

Conclusions topic 2: Real Estate fraud and its connection to the Land Registry

1. The Rule of Law is tightly connected to the security of Property Rights, freedom and legal equality. Land Registry is closely linked to the construction of the Rule of Law. Registration systems, irrespective of the model, are based on the assumption that public power is responsible for the protection and enforcement of Property Rights.
2. The State's tool to protect property rights by making them secure and facilitating the transaction process is the Land Registry.
3. The model of the Registry that best serves this public function and in this way the prevention of real estate fraud, is the Registry of Rights (Title Registry). This leads to legal control (both formal and substantial) and a plot based system (real folio). It is only possible in this way to create indefeasible rights, which are immediately obtainable if the system provides public faith, or over time by means of "*Usucapio*". Thus, the Title Registry facilitates transactions, simplifying the proof of title and making further retrospective searches or studies of title unnecessary.
4. Land Registry in this model becomes a mechanism of purchase without fear of eviction and not just a database. When Registries decide to include non-legal information obtained from outside the Registry, cautionary measures should be implemented to avoid distorting the Registry's reliability. This can happen if data is offered from sources other than the registry and not subject to the same level of scrutiny so the Land Registry cannot guarantee its reliability. This could potentially diminish the trust in the data that has been produced by the Land Registry (i.e. who the owner (of the plot) really is, which is the plot and clarification of rights and charges) resulting in a loss of confidence in the real estate and mortgage markets.
5. The implementation of modern registration systems has always been linked not only to an economic or utilitarian end (promoting the development of real estate and mortgage markets) , but also to an ethical goal (to prevent any kind of fraud). To reach that end it is necessary to provide a firm and sound guarantee of property rights. However, the Land Registry should not only be a medium to prevent fraud; it must be avoided that the Registry becomes an instrument to commit fraud. For the registered rights to become indefeasible, there is a need for ethical requirements such as good faith (*bona fide*), notice or lack of proper care.

6. It is necessary that all Land Registries put in place appropriate precautionary measures to avoid real estate fraud. This can be achieved by using new technology such as interconnection through a secure channel between those who draft deeds and the Land Registry. This channel ensures the authenticity, the integrity and the inability to change the deed and the identification of the author. The following are also recommended: the online verification of documents presented in hard-copy by means of secure codes; instant alerts via email or cellphone messaging providing notice of documents being submitted both to the owner of the properties involved as well as to the appropriate authority (to prevent identity theft and other types of real estate fraud); blocking the entries related to certain properties requested by the owner or holder of registered rights when it is feared that a fraud may be committed, and in general any measure that contributes to prevent real estate fraud without hindering legal transactions.
7. To prevent documentary fraud and identity theft, new technologies should be introduced, specifically Digital Signatures, as well as the close cooperation with Public Administrations. Confidentiality and non-disclosure agreements should be signed by those with access to the electronic systems of the Land Registry and precautionary measures should be implemented to prevent the Registry's databases from being tampered with. In the same way, agreements should be reached with public administrations in order to strengthen legal certainty in the performance of the Land Registry.
8. The Land Registry should be reliable for the citizens. A prerequisite of this reliability is transparency. Thus information about the Registry's contents should be made available to citizens, while adhering to the applicable data protection standards in force in each country. Regarding mortgage loans and mortgage securitization, the identification of the credits in the Land Registry backing the issue of such securities gives transparency that not only benefits consumers but also investors which serves as a guarantee of solvency for financial institutions. Also, transparency benefits public administrations and public powers by enabling them to use Registry Data to prevent different types of fraud, such as tax evasion or money laundering.
9. Every effort should be made to increase public awareness about the functions and goals of the Land Registry, which would increase confidence in the Institution.