buy much more sophisticated weapons than those of the city and state police.¹⁴

Who are the Sellers?

There are a wide variety of reasons for people to sell favela properties. These include: fleeing the drug violence; moving in with relatives to save money; needing to move due to marriage or the number of children; or moving out to a more peripheral part of the city where they can exit favela life and live on the asfalto. Usually the sale reflects a dramatic change in life circumstances. For people in the favelas, their house is their only asset and, unlike apartments in the formal city, it can be expanded to accommodate family growth or generate rental income. Surprisingly, half of the 750 people the author interviewed in 1969 were still living in the same place in 2001. The major reason for leaving in the past decade has been to escape the violence, particularly to protect the children and to keep teenagers out of harm’s way. Sometimes, it is a mixture of desire for safety plus the need for more space or a spouse that comes from another area. If both husband and wife were born and raised in the same community, it is rare that they will sell unless forced to do so.

There is no safety net in the favelas. Any crisis such as an accident, illness or the death of the main breadwinner can change the survival strategy. A disaster for one family that forces a move to a smaller, cheaper or more remote residence may be a boon for another family, opening up new opportunities.

Absence of Real Estate Agencies in Favelas. Only in a **small number** of the best located and most desirable favelas, such as Vidigal and Rochinha, are there locally-run real estate agencies within the community. The people who work there are not certified real estate agents (*coretores* de imoveis) and the homes they are selling are not on legally-owned

13 There are three drug gangs (or factions) in Rio. The first gang, the Comando Vermelho - CV (Red Command) was forged from the mixture of political prisoners and common criminals in the Ilha Grande penitentiary during the dictatorship. The leftist intellectuals taught the criminals how to think strategically and explained the historic roots of their oppression, while the criminals taught the radicals how to fight and how to finance their struggle. The other two factions in Rio are the Terceiro Comando—TC (Third Command) and the Amigos de Amigos—ADA (Friends of Friends).

14 See Chapter 7 in Perlman, Favela. In the past several years militias (comprised of retired or off-duty policemen and firemen) have taken over some of the favelas and rid them of drug dealers. They earn money by “protection” fees to the local residents.

property. These agencies mainly serve people from the outside—outside the community, outside the lower class, outside Rio or outside the country. The buyers are attracted by the low cost, the good location, and the spectacular views in town. They are people willing to assume a degree of risk (both of violence and of losing their investment if the government expropriates the land) for the social and artistic freedoms offered in the favelas.

Whereas local residents—and their relatives and friends—use the grapevine or the Residents' Associations to learn about what is available, outsiders go to the real estate office. This gives the impression that they are not dealing with the drug traffic, but that is a mistake. The sales arranged by the handful of real estate agencies in the favelas are all subject to the signature of the president of the Residents' Association, and the majority of these presidents are put in place by the drug traffickers.

Who are the Buyers?

The desirability of locating in any given favela varies by location, security and other factors and the potential buyers vary accordingly. In most cases, the buyers are people already living in the community, people related to a person from that community or people who know families in the community. There is low, but constant turnover and need for a separate house or a larger house or a smaller house, or one with rental potential. Some long-time residents of a favela acquire several houses that they rent out to pay their expenses.

In the newer favelas, particularly in the West Zone, almost all sales are to newcomers from the Northeast, particularly the state of Paraíba, one of the poorest regions in Brazil. A daily bus arrives from the capital of Paraíba to the City of God, in Jacarepagua. People need an inexpensive place to live and a place to find work when they arrive. In earlier times, they found a small settlement where they knew someone and built their shack. Today they might be enticed into a clandestine subdivision on the promise of easy ownership, or might start by renting a small house or part of a house in a well-located favela until they can find work and save enough to purchase a place in a more distant favela. Again, they would locate the property through word of mouth.

In the older and best-located favelas of the South Zone, housing is in high demand and there are relatively few dwellings for sale at any given time. In the favelas of Babilonia, Chapeu Mangueira and Santa Marta, which were the first to benefit from the Peace-keeping Police Units (UPPs,) the demand is even greater and there is a movement to prohibit outsiders from buying.

Directors of the Residents' Association in the Morro de Babilonia report that many outsiders have been trying to determine who owns what property and which ones are for sale. In response, the Association was considering a ban on sales to anyone not from the community.

Babilonia is the favela of Benedita da Silva, the black woman who became a national Minister of Social Action, and it has benefited from many government programs. As of June 2009, it was one of the first of four favelas to benefit from the state's UPP program of "pacification" in which the drug traffic is expelled. In addition to having an internal barracks for the full-time peace-keeping police and keeping drug dealers out of the area, the government has set up job training and computer courses in temporary structures in the central plaza. The focus is on providing alternative livelihoods for youth who would otherwise earn their living from the drug traffic.

It is still too early to say whether the "liberated" areas will remain free of the drug traffic or what will be the impact on the real estate market if the government succeeds in creating safe favela communities through the UPPs.

However, it is already clear that when the drug dealers are gone and violence drops, life conditions improve and home values tend to increase. People in the UPP favelas including Babilonia are already concerned about gentrification. Some express fear that when their own families grow and need more space, the prices will be too high and they will have to move to cheaper locations. Others fear that their friends and neighbors will sell to outsiders for seemingly large amounts, only to find that they still cannot afford to buy a place closer to their work and are then unable to afford to return to their original community.

This form of gentrification is sometimes referred to in Brazilian literature as “expulsao branco” or *white expulsion*, in contrast to the forced evictions during the military dictatorship. In Babylonia, too, the Residents’ Association leadership and members are considering a ban on selling houses to anyone from outside the favela.

In some of the best located favelas such as Rocinha and Vidigal, there has already been speculation. Some absentee landlords own as many as five houses in one community and some local residents have bought the homes near them when they could. But by far the most dramatic example of land acquisition in a favela was in 2009 when a multi-millionaire German businessman bought up more than 50 favela properties in Vidigal. The story is revealing about what could occur as the prime lands in Rio’s favelas become sufficiently secure to attract private investment. The case is described in Appendix 4.

How Prices are Determined

As in the formal city prices are determined by supply and demand. Many of the same factors affect prices within the favelas and in the formal city. But there are no real estate appraisers. Instead, there is simply widespread consensus among local residents about the value of any given property at any given time. The final price is negotiated directly between seller and buyer within what is considered “fair market value.”

Property values within the favelas are determined by a combination of such factors as:

- **Location of the favela—proximity:** Proximity of the favela to upscale neighborhoods where service jobs are concentrated means higher prices, some higher than in certain areas of the formal city.
- **Location of the favela—personal safety:** Relative to violence and personal safety, the safer the favela, the higher the price; and the safer areas *within* the same favela, the higher the price.
- **Location of the favela—risk of removal:** Security of place is a determinant of both the price in a given favela as a whole (the more secure, the higher the price) and the location of the specific home within the favela (the more secure, the higher the price). The favelas which were upgraded by the Favela-Bairro Program or which have been the beneficiaries of other government investments (including the new UPPs) have the lowest risk of removal.
- **Proximity of the dwelling** within the favela relative to the main street adds to desirability. The higher up the hill and the more difficult the access, the worse the conditions and the lower the price.
- **Risk of eviction/expulsion.** Some of the houses within the favelas are more secure and therefore more expensive because the owners have had a form of title from a previous government program (such as former Governor Brizola’s Cada Familia Um Lote—each family a land parcel); or because they have been paying property taxes;¹⁵ or because they are *not* in an area considered to be an environmental risk.
- **Size of house and of property:** Number of rooms –how many bedrooms and how much space is available on the *laje* (the roof) for a washing and recreation area or for building another floor affect the value. Size of lot is also a factor.
- **Building material and quality of the home construction:** Factors ranging from crumbling stucco (waddle and daub) and/or wooden huts to perfectly finished brick houses (plastered over and painted) three to five stories high with tiled floors and walls in the kitchen and bathroom; air conditioners; and modern windows in aluminum casing affect the value.
- **Urgency of the sale:** If there is a strong need for the family to sell, for reasons ranging from death threats by local traffickers to the imminent arrival of a baby or the death of the breadwinner, the house may be sold for less than market value.
- **Length of time the property has been on the market:** The longer the property goes unsold, the lower the asking price becomes, until the point when the investment cannot be recovered and the seller removes the property from the market.
- **Amenities:** The better the view, the fresher the air, the more sunlight, and the larger the garden, the higher the price will be.

15 The property tax would be a plus in terms of legitimacy but; but a negative in terms of added expense. (The property tax, called IPTU is not very high by US standards. Those I spoke to in favelas who do pay, say it is only about R\$ 60 /year – approximately US\$ 30.00 a year.)

Payment and Financing

Purchase Prices: In the dozen favelas studied for this report, the prices ranged from a low of R\$15,000 reais (about US\$7,500) in the North Zone favelas to a high of R\$150,000 (US\$ 75,000) in the South Zone favelas of Vidigal and Rocinha, but these are going up.

For the same price it is possible to buy a small house or apartment in some neighborhoods in the formal city—*o asfalto*. It is a question of trade-offs. Favelas may be stigmatized and dangerous, but they may also offer better access to job opportunities, proximity to extended family and friends, more space for the same cost, greater acceptance of non-conventional behavior, more freedom to expand the house (no zoning or building codes and regulations) and other benefits.

The author's four decades of inter-generational research showed that not all families who have the economic conditions to move out of favelas do so.¹⁶

In the words of Marlene from Rocinha:

You almost always pay “a vista”, with money in hand. Sometimes, if you are “muito amigo” (very close friends) with the sellers they will accept payment in a few installments, but usually it all must be paid in full within the first month after the sale.

It's difficult for any of us to get a loan,. Usually people will work for many, many years so that they have the cash to buy. For loans you need all kinds of documents such as proof of how much you earn, how much your house is worth, title of your house and land, etc. We do not have these, so normally people here do not even try to get loans.

There are two aspects to the lack of loan financing for favela residents, or anyone living in the informal sector. First, most favela residents are not eligible for loan financing, even in the new programs, like Minha Casa, Minha Vida, that are targeting poor and underserved populations. They are generally disqualified because they cannot prove that they have a regular source of income from salaried jobs or if they have a formal job, they may earn at the lowest end of the spectrum and are not competitive for the loans.

Second, even if they have a formal job, they may not want to move out of their community to a more distant neighborhood, which would be the only place they could afford to buy in the formal sector.

There is **no housing finance for favela properties** as they are not part of the legal housing system. In the case of predatory loan financing described below, the family was willing to move out of the favela into a formal sector subdivision outside the Rio municipality, which is why they believed they could qualify for the housing loan.

The Real Estate Transaction

When you want to sell your house and find a buyer, you go to the Residents' Association to take care of it. The Association will do the research to be sure all of the documents are in order. You have to show them something that proves you are the rightful owner, which may be a problem if your parents or grandparents built the house and you do not have any documents. (Marlene, Rocinha)

¹⁶ A multi-variate analysis of “favela exit” and of the correlates of moving into a formal neighborhood appear in Perlman, Favela, Chapter 9. The cost comparisons between property in the informal and formal sectors are well documented in the work of Pedro Abramo, who has long made the point that in some favelas property is more expensive than in some legitimate neighborhoods See, most recently, Pedro Abramo (ed.) , *Favela e Mercado Informal*, Colecao Habitare, Porto Alegre, 2009.

There are two separate and unequal systems for buying and selling property. The one in the formal city has been described in the first part of this report. The one in favelas is run entirely by the Residents' Associations (RAs) which have authority vested in them by city government to manage matters including real estate transactions within the communities. The process is similar in all favelas.

The Role of the Residents' Association

It is the responsibility of the RA President and officers to keep track of who "owns" or at least who "occupies" what property in their community. Until recently, the RA Presidents were elected and they had generally been born and raised in the community so they knew everyone and knew which family had what property.

Since the 1960s when the RAs were established, property sales have involved the seller and buyer signing a document (co-signed by two witnesses,) which is then signed, sealed and dated by the RA President, making it "official" in the unofficial world of the favela. The grey area is that the sale and the RA signature might not stand up in a court of law in the formal sector, since the entire transaction is based on the selling a property—usually a dwelling—in a specific location on a specific piece of land that is classified under the law as illegally occupied.

An example of the standard (boilerplate) sale document used in the favelas is shown on the following page. The document is printed on the RA stationary with its logo on the upper left hand corner and letterhead across the top. In translation it reads as follows:

The President of the Association signs and stamps the document with a rubber seal. In most cases, the sale is complete once it is thus signed and sealed.

The Residents' Association charges the buyer a fee of **five percent** of the purchase price for non-members and **three percent for members**. Membership is very inexpensive, but less than half of the residents are members and those who do join rarely pay their token monthly dues.

The witnesses are generally neighbors who can verify that the seller is the resident and the property lines and house description are correct.

The forms attached to the signed sale document describe the property and generally include a detailed description of the location; specifications of the property size and boundaries, the material of construction and condition of the house; the

Defrauding the poor. Scams have already developed around the new low-income housing finance program, *Minha Casa, Minha Vida*. One woman interviewed was about to sell her favela house for R\$25,000 and to buy one in a legal subdivision for R\$35,000. She went to look at the house for sale. She could not pay it up front until her other house sold and even then she would need an additional R\$10,000.

She was told she could get a loan to make up the difference in purchase price, which seemed entirely reasonable as the property she was buying was legally registered. She was directed to the second floor of a nearby shopping mall to an apparent real estate loan agency called Casabella (Beautiful House.) There she was greeted politely and given a glossy folder with a set of papers inside. The documents describing the loan had the logos of the Caixa Economica Federal (Brazil's National Bank) and the Itau Bank, one of the richest in the country.

She was asked for a cash deposit of R\$1,050 to begin the loan process and told where to sign the papers. She believed she was getting a bridge loan until she sold her house. Her understanding was that she could pay back R\$25,000 as soon as she got the money from her house sale, and then her loan would revert to the R\$10,000 she needed.

When she got home and looked at the small print of the papers she had signed, she discovered that she had agreed to borrow R\$35,000 and pay it back over six years (or 192 months) at 12 percent interest. When she did the figures, she discovered that she had agreed to a home loan that would cost her of R\$50,000 considerably more than the value of the house. She tried to get out of the agreement, but it had legal standing because it was signed by both parties and there was a "no-escape clause." The lawyer she consulted in her favela told her that the selling agency pays high commissions for each loan made and so the person who had talked her into this was making a profit from her naïveté.

RESIDENTS ASSOCIATION OF the VILA of VIDIGAL

Registration number of the RA, telephone number

Address

Considered as a public entity by state law # 2348 — 10/10/1994

I, (name) a Brazilian, bearer of the identity card (number) and the CPF, (number), resident of (address) in Vidigal, Rio de Janeiro RJ, herein referred to simply as “the seller”, have lived in this house for (# of years) declare that I am hereby transferring, with all improvements, the property located at the address (street name and number) VIDIGAL-Rio de Janeiro- RJ to Mr(s). (Name), a Brazilian, bearer of the identity card (#) and CFP (#), from here on known as the buyer/owner. The price of this sale is (sum in reais) being effective according to the agreement of both parties.

The property consisting of (description attached) is transferred starting on this date upon the registration of the property in the category of an improvement and registered in this Association. For legal purposes, I have no objection to the sale of this property.

As proof that this is true, there are witnesses:

1st Witness: name and ID #

2nd Witness: name and ID #

We declare having verified the physical space cited above with the commission of buildings of this Residents Association, which assumes all responsibility with the signing of this transfer registration.

Rio de Janeiro, 21 of May of 2009

(seller)

(buyer-new owner)

(witness)

(witness)

Jose Valdir Correia Cavalcante
President of the Residents Association of the Vila of Vidigal

size of the house, the number of rooms in total, and of bedrooms and bathrooms specifically and the existence of any other improvements on the land.

Ownership is transferred when the money is exchanged.

But, it depends. In some favelas, it is customary to take the signed document to a local “Cartorio (Registry) for Titles and Documents” where the President’s signature is on file and can be confirmed. There is a small fee (about \$20) for this signature verification. In such cases, the sale is not complete without this notary function.

It is increasingly common for the Association Presidents to be appointed by the drug lord of the dominant faction (gang) in that community. The former Presidents were long-time community members, well-known, trusted and elected. The new ones may be from outside the favela. And in more than one case, the Residents Association was burned down and all records lost when the drug traffic took control from the elected President.

Ownership is a relative thing.

In the favelas, ownership is not a static state but a continuum. Even today with the four to five-story brick and concrete structures in the favelas, the majority of homes are self-built, works-in-progress and are owner-occupied. People are constantly investing in their homes, which they pass down through the generations.

Favela dwellings typically started out as small shacks (*barracos*), made of wattle and daub or wood, cardboard and other kinds of scrap materials. Over time the families expanded and improved these dwellings. It is an incremental process that continues across the generations as the families grow, children are married and have children of their own, and perhaps rental units are added. Homes expand upwards as new stories are added and outwards as new rooms are attached in the back or on the sides. *Bater um lage*, adding another story to one's home, is an almost constant process. The house is the main family asset (the only asset in most cases) so the favela residents are always improving it.¹⁷

In an earlier program called “*Cada Familia Um Lote*” (Every Family a Piece of Land,) Governor Leonel Brizola gave out “title papers” in some of the favelas and, if the household has continuously paid property taxes, this can be considered a legal title. But the program did not last very long nor did it have an extensive reach, so the number of such titled units is very small.

Even in favelas that benefited from the Favela-Bairro program, land regularization proved impossible and no titles could be granted. The land ownership issue proved too complicated to resolve in the time period it took to install steps, paved roads, water and sanitation systems, overpasses or funiculars.

The city government was able to set up local offices or service centers called *Pousos* in some of the several areas where Favela-Bairro programs had operated. These are now part of Favela-Bairro Phase III for all communities. The Pouso has a city-paid staff of architects, engineers and social workers. Their main function is to verify the soundness of the dwellings. For those homes deemed safe or brought up to safety standards, the government gives the family a permit of occupancy called *Habite-Se*. This is not a title.

The Habite-Se document has the name of the family and the address of the dwelling. It tries to get around the contradiction of lack of land title by providing a form of title to the dwelling. Should environmental risk or the right of eminent domain be used to remove a dwelling or a part of a favela, the government is obliged to provide replacement housing for the family. Ideally this would be inside the same community or as close to the community as possible. This scenario occurred during several of the Favela-Bairro projects when streets were widened to allow access for emergency vehicles or open spaces were created, or homes with no access to fresh air were destroyed in the densest parts of some favelas. These “replacement houses” typically follow the precepts of the “new urbanism”—that is low rise/high density. The pattern is a good one for maximum use of land, with attached two (or three)-story housing in small clusters. They are brightly painted and well-designed, but tend to be smaller than the previous homes.

In addition to these policy-related permutations, there is great variation in terms of documentation. Some people have handwritten notes of sale signed by the seller; others have documents from the Residents' Association; others have some government issued certificate from a previous administration. Almost none of these are documents confer official title that would stand up in a court of law—since the land beneath the dwelling is not owned by the seller.

Registration of Sale

As mentioned above, the Residents' Associations are responsible for authorizing and recognizing internal sales in the favelas. They issue the sale and purchase document—the “*promessa de compra e venda*” (a promise to buy and sell.)

As Zoraide, a lawyer who works in the favela of Borel put it, the associations have *fe publico* (public trust/faith) meaning that they act as the municipally recognized local government within the favela territory. They act as the government's arm within the area and in that capacity have the right to authorize land transactions.

¹⁷ Mariana Cavalcanti goes into excellent ethnographic detail on this point in her dissertation.

Even when the Residents' Association is controlled by a known criminal, put in place by a known drug don, the President is officially responsible for the community. It is his personal **signature that provides legitimacy for all real estate transactions in the community**, a contradiction in terms since the occupation of the favela land is not legitimate. Once the buyer and seller and their respective witnesses have signed the sale papers, the Association President signs and seals it.

Registering Signatures versus Registering Property Transfers

The signatures of the Association Presidents are registered at a *Cartorio de Registro de Titulos e Documentos* (Registry of Titles and Documents) in the district where they are located. If a RA President is replaced (usually due to another faction taking over the community) the new President goes to this same cartorio and registers *his* signature and that becomes the new **required** "official" signature. It is to verify the signature as the authorized one (and prevent opposing claims of purchases and sales) that the buyer and seller take the purchase document to the local cartorio. It is **not** to register the sale itself which is binding within the favela as soon as the RA President has signed it, but is not accepted as a legal sale outside the favela since by the laws of the formal city, property not legally owned cannot be legally sold.

The cartorios which perform this signature-verifying function are concessions. They are private enterprises, but they perform a quasi-public function. It is a lucrative business as fees are collected for each transaction and the owner of the concession retains a percentage of every fee.



All documentation from birth certificates and marriage licenses to identity cards and company registration are registered at the cartorio of the local area. It is at the cartorio that power of attorney is signed over, that apartment rentals are registered and that contracts of any type are signed by the concerned parties. What is interesting is that the signature verification of a favela Association President is just business as usual to the cartorio. It is the formalization of an informal process.

The photograph to the left shows the cartorio on the Praca General Osorio, the one responsible for the area of Ipanema and Leblon and for the favelas of Vidigal and Rochinha used.

The quasi-legalization of an extra-legal property transfer is yet another example of how the boundaries between legitimate and illegitimate fall apart upon closer inspection. It is a kind of perverse formalization of the informal sector, which leaves the urban poor without protection of the law while offering a veneer of legitimacy.

The **Cartorios de Registro de Titulos e Documentos** (Titles and Documents Registries) are not to be confused with the **Cartorios de Registro de Imoveis** (Real Estate Registries) where formal sector real estate transactions are registered. They are two different types of registries serving completely different functions. No favela properties meet the criteria for registration at these Real Estate Registries. They are exclusively for the asfalto.

Enforcement

Since there are no legal titles, one wonders how real estate disputes are resolved in the favelas. In the case that either the seller or buyer has not kept his or her word, there is no recourse to the law. These matters are handled by the Residents' Association or the dispute resolution center (if there is one.) If that fails, things are taken care of by extra-judicial use of force. Physical threat backed up by the power to inflict harm is the ultimate enforcer of the non-binding contract. There is total impunity. No government agency, no police, no juridical process will get involved an internal homicide within a favela.¹⁸

¹⁸ For more detail on this see Chapter 7 of Perlman, FAVELA.

IV. Summary and Conclusions

“All That Is Solid Melts into Air.”¹⁹

The Intersection of Formal and Informal

The blurry line between formal and informal in the world of real estate begins with the fact that the Residents’ Associations—by agreement with city government—handle internal real estate transactions in a perverse cross-over between formal and informal, especially since the late 1980s when independently elected Presidents began being replaced by appointees of the dominant drug gang in each locale.

The practice of signature confirmation of RA Presidents at the Title and Document Registry office confers the trappings of legitimacy on sales, which are not legitimate and not legally binding. The documents would not stand up in a court of law since the seller could not provide legal proof of ownership. So the properties purchased are under a certain risk of expropriation.

What allows the real estate markets to function as if the residents had land title is the low probability of the local government daring to demolish a favela when nearly 40 percent of the city’s electorate lives in informal settlements or neglected housing complexes (*conjuntos*.) This has given the favela residents *de facto* land tenure and taken the issue of title off their priority list. They are more concerned today with earning an income or getting work than with having title papers.

However, the reality is that they are vulnerable and their lifetime investments in their homes (their main asset) are not without risk. Even if the city does not expropriate the land of the favelas, if they continue to abdicate territorial responsibility to the drug gangs and avoid responsibility for protection of life and limb, they are acquiescing in the demise of these communities.

In the formal sector, on the other hand, the city turns a blind eye to the myriad illegal and illicit real estate dealings. Building and zoning codes are not enforced, clandestine constructions not detected and taxes not collected. As a downtown real estate agent put it, “nothing is impossible in Rio real estate.” Every boundary is permeable. For every rule, exceptions can be made. It is a question of money, power and connections. In effect, the poor and disenfranchised are held to unfavorable pseudo-legal arrangements without protection while the elite manipulate and maneuver to their advantage.

*As Luiz, a downtown real estate agent repeatedly stated in response to this author’s persistent efforts at clarification of the terms and conditions, “**Tudo tem como resolver; nada e impossível**” — **Everything has a solution; nothing is impossible**” in Rio real estate. There is a jeitinho (knack, a way around) for everything and everything has its price. Such things as zoning regulations, building codes, land use restrictions etc. are all negotiable.*

“Depende”— *It all depends, he says. I ask, “Depends on what?” He responds “that depends.”*

One might expect that in the formal sector, home and land ownership would be clear-cut. But even on the *asfalto*, there are gradations in degree of ownership and in the relationship of the seller to the property. These include “possession” of the property, which may not imply legal title; “use rights” to the property, which likewise does not necessarily imply title; ownership with debt (such as a mortgage or other loan); and outright ownership with no debts, liens or encumbrances. The old saying, “*possession is nine-tenths of the law*”, is often an applicable rule of thumb. For a real estate transfer in the formal sector, as in the informal sector, the seller needs—above all—to be in possession of the property and to have that confirmed.

This is more fluid than it sounds. Just as property sales take place in the favelas without ownership title, property sales in the formal city sometimes take place without official documentation. For example, a property owner who builds a

¹⁹ This is the title of a book by Marshall Berman (1982). It is a line from Karl Marx’s *Communist Manifesto*.

multi-family dwelling or small apartment building on his own land can sell the apartments, but will often do so informally, which is illegal. To do this legally, the seller would need a building permit, would need to show conformity with the zoning regulations of the area, and would need to register the new structure(s) and pay taxes and fees accordingly. Insofar as these requirements are not met, which is quite often the case, the properties are both illicit and illegal. But where there is demand and code enforcement is lax, real estate transactions are conducted among consenting parties, money is transferred and occupation follows. It is clandestine occupation of a clandestine building hiding in plain sight in the formal city.

Summary of Research Findings

The following is a summary of how real estate markets function in Rio de Janeiro.

- 1) There are active real estate markets functioning in all of Rio's favelas— from the poorest to the richest.
- 2) Buyers and sellers find each other by word of mouth or through postings in the local Residents Association.
- 3) Turnover rates of homeowners are relatively low and families tend to occupy the same housing for several generations.
- 4) Most buyers come from the same favela, marry someone from that favela, or have family or friends in that favela. The next largest group of buyers comes from more distant favelas and have “traded up.”
- 5) Property values in the informal sector are based on the same general criteria that formal sector buyers use—supply and demand determine price.
- 6) The agreed-upon sales price is usually paid up front in cash.
- 7) The Residents' Association serves as the local authority within favelas by agreement with city government and it is responsible for certifying property transfers.
- 8) It is the signature of the President of the Association that legitimates the internal sales document after the buyer, seller and witnesses have signed.
- 9) The signature of the RA Presidents are on file at the “Registry of Titles and Documents” for their locale and (in some cases), the sale is only final when his signature is verified, creating a veneer of formality for an informal sector transaction.
- 10) A handful of favelas in the most desirable locations have informal “real estate agencies” but for the sales they arrange to have validity within the community, they need to be signed by the RA President.
- 11) Real estate transfers in the formal city (outside the favelas) are done through official “Registries of Assets and Property” and require legal proof of ownership—thereby excluding all favela properties.
- 12) Building codes, building permits, occupancy standards, health standards and zoning regulations do not apply inside favelas.
- 13) In a few instances, outsiders have begun buying up properties in the best located favelas or in those with the protection of the new peacekeeping police, but the residents and the city government are opposed to what they consider land speculation.
- 14) The boundaries between formal and informal real estate practices are permeable. Including the excluded urbanites depends on money, power, and political will—or lack thereof.

In order to further clarify the nuances of this complicated question the author has written up a series of answers to frequently-asked questions. These are spelled out in Appendix 4.

Contending with Complexity

In order to provide some nuanced understanding and additional clarity to the above summary I have compiled the most frequently-asked questions about how real estate works in the favelas of Rio as follows:

Given that the favela homeowners do not have a legal title to their land, what is their liability in terms of being expelled?

They have a form of “use right” subject to the government or private owner deciding to assert their ownership rights. Expropriation remains a possibility until land is regularized.

What does an owner in the favelas sell?

The owner sells the house and all physical improvements on the land along with a non-written use right to the land beneath and around the house (according to the property line which is well defined.) The contract of sale used by the Residents’ Association is not explicit on this point. But it is understood that if the land is expropriated by the government, the buyer has right to receive a substitute dwelling. In this case the Residents’ Association will determine who owns what inside the favela.

If a person built a house on squatted land does he own the building and would he be able to dismantle it and take it (along with other improvements) to another location in the case of eviction?

Theoretically yes, although in the past, as with the removal of Catacumba, the builder/owner-occupier family could only bring with them what they could carry to the curb and what would fit—with them and all the other 2000 families—into the garbage trucks provided to relocated them and their belongings. They were not permitted back on the favela site to take down their homes and salvage the materials for use or sale. All of their homes were bulldozed down immediately and a high barbed wire fence erected to seal off the area.

Is the Habite-se document a form of occupancy permit? Does it mean anything about ownership of the land or the dwelling?

The ownership situation is unchanged—they own the building but not the land—same as what all favelas have. But the Habit-se affirms that the building is safe and solid in construction and that the inhabitants have the right to be there. It adds a document from city government which confers a sense of greater security—although in the past, these types of documents have been ignored by subsequent city administrations, especially if they are from a different political party

Since the homeowner owns the dwelling, can he or she sell the improvements?

Yes, theoretically, but this is only relevant for the newest favelas since the consolidated favelas are comprised of multi-story dwellings of brick and reinforced concrete. If they are newer migrants in make-shift shacks they may be living in a clandestine subdivision on private land in which case they would not have the right to take anything if expelled by the landowner. It would not make any difference if they had built their home themselves or bought it from another builder.

Are property sales in the favela legally binding?

They are binding inside favela as long as the favela stays where it is and no public action destroys them—that is no planning decision is made to widen a road, or put in a cable car (as done recently in several of the steepest favelas). They will be the guide to ownership if the land is regularized and will determine the right to a replacement dwelling if the current one is taken over by eminent domain.

What about favelas where the government has invested in upgrading?

Once the city government has invested in infrastructure upgrading and urban services as it has done in most of the South Zone and many North Zone favelas, the chances of removal are greatly reduced. Yet there is always a risk where land values are high such as the prime real estate in the south zone.

Land Ownership and The Right to the City

The workings of the real estate market in the favelas of Rio reflect a larger reality of a fundamental lack of equal protection under the rule of law. This is at the heart of the debates about “the right to the city.” What is at stake is “who is the city for?”

Up until the late 19th and early 20th century in Brazil the answer was clear—the city was the unquestioned citadel of the elite. Those who lived in the city were the land barons whose accumulated wealth was then invested in industry. The hierarchy of privilege had roots in the monarchy and was reinforced by slavery which only ended in 1888. The concept of “*a city for all*” was unthinkable.

When the first low income migrants arrived from the countryside, the reaction was to expel and exclude them and to treat them as dangerous, criminal, immoral and unfit.²⁰ This legacy has continued to the present although in modified form. Since the end of the 20-year military dictatorship in 1985, there has been an ongoing struggle for inclusion.

The process of drafting the new 1988 constitution included a series of public meetings that ended up in the creation of the “City Statute,” which mandated the creation of local plans in cities over a certain population size and mandated broad public participation in the formulation of these local plans.

In other places, the idea of a “right to the city” may seem abstract or ideological, but in Brazil, it was the basis of a long and widely debated process. The idea was to extend the concept of individual rights to the concept of collective rights to space and place in the cities. The implications of this were not only the right to move freely within the urban territory, but also the right to a voice in the decision-making process concerning land use, service delivery and budget allocations. The hope was that widespread participation would lead to a more equitable and just city. This dream has yet to be realized.²¹

In understanding the way the haves and have-nots negotiate the space of the city and the urban territory, we are addressing the central issue the world will be facing over the coming decades. Virtually all the population growth from now until 2050 is expected to be urban growth in the cities of the developing world and to be concentrated in squatter settlements. Our collective ability to understand and deal with these marginalized populations will determine our ability to create sustainable, safe and productive cities.

20 For more on this see Perlman, *The Myth of Marginality*.

21 Perhaps with the Mayor and Governor of Rio city and Rio state belonging to the same political party and sharing an alliance with the national government for the first time since democracy was reinstated, this can be seriously addressed.

Appendix 1: Favela-Bairro

Favela-Bairro, one of the most ambitious squatter upgrading programs in the world, was initiated in 1994. It is supported by a partnership among the InterAmerican Development Bank, the Brazilian national Caixa Economica and the Rio municipality. Currently it is in Phase Three each phase lasting for five years. Favela-Bairro has noticeably improved living conditions in the favelas which benefited from the program, but has reached only a small percent of Rio's favelas and began with the smaller and least dangerous ones. There are now parallel programs for the largest favelas.

Yet, the program could not be said to have succeeded in its goal of integrating the favelas into their surrounding neighborhoods visually, politically or socio-economically. Favelas remain highly stigmatized territories of exclusion.

My longitudinal research on favelas revealed that discrimination against favela residents is greater than discrimination against dark-skinned people, women, migrants from rural areas or any other

Despite the construction of paved plazas at the entrance to many of the participating favelas, no one is in doubt as to where the formal city (called the *asfalto* or paved city) ends and the informal city (called the *morro* or hillside) begins.

Violence perpetuates stigma and reduces housing values in favelas. One of the factors that has deepened this stigma is the high level of lethal violence related to drug and arms traffic in favelas. One in every five families I interviewed had lost a family member to homicide, often through stray bullets in the turf wars among rival gangs or in the shoot-outs of the police raids.

Appendix 2: Minha Casa, Minha Vida

“Minha Casa, Minha Vida” (My Home, My Life) is a new low-moderate income housing finance system. It serves families earning 1-5 minimum wages per month or about \$200 to \$1000/month.¹ It is illegal for employers to pay less than the minimum wage, so those who earn less are not officially employed—although they may be working for a private company under the table or working in odd jobs on a sporadic basis. They not eligible for any housing finance. Those earning more than 5 minimum wages are eligible for other housing finance programs.

The family has to show proof of fixed income, which disqualifies most low-income families. The maximum loan is 30,000 reais (US \$15,000) and the land or house being purchased can cost up to 50,000 reais (US \$25,000 dollars). The property must be formally registered with legal land title and must show proof of paying property taxes –IPTU— if it is a house or territorial taxes if it is vacant land. In the latter case, the loan can also go towards purchasing building materials.

The vast majority of favela residents cannot qualify for this program because:

1) they do not have proof of steady income or employment; 2) they earn too little or at the low end of the range (1-3 minimum wages) which makes them less desirable borrowers; 3) they cannot afford to buy a house in the formal city, one that is legally registered outside a favela or irregular subdivision; and 4) if they could afford it, the property would likely be so far from work that they could not manage the time or money for the commute.

¹ The minimum wage was raised in February 2009 to 465 reais (\$200.95) a month. That represented a 46% rise since 2003 when President Luiz Inacio Lula da Silva came to power. Program eligibility is determined in ranges of minimum salaries rather than ranges of reais, the local currency, to adjust for inflation and cost of living. The minimum salary is periodically adjusted. This form of monetary correction derives from the experience of triple-digit inflation in Brazil which rendered absolute earning ranges meaningless. If you ask people about their individual or household income, they will answer you in terms of how many minimum wages. Many people in favelas earn one half minimum wage a month or less; a small fraction may earn five or even six minimum wages.

The program intends to finance one million “affordable” houses to begin reducing the national housing deficit which is calculated at 7.2 million units.

However, according to the people interviewed about the program, Minha Casa, Minha Vida is about another matter entirely. It is not really a line of finance for low income home buyers wanting to enter the legal housing sector, but rather a subsidy for the construction and sale of new houses that can be bought by anyone who is currently living in Rio. It does not pertain to already existing dwellings or to home improvement. It was a counter-cyclical plan to revitalize the construction industry by the government’s buying up land, giving it to developers, and then buying it back to sell to moderate and low income families. Some view the program as more of a stimulus plan for the construction industry or “work guarantee for builders” than a housing guarantee for the poor.

Appendix 3: Guide to Buying Property in Brazil- the formal way

The passages below are excerpted from Guide to Buying a Property in Brazil². Although it was written for foreign buyers, it details the formal real estate process and indicates the areas where informality, irregularity or illegality may creep in.

Is the way you buy a house in Brazil the same as at home?

No. The systems abroad for buying property are very, very different from the English, Irish or US way of doing things.

Unfortunately, very often people buying property overseas take little or no legal advice and are far too “casual” about the purchase and about the signing of legal documents... They may find there is *no title to the property, that the property was built without planning permission . . . or that the property does not even exist!* (Author’s italics)

Can you make all the same checks in Brazil that you would make in Britain?

No. As we have already said, the systems in Brazil are very different.

The role of the real estate agent in Brazil (US: realtor)

Most (but not all) estate agents are, of course, honest, but however honest and helpful they may be you must remember that they are only paid if the property is sold and that they are *not able to give you independent legal advice*.

Be very careful before using the services of the estate agent’s “own” lawyers.

Sales direct from a seller or developer

Increasingly, our clients are buying property directly from a seller or developer, without the intervention of a real estate agent. Take all the same precautions.

Even some major developers sell property that is illegally constructed or not safe to buy.

The Role of the Notary in Brazil (Notario)

The Notary is an official who is there to put on the public record the fact that the formal documents recording the sale/purchase have been signed in his or her presence and understood by the parties concerned.

² The International Law Partnership LLP, “Buying Property in Brazil”, <http://www.lawoverseas.com>
The Vaults, Holborn Hall, 193-197 High Holborn, London, WC1V 7BD, United Kingdom, (UK) 020 7061 6700,
info@lawoverseas.com. Updated 03-Jul-2009

The Notary also carries out a number of checks as to the status of the property and/or the buyer and seller. The Notary may act for both buyer and seller.

Brazilian mortgages are different from UK/US mortgages.

It is not, at present, usually possible for a foreigner to obtain a mortgage secured on their Brazilian property. The situation is, however, changing all the time.

Some developers are offering ‘in house’ mortgages on properties in their projects.

Structural surveys in Brazil

It is prudent to have the property you intend to buy surveyed/inspected)... especially in the case of older or unusual property or in the case of property that has been extended or modified. Structural surveys typically take 7 - 10 days. The time and cost varies from place to place.

What is the process of buying a property in Brazil?

There are many ways to purchase the property. These include:

- in your own name alone
- in your name and in the name of your co-purchaser(s)
- wholly or partly in your children’s names or in the name of somebody whom you would like (eventually!) to inherit the property from you
- in the name of a limited company, whether English, Brazilian or “off-shore”
- via your pension fund
- via an investment fund
- via an investment club
- via a trust

The ‘Reservation Contract’, ‘Offer to Buy’ or ‘Preliminary/Promissory Purchase Contract’

A Reservation Contract (**Contrato de Reserva**) is a short contract under which you pay about \$3,000 to take the property off the market for a short time (typically 2 to 4 weeks). During this period lawyers can verify if everything is in order. Then sign a promissory purchase contract and pay over a full deposit. If you pull out because of legal problems you will be contractually entitled to your money back. If you simply change your mind you will often lose the deposit.

An **Offer to Buy** is a formal written offer to buy a property. It should be drafted by a lawyer or a qualified real estate agent. If it is accepted by the seller this can create a *legally binding commitment*. An Offer to Buy is not a document to be signed lightly.

A Promissory Purchase Contract —**Contrato Promessa de Compra e Venda**— is a **legally binding contract to buy the property**. It is followed up by a formal contract of sale, so to that extent it is a preliminary contract, but it is legally binding. If you do not go ahead with the purchase you lose your deposit and may face further action from the seller.

These documents are not always what they seem.

Finding a **clean title is a crucial task in this market**. It is possible to buy property with its history properly and legally recorded.

After you have signed a Reservation Contract

We recommend a variety of checks to make sure that the property is what it seems. These include:

- a **Land Registry check** to make sure that the person selling the property is its registered legal owner and that the property is free from debts or other onerous burdens

- a **planning enquiry** to establish the current planning status for the property. Ideally, this would show that there is (in the case of a new property) a **construction license** for the building of the property or (in the case of a resale property) a **habitation certificate** authorizing the occupation of the property as a **dwelling**.
- checks on the proposed contract of sale to make sure its terms are fair and cover all of the necessary points
- checking that, where these are required, the proper guarantees securing the completion of construction of the property will be made available
- If you want a **survey** (which we recommend – see above), now is the time to do it. The same applies to obtaining an approval, in principle, of any **mortgage**. If you wish to make alterations to the property, for example to put in a pool, this is the time to check that the authorities will, in principle, approve the project – though you will not usually be able at this stage to get a binding commitment to do so. If you have not already done so, now is the time to decide who will become the legal owner of the property (see above). There will usually also be some issues specific to your property that will need to be checked at this stage.

Be aware that, in many cases, *all is NOT as it should be, even if you are buying from a reputable estate agent or a substantial looking developer.*

If you decide to go ahead, you then sign the Preliminary/Promissory Purchase Contract and pay over a deposit, typically in the case of a resale property **10 percent of the price**. For property bought off plan the deposit (often 30% of the price) is usually followed by a series of stage payments as the building work progresses.

After you have signed a Preliminary/Promissory Purchase Contract

Final Contract of Sale/Title Deed (Escritura Publica de Compra e Venda) needs proof of tax number, bank account and other official documentation. A Notary,(Notario) prepares for the signing of the Final Contract of Sale/Title Deed (Escritura Publica de Compra e Venda).

There is no cooling off period when you buy a property in Brazil. Once you have signed the Contrato Promessa de Compra e Venda you are committed and you can only ‘escape’ from the contract for good legal reasons – those stated in the contract or laid down by the general law.

Signing the Final Contract/Deed of Sale (Escritura Publica de Compra e Venda)

As soon as everyone is ready to proceed, the Final Contract of Sale/Title Deed (**Escritura Publica de Compra e Venda**) is **signed**. This is, normally, when **you pay over the balance of the price of the property** and all necessary **fees and taxes**. This Escritura Publica de Compra e Venda is the document transferring ownership to you. This must, by law, be prepared by and signed in front of the Notary (**Notario**).

The whole process up to the signing of the Escritura Publica de Compra e Venda will (in the case of a resale property with no mortgage) typically take about 12 – 16 weeks, though this can vary enormously. In the case of a property under construction, the pace is usually determined by the speed of construction – typically, perhaps, 18 months.

Once the Escritura Publica de Compra e Venda has been signed we make arrangements for your **title to be registered at the Land Registry**. This is the **main protection of your right of ownership** and must be done without delay in order to safeguard your position.

Some dangers may arise in every country and every transaction. For example:

- Does the seller have good legal title and the right to sell?
- Is the property affected by debts?
- Has the building been constructed legally?
- Does the property suffer from any defects?
- Is what the Seller and the agent have told you about it true?

In addition, in Brazil there are other issues that often need special attention. These include:

- Correct form of legal ownership—the restrictions on freedom of choice as to who can inherit your property make this vital.
- Is the property subject to any rights of pre-emption? These give certain people (including, in some cases, a government department) the right to buy it in preference to you.
- Some of those properties will suffer from considerable **restrictions** on what can be done with them. Even something simple is often not straightforward or may be prohibited completely.
- Is the property built in an area that is specially protected?
- Are the boundaries of the property clear?
- Is the existing planning status of the property clear?
- Is the Seller asking for illegal “black money” payments?

The price you declare in the Deed of Sale as the price paid for the property should, legally speaking, be the full price paid. This is the value used to calculate all of the taxes arising out of the transaction. Declaring any other value can lead to all sorts of problems, both locally and in the country where you live.

Despite this, in many parts of Brazil there is still a **culture of under-declaration**. This is part of the wider **addiction to ‘black money’** – money that is kept well out of sight of the taxman.

There will usually be other issues that arise in the special circumstances of any particular transaction.

Land Registry system in Brazil

After the Final Purchase Contract/Deed of Sale (Escritura Publica de Compra e Venda) has been signed we will arrange for it to be registered at the appropriate Land Registry and for the payment of any Land Registry fees.

Appendix 4: The Case of Vidigal: Gentrification in favelas?

Vidigal is a particularly well located favela between the two richest areas of the city —the old wealth in the South Zone (Ipanema, Leblon, Lagoa, Alta Gavea) and the new wealth along the coastline including Sao Conrado, and Barra de Tijuca. It sits atop a hillside providing spectacular views of the ocean, the fresh water lagoon, the Corcovado and the city. Its steep streets are paved in cobblestone, its alleyways are narrow, its houses are colorful and it is in the midst of the Floresta de Tijuca (a tropical forest and ecological reserve). In any other city, this real estate would be occupied by the elite of the elite. In Rio it is a favela—on one side of the main street, that is. On the other side properties are legitimately owned and were once occupied by famous artists and musicians including Gal Costa and Caetano Veloso.

As stated above, it is a rarity for someone unconnected by relatives or friends to buy property in a favela. A handful of students and artists have done this and there are now a few pensiones or bed and breakfasts (and even a hotel or two) in the best located favelas catering to young European and American travelers. So it made big news in 2009 when a wealthy German businessman (name?) was discovered to have incrementally and quietly purchased 52 properties in the favela of Vidigal.

Here was someone who –on the positive side—saw the potential for economic and touristic development in the favela and had a business plan for job creation and generation of profit. He told people that he wanted to turn the favela into a “tropical Positano.” His plan was to open a European-style “pensione” which would be serviced by local residents. In June, 2009 he spoke of Vidigal being “the next hottest real estate property in Rio” and tried to interest the author in buying one of his properties.

In order to deal with his holdings, this investor opened a real estate office in Vidigal, close to the main road, Avenida Neimeyer, and hired a local resident, as his real estate agent.³ He also founded a non-profit organization, “VidigalFeliz” (Happy Vidigal) to promote tourism and economic development within the community.

There had been previous cases of real estate speculation in the favela of Rocinha, when an absentee landlord bought up a half dozen houses and rented them out as a business operation. Even some of the locals acquired an extra property or two for rental income or future re-sale. But when a multi-millionaire from another country started buying up homes by the dozens, it raised questions about the future of the community for its longtime residents. People suspected that he wanted to ultimately make a European enclave and get them all out through sticks or carrots.

The houses he bought were left unoccupied. They were boarded up and each had the word ONG (meaning NGO) and a number representing the order in which they were acquired painted on the front door. When the city authorities learned of this around April 2009, they too became suspicious and issued a “stop work order” forbidding him to develop any of his properties until they could investigate the matter.⁴

But this is the land of “it depends.” A few months later the way was cleared for him to continue his project. He apparently reached an agreement with the city government. They decided he could go ahead with his building project as long as any improvements made or jobs created in the process would be attributed to the Mayor and to his political party and that they would have a large sign posted at the entrance to the community attesting to that.

Then four months later the city government reversed its position once more and denied permission to proceed with his project.⁵ He put up his properties for sale and disappeared.

This case of Vidigal was the first large-scale attempt by an outsider to conduct real estate speculation in Rio’s picturesque favelas and it raises the question of the right to the city. Will the original residents who built up their communities fought successfully to resist being displaced by the state, now be displaced by the market? Will they any right to remain where they are and how will local government see this in terms of getting “full market value” for the land?

3 The agent was formerly an ambulatory vendor on the Ipanema beach. He befriended a Swiss tourist and arranged tours of Rio for groups of Europeans sent over by this friend. He was a natural for the German to call upon and he has already registered his own tourism agency. He is using his home in Vidigal as his personal office. He has 3 computers going there, posters, business cards and other tourism paraphernalia all over his living room and bedroom, and all his family members are helping him. This is a big step forward in his life –a life I am told was almost lost to drug use.

4 The Mayor’s office told him that “the only entity permitted to benefit the poor or provide social assistance (*assistencialismo*) was the government itself, since “that is our way of getting votes.”

5 According to email correspondences received on December 3, 2009, he had left Brazil. There are two versions of what happened: 1) As long as he acted discretely, he was not doing anything less legal than any other person buying a house in a favela. It is well known that some favela families (and some foreigners) in Rocinha own several properties which they bought and rent out. The irregularities were the “ordinary” ones such as buying houses which sit on invaded (not legally owned) lands; setting up a business without legal registration or authorization; and avoiding property taxes on his holdings, etc. In this version of the story, his big mistake was to agree to do an interview for the cover story of Sunday Magazine of the most widely-read newspaper in Rio, *O Globo* (*the equivalent of the Sunday New York Times Magazine*). Evidently this caught the attention of the municipal government officials—some say it was a direct affront to the city government. He was fined and barred from continuing with any irregular transactions. The second version is that he paid the local drug dealers and they kept on charging him more and more until it became non-viable for him to continue.