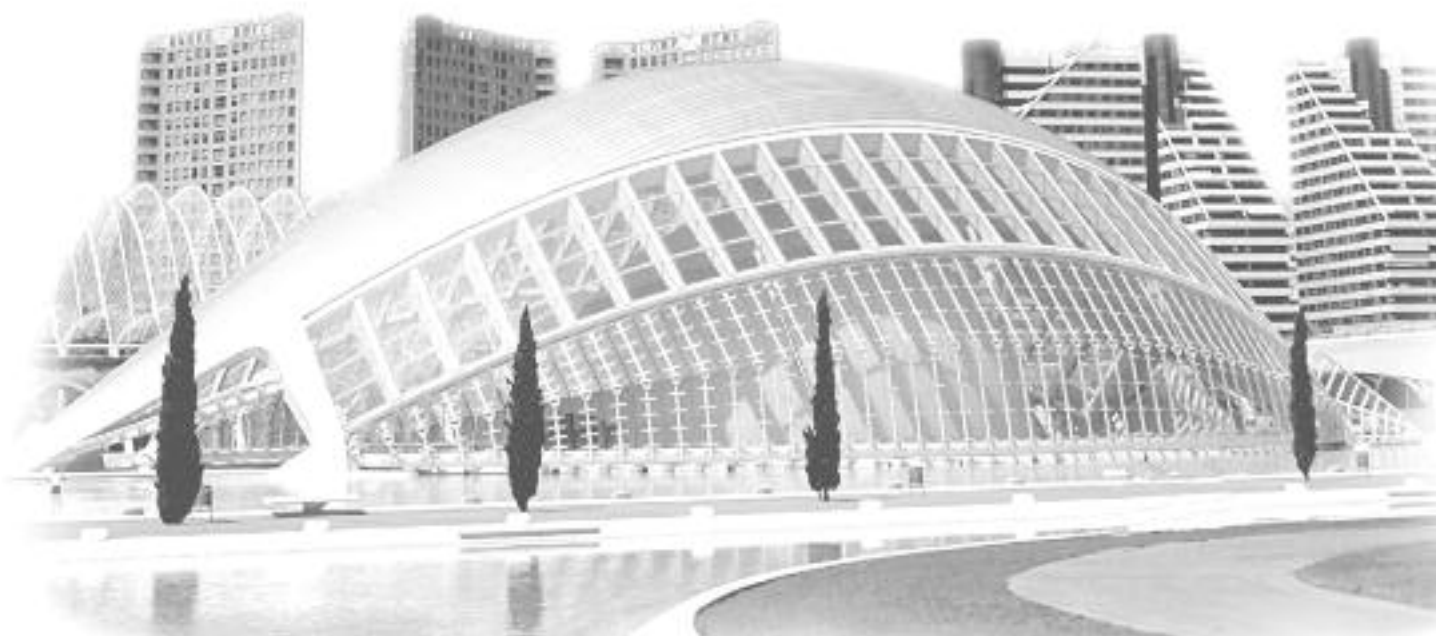


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# **LAND REGISTRATION IN HUNGARY, LEGAL EFFECTS OF REGISTRATION, LEGAL GUARANTEES, LEGALITY CHECKS**

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**PONENTE: ESZTER TAKÁCS**



# LAND REGISTRATION IN HUNGARY, LEGAL EFFECTS OF REGISTRATION, LEGAL GUARANTEES, LEGALITY CHECKS

## 1. LAND REGISTRATION IN HUNGARY

### 1. DEVELOPMENT OF THE UNIFIED LAND REGISTRATION SYSTEM

From the middle of the 19<sup>th</sup> Century two types of record were kept of lands and properties in Hungary: the land tax cadastre and the land book/legal registry/Grundbuch (following the German tradition). The task of the land tax cadastre was to determinate and register the data of the land parcels corresponding to reality. Whereas the land register had to keep records of the rights, legal restrictions and obligations of the negotiable and mortgaged real estates. Naturally, the land tax cadastre could not miss records of the owner, trustee or user, and similarly, the land register also had to know descriptive data of the land parcels. So there was a parallelism (duality, in other word: overlapping) between the two registers. But none of them was complete: the land register did not contain the State public domains (e. g. streets, railways, channels), and the land tax cadastre did not contain the other real estates (e.g. housing co-op flats, condominiums). Only the land register guaranteed authentically the ownership right and the other rights, but it did not guarantee the size of the land parcel's area. On the other hand, considering the map representation the land tax cadastre was authoritative.

The two registers were separated as organisations too: the land tax cadastre was managed by the land offices, and the land register was managed by the court. Keeping both overlapping registers up-to-date, it involved extra charges, and because none of them was complete, the authenticity

status of the real estates could be investigated only by comparing the data of the land tax cadastre with those of the land register.

By the '70-s, it became more and more necessary to create only one unified and complete register instead of the two registers, including all the data (mapping and legal) concerning the legal status of the real estates. Managing of the uniform, consistent land registration system became the duty of the countrywide land office network.

### 2. THE UNIFIED LAND REGISTRATION

Since the 1<sup>st</sup> January 1973, a unified land registration has been going on in Hungary. The land registration system holds all the data specified by the act for each and every real property in the country, along with any pertinent rights and facts of significance for legal purposes. Real estate records shall also include the personal identification data and address of each person registered therein, which are prescribed by the act as necessary for registration purposes.

Keeping records in the land register is the duty of the district land offices in the settlements and city districts. The superior authority of the district land office is the county (second-level) land office, and the supervisory organization of the land management sector is the Department of Land Administration and Geoinformation within the Ministry of Agriculture and Rural Development. At present, the land offices keep records about more than 10 million real estates.

The land offices keep records since the middle of the '90-s in digital form. The land registration

system consists of property sheets, list from data of records cancelled from the property sheet, land registration maps and the document archives.

The property sheet contains the data of the real estates (first part of the property sheet), the owner and the trustee (second part of the property sheet), the encumbrances and the authorized persons to that (third part of the property sheet).

### 3 PRINCIPLES OF LAND REGISTRATION

Records of the land register are being kept according to principles specified by act. These are the following:

- Official Entries and their Scope
- Public Access
- Authenticity
- Mandatory Application
- Priority Sequencing
- Documentation

#### Official Entries and their Scope

Certain rights specified by act come into being by recording them into the property sheet, so the records are constitutive; without recording, these rights will not exist. The document, which forms the basis of the record, means only an obligation to be recorded, so the person authorized by the contract may require keeping record about his/her right into the land register. Such a constitutive force has the record in respect of ownership based on transfer, asset management right, use of land, usufruct and the right of use, easement and mortgage (independent lien) based on contract.

Furthermore, the principle of official entries and their scope means that registration of certain rights and facts with legal importance specified by act shall restrict or render conditional any future acquisition of rights (e.g. ban of alienation). Other facts of legal importance defined by act and rights shall have no impact on the legal effect of such rights (e.g. minority or placing in charge of a guardian of the right-holder, liquidation or voluntary dissolution proceedings instituted against the right-holder of record).

#### Public Access

Public access means on the one hand that the property sheet is public; its content is open to know without restriction for anybody. Anybody may make notes of the property sheet and get authentic or non-authentic copy of it. On the other hand, public access means that the documents serving as basis for registration are open to know only with the permission of the recorded right-holder, if the petitioner justifies in writing that reviewing the document is necessary for enforcing his/her rights or performing his/her duty based on law or on official decision. The land registration system contains also the personal identification number, which is the most personal data of the registered right-holders, but to avoid abuses, the property sheet does not indicate them.

#### Authenticity

Principle of authenticity is one of the most important principles of the land registration. It provides the State guarantee for the content of the property sheet, namely that the records kept by land registry on the property sheets are correct and correspond to reality. According to principle of authenticity, the land register certifies authentically the existence of the registered rights and facts. If a right or fact was registered into the land register, nobody can refer not to know about the existence of them. Until proving the contrary, it is to be presumed that the registered rights and facts exist and belong to the registered right-holder. According to the principle of authenticity – until proving the contrary – in favour of the bona fide third person (who acquired right against payment, trusting the land register), the land register in the relation of the registered rights and facts is to be regarded as right and complete, even if the records do not correspond to reality. Another rule protecting the bona fide third is that the person, whose right comes into being not by registration (e.g. as inheritor), or the right-holder, whose right or fact was deleted, cannot enforce his/her right against the registered right-holder or the bona fide third preceding him/her in the sequence of priority.

#### Mandatory Application

In accordance with the principle of mandatory proceedings for the registration of rights and the

recording of facts of legal importance concerning a real property shall commence upon the request of the client or upon the order of the authority. Only those rights and facts of legal importance may be registered and recorded in the land register, which are designated in the application or in the order of the authority.

### Priority Sequencing

Also the principle of the priority sequencing is a very important basic principle in land registration. In line with this principle, the position of an entry of record in the land register and thus the sequence of such records shall be determined by the filing date/arrival stamp of the applications for such.

### Documentation

Rights and facts of legal importance may be registered and data may be updated in land register only on the basis of documents or final resolutions of authorities or court, which authentically certificate the creation, modification or termination of the right or fact in question.

## 2 LEGAL EFFECTS OF THE LAND REGISTRATION

Land register in Hungary contains every land and real estate of the country, in other words, there is no real estate, which would not be registered. From this and from the principle of public access follows that any real estate's property sheet is available for anybody, each real estate's ownership's relations, data and charges are open to know for anybody. Contrary to the former double registration, there is no need anymore to collect physical data about the real estate and rights and facts relating to that from two different organizations.

A very important feature, the „soul“ of the land registration is its authenticity; the land register officially certifies the existence of the registered rights and facts. Nobody can refer not to know about the existence of these rights or facts, and there is a presumption based on act, that the registered rights and facts exist and they belong to the registered right-holder. In favour of the bona fide third (who acquired right against

payment, trusting the land register), the land register in the relation of the registered rights and facts is to be regarded as right and complete, even if the records do not correspond to reality.

Among the legal effects of the land registration, it should be mentioned that certain rights specified by act come into being by entering a record into the land register (property sheet). So these rights come into being not only by the mutual and concordant act of will of the contracting parties, but beyond the contract, also the given right should be registered.

In those cases, when recording into the land register has no constitutive force, so when a right comes into being not through the land registration (e.g. inheritance), if the right-holder fails to register his/her right, which came into being not through the land register, then he/she cannot enforce his/her right against the registered right-holder or against the bona fide third preceding him/her in the priority sequence.

Among the facts, which may be registered, there are facts specified by act, the non-recording of which does not influence the legal effects (e.g. the minority of the right-holder or placing him/her in charge of a guardian, construction or demolition of a building, staying of registration proceeding).

But there are also facts, if not registered, the right-holder cannot enforce his/her right against the bona fide third (e.g. property restriction based on court decision, prohibition of detaching land parcels and building).

## 3 LEGALITY CHECKS

The land offices in Hungary do not have authority to examine, whether the legal transactions standing behind the applications for registration are true. They have to take the legal transaction, which is included a document having required formalities to be correct and true. There is one exception from under mandatory application, if the document serving as basis of registration has such a formal or content deficiency that the document is evidently invalid, i. e. when the invalidity of the document can be established – without any

further examination - from the document itself. (This is the case for example, if a contract is contrary to the law, or if an under-age enters into a contract without his/her legal representative). In the cases like that, the land office rejects the application without sending out a request to bring the application into compliance.

In consequence of the registration sphere of authority of the land registry office there are increased requirements against the formalities of the documents: the strongest rights –ownership, usufruct and the right of use, easement, purchase right, mortgage (independent lien) – may be registered and cancelled only on the basis of public document or a document countersigned by a lawyer. There is a rule stepped into force on 1st January 2006, according to it in the registration proceedings commenced upon request, based on public document or document countersigned by lawyer, the legal representation is compulsory. This guarantees that the whole the procedure goes on by contribution of an expert with adequate qualification also on the side of the clients.

If the authenticity or legality of the document becomes questionable, the contracting parties can enforce their truth before civil court, and the land office will stay its proceedings until the lawsuit for establishing the invalidity of the document comes to an end.

In the land registration proceedings, there is no right of supervision against the decisions made in the subject of registration or cancellation of rights and facts, that is the resolutions of the land office may be re-examined – except correction and completion – only on appeal. This is also a rule serving the authenticity of the land registration; it cannot occur that the land office later officially modifies an authentic registration in its own competence, and causes loss to a person who contracted trusting the land registration.

The authenticity of the land registration is also strengthened by the rule that if the client does not receive the decision of the district land office for any reason, over a year counted from the registration he/she may not submit in appeal, namely the records of the land registration may not be modified over a year.

#### **4 LATEST MEASURES TO AVOID ABUSES AND STRENGTHEN THE SERVICE CHARACTER OF LAND REGISTRATION**

According to the rule valid from the 1<sup>st</sup> January 2006, the land office is to inform the client whose registered ownership is requested to cancel, or against whom purchase right registration is requested. The reason for creating this decree was that lately the number of crimes about flats – consequently the number of applications for registration ownership right based on false contracts – has dramatically been increased. Nowadays, on client's request, the land office sends notice by e-mail or sums in every case, when an application arrives that relates to his/her property.

The property sheets are available through the computer system countrywide. There are organizations and professions specified by act (e.g. courts, bailiffs, public notaries and prosecutors, police), which may join the computer system to view the property sheets. If the Department of Land Administration and Geoinformation within Ministry of Agriculture and Rural Development gives permission, and the contract is made with Institute of Geodesy, Cartography and Remote Sensing (FÖMI) also other ones may join the system (private individuals cannot apply for access at the moment). The computer program registers the entry to the computer system and counts the queries too. If somebody requests a copy of property sheet personally at the clients' service of land offices, his/her personal data are registered too.

The growing function of real estates in the economic life and the strengthening of their security/collateral character is reflected by the fact that more than 1/3 of all applications submitted to the land offices in 2007 related to mortgage. The change of this function of the real estates – the real estate is nowadays not only a property, but also a tool of investment and source of income – also increases the importance of the land registration. Consequently, it is expected from the organization of land registration to be more up-to-date (prompt case management), authentic (reliability), transparent (simplicity), offer services satisfying the demands of the social and economic life (elasticity and keeping the legal security). These are the aims and qualities we have to reach and continuously improve.