

From censo to mortgage: the modern law

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The nineteenth century dissolved the old system. The canton allowed the redemption of tithes and perpetual rents, the suppression of convents in 1848 and 1852 transferred much ecclesiastical property to the state. The cantonal civil code of 1837, which like the codes of Geneva, Vaud and Neuchâtel followed the French model, and then the Swiss Civil Code, adopted unanimously by the Federal Assembly in 1907 and in force since 1912, replaced the old forms of land credit with the mortgage and the mortgage note.¹ Under the Swiss Civil Code, the *Gült* (*rendita fondiaria*) preserved something of the logic of the old *censo*. It was a land charge for which only the land was liable, without personal liability of the owner, and it could be created only on particularly secure property such as agricultural land or dwellings, within a lending limit based on an official valuation. The revision of the law of rights in rem of 2009, in force since 1 January 2012, abolished the creation of new *Gülten*. Existing ones remain in the land register under the old law, and the cantons may require their conversion into other forms of land charge.² The real burden (*onere fondiario*, *Grundlast*) of Arts. 782 ff. CC, which obliges the owner of land to perform an obligation for which only the land is liable, and which the owner may in any case redeem after thirty years on one year's notice, remains the closest modern relative of the old rent charge.³

For the practitioner in Lugano, the legacy of the *censo* is more than antiquarian. Old notarial charges, perpetual rights of use and land burdens occasionally appear in the land registers of Ticinese municipalities and have to be cleared in property transactions. More importantly, the habit of financing land and houses by secured, long-term, moderately priced credit, often from local institutions with which the borrower has a personal relationship, describes the Ticinese mortgage market today. Mortgage lending is the largest lending business of the cantonal bank and of the regional banks in Ticino, and residential property is the dominant form of household wealth in the canton.⁴

Instrument Legal nature Role in the valleys *Censo* Purchase of a rent charged on Main long-term rural credit after land, redeemable by the 1569 debtor *Livello* Perpetual or long lease Exploitation of church land; (emphyteusis) against a *canone* disguised credit *Legato pio* Endowment with a fixed Capital of confraternities and purpose benefices Acknowledg Notarial deed of a loan Short-term credit; often with ment of debt titles of compensation

For the practitioner. Old rights recorded in Ticinese land registers may derive from pre-modern ecclesiastical and rural credit. - Check land register extracts for real burdens (*oneri fondiari*), servitudes and old annotations that may derive from *livelli*, *censi* or foundations. - Clarify whether the beneficiary of an old charge still exists (parish, confraternity, foundation) and who represents it under cantonal law. - Use the statutory redemption rules for real burdens before closing a sale. - Where property belongs to a parish or a confraternity, verify the internal approvals required by canon law and by the cantonal law on the Catholic Church before any sale or encumbrance.

1 Notes

1. Bernhard Schnyder, "Codice civile (CC)", transl. Sergio Mantovani, in DSS, version of 18 November 2014, <https://hls-dhs-dss.ch/it/articles/030734/> (Ticino among the cantons that followed the Code Napoléon; "nel 1907 il parlamento votò all'unanimità il CC, che entrò in vigore nel 1912"); On the cantonal code of 1837 see Chapter C.II. ↩
2. law.ch, "Exkurs: Gült – altrechtliches Grundpfandrecht", <https://law.ch/lawinfo/grundpfandrecht/exkurs-guelt-altrechtliches-grundpfandrecht/>. Swiss Civil Code, SR 210, Art. 793 (only the mortgage contract and the mortgage certificate are now permitted), as amended by No. I 1 of the Federal Act of 11 December 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 January 2012 (AS 2011 4637; BBl 2007 5283), English translation as reproduced by lawbrary.ch, <https://lawbrary.ch/law/art/ZGB-v2024.01-en-art-793/print>. ↩
3. Swiss Civil Code, SR 210, Art. 782 para. 1 ("A real burden obliges an owner of immovable property to fulfil an obligation to a beneficiary for which he or she is liable solely with the immovable property"), Art. 787 (redemption by the creditor) and Art. 788 (redemption by the debtor, in every case after thirty years with one year's notice, unless the burden is linked with a perpetual easement), English translation as reproduced

by lawbrary.ch, <https://lawbrary.ch/law/art/ZGB-v2024.01-en-art-782/print>, <https://lawbrary.ch/law/art/ZGB-v2024.01-en-art-787/print> and <https://lawbrary.ch/law/art/ZGB-v2024.01-en-art-788/print>. ↩

4. Banca dello Stato del Cantone Ticino, annual report; Federal Statistical Office, statistics on home ownership by canton. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

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