

From "Lex Von Moos" to "Lex Furgler"

Autor(en): **[s.n.]**

Objektyp: **Article**

Zeitschrift: **Helvetia : magazine of the Swiss Society of New Zealand**

Band (Jahr): **40 (1975)**

Heft [1]

PDF erstellt am: **29.04.2024**

Persistenter Link: <https://doi.org/10.5169/seals-945667>

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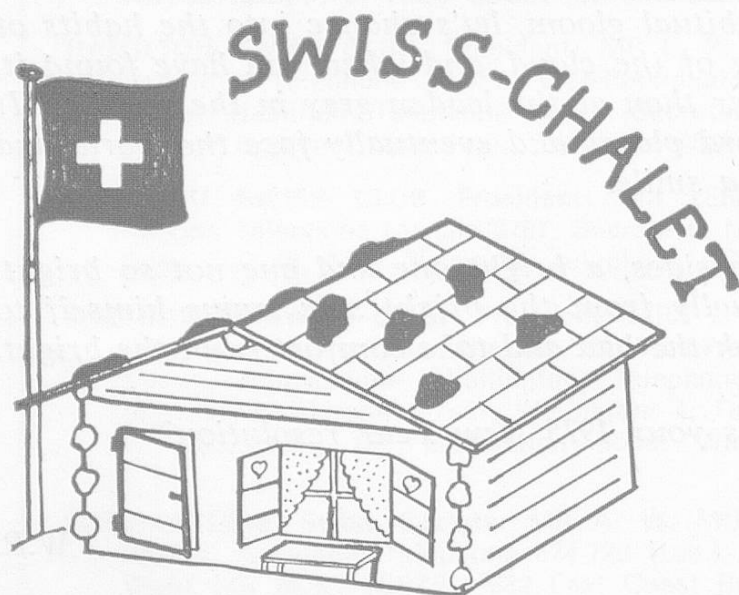
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From "Lex Von Moos" to "Lex Furgler"

The problem of a sellout of the Swiss countryside, particularly in certain tourist centres, was first raised on a large scale in the mid-fifties. Public concern on that issue was voiced time again. This in turn led the Swiss Federal Council to present in 1960 a bill to Parliament, dealing with the purchase of Swiss real estate by "persons resident abroad" (i.e. outside Switzerland) and making such purchase subject to a special permit. The bill was enacted by Parliament within a matter of months. The law took effect as of 1st June, 1961. Before long, the Federal Council promulgated the relevant executive order, popularly known as "Lex von Moos" after the then head of the Federal Department of Justice and Police.

The major characteristic of the "Lex von Moos" was the introduction of a permit covering any and all purchase of real estate by persons residing outside Switzerland. At the time, it appeared to run counter the justified interests of certain regions to impose a total embargo on such purchases. However, any purchaser deemed to be a "person residing outside Switzerland" had to indicate his "justified interest" for entering into a purchase contract involving Swiss real estate. Whenever "industrial land" was to be purchased, a permit had to be granted. Whether a person was to be subject to the new law depended on his (her) legal residence or, in the case of a company, on its registered head



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office. This rule was not applicable in the case of a controlling holding in a company registered in Switzerland by (a) person(s) without any permanent abode or domicile.

"Real estate" as defined by the "Lex von Moos" covers not only land with or without buildings and buildings constructed on leased land, but also holdings (such as shares and parts) in companies investing solely or primarily in real estate ("realty companies"). So as to preclude any other possible circumvention, the purchase of leasehold and rights of usufruct was also made subject to the granting of a permit.

The effectiveness of the "Lex von Moos" in its original form was apparently not satisfactory, since it was amended as early as 1965. In 1972 the Federal Council was forced to prohibit by executive order the investment of foreign funds in Swiss real estate. This prohibition was made within the context of measures taken to combat the business boom.

The base for this executive order was to safeguard the Swiss currency. The executive order was soon heavily criticized. The Federal Council was accused to institute policies for land use under the guise of protective currency measures. The Federal Council proposed in turn on 25th October, 1972, to revise the "Lex von Moos". The purpose of this revision was to make major changes in the applicable law, so as to leave no room for the aforementioned criticism.

The Federal Council outlined at length the problems encountered in administering the "Lex von Moos" pointing out that the substantial increase in permits granted in 1971 as compared with 1970 would be most evident. Demand from foreign sources would primarily concern a "second apartment", i.e. condominium apartments for persons residing outside Switzerland. Statistics published would only indicate minimum figures. Any close examination of the data would also have to take into account that available figures were likely to be incomplete. The Federal Council conceded, that neither stabilisation nor at least a reduction of the sales of Swiss real estate to persons residing outside Switzerland was achieved.

The Federal Parliament voted a new law on 21st March, 1973. This law is popularly referred to as "Lex Furgler" (after the present head of the Federal Department of Justice and Police). This new law not only amended the "Lex von Moos", but changed it substantially, i.e. certain purchase agreements are to be made subject to official approval in the future through the device of a "catchall" proviso. Acquisition of real estate is deemed to be comparable to the acquisition of other rights, insofar as similar economic goals are achieved. Cases in point are rights derived under trust, rental and lease agreements as well as lending operations. The intended goal is to render any and all circumventions impossible.

A person is deemed to be a resident of Switzerland, if he (she) holds a Swiss residence permit or has been living in Switzerland for a consecutive period of more than five years under another permit granted by the Swiss Federal Police for Foreigners. No official approval

to purchase real estate is required, whenever a person is deemed to be a resident of Switzerland. The restrictions stipulated by the "Lex von Moos" for realty companies registered in Switzerland, which are controlled by foreign interests, have not been abridged by the new legislation.

An exhaustive list of the reasons for approval or refusal constitutes one of the major changes. "Justified interest" is defined rather narrowly. The purpose of this new definition is to limit the scope of Cantonal approval policies. A stiffening of Federal supervision will also have a limiting effect. However, no major changes were made as to the penal provisions in case of violations of the "Lex Furgler". This means *inter alia*, that any abetting by Swiss nationals to circumvent the provisions of the new law will be considered as an offence and as such be subject to punishment. When the "Lex Furgler" became law as of 1st February, 1974, the executive order by the Federal Council barring any purchase of Swiss real estate by persons residing outside Switzerland was in turn abolished. It is hoped that the new law will alleviate the problems now existing in certain sectors of the economy.

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