

# THE CADASTRAL REGISTRATION OF THE PROPERTY RIGHT

**Diana-Geanina IONAŞ<sup>1</sup>**

**Abstract:** *Real rights are subjective patrimonial rights which provide the holder with the right to directly exercise certain prerogatives over a determined good. Real rights over immobile goods, registered in the cadastral register are called tabular rights. Cadastral registration is that certain form of registration by which a real right over an immobile good is acquired, changed or ended, from the time de registration request is filed. At this time, registration in the cadastral register provides the opposability effect, as the constitutive effect is suspended until the cadastral works are finalized and new cadastral registers are created for each administrative unit.*

**Key words:** *property right, registration, cadastral register, cadastral registration..*

## 1. About Real Rights

Real rights are subjective patrimonial rights which provide the holder with the right to directly exercise certain prerogatives over a determined good (Bârsan,C., 2015, p.23). Real rights are different from claim rights, as they are of absolute character, opposable *erga omnes*, of permanent character and formed over a long period of time, thus giving birth to the preference right.

Real rights, as defined by the new Civil Code are: property right (public or private); real rights which derive from the private property right: superficies right, benefit right, use right, habitation right, encumbrance right, administration right, concession right and the free use right (these are real rights which correspond to public property), immobile mortgage right, other rights which are provided with this character by law.

## 2. General Aspects regarding the Cadastral Register

Article 876 of the Civil Code states the following: “The cadastral register describes immobile goods and shows the real rights over these goods. In certain cases stated by law, other rights, facts or legal relations can be registered in the cadastral register, if they pertain to the immobile goods registered in that register”.

A more restricted definition states that the cadastral register can be defined as that public document which describes immobile goods and shows the real rights, acts, facts or legal relations regarding that immobile good, as well as the people who hold these rights (Nicolae, 2011, p.169). A wider definition states that the cadastral register consists of the

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<sup>1</sup> Transilvania University of Braşov, [diana.ionas@unitbv.ro](mailto:diana.ionas@unitbv.ro)

sheets of paper which provide legal inventory, as well as the documents which form the cadastral register: the general entry register, the cadastral plan which identifies immobile goods, the justifying documents regarding the immobile goods (article 17 fourth alignment of Law no 7/1996).

The cadastral registers are operated by the National Agency for Cadastre and Immobile Publicity (ANCPI), organized as a public institution subordinated to the Government. Furthermore, there are Cadastral and Immobile Publicity Offices (OCPI) subordinated to the National Agency in each county as well as in Bucharest. In their turn, these offices are organized in each judicial district, thus maintaining cadastral registration for each administrative unit: county, city and/or village.

The registration office of the competent Cadastral Office registers requests which pertain to immobile goods and releases documents.

The same office solves requests and maintains an archive (digital and paper support). Thus, the cadastral office is the place where the citizen directly interacts with the cadastral authorities.

Real rights which pertain to immobile goods registered in the cadastral register are called tabular rights. Registration of the immobile real rights in the cadastral registers is performed with the respect of the rules established in the Cadastral and Immobile Publicity Law no 7/1996, republished, with subsequent changes and the Regulation for the reference, reception and registration in cadastral register as approved by the General Manager of the National Agency for Cadastre and Immobile Publicity no 700/2014, with subsequent changes and also other legal provisions such as the Civil Procedure Code or Law no 17/2014.

Once registered in the cadastral register, tabular rights are acquired, changed or ended with the respect of cadastral rules and regulations.

Registration in the cadastral register can be achieved by any of the following means: *tabulation, temporary registration and notation (article 881 first alignments.)*

### **3. About Tabulation, as A Cadastral Registration Operation**

Tabulation can be defined as that specific form of *registration by which an immobile real right is acquired, changed or permanently ended from the time the registration request is file*. The constitutive of rights effect of the registration of tabular rights was suspended until the finalization of the general cadastre for each administrative unit and until the creation of new cadastral registers.

Until this date, the immobile rights acquired based on legal acts are registered with the sole purpose of ensuring third parties opposability (article 56 of Law no 71/2011).

The registration of the ending of a tabular right is also called cancelation (Article 907 second alignment of the Civil Code).

Tabulation is a definitive registration as, once the request is filed, the effects of tabulation occur from the time the registration request is filed (article 890 of the Civil Code) without the need for subsequent justification, as is the case with temporary registration. This provision is regulated in article 885-897, 907-910, 912 of the new Civil Code; in regard to the form, the provisions are found in Law no 7/1996 (article 47 and the following) and the Regulation for the reference, reception and registration in cadastral register as approved by the General Manager of the National Agency for Cadastre and Immobile Publicity no 700/2014, with subsequent changes (article 55 and the following).

*Cadastral registration conditions.* In order to perform the cadastral registration, certain conditions must be met, such as form and content conditions needed for each cadastral operation (according to article 888 Civil Code, article 48 of Law no 7/1996), as well as some special conditions in the expressly regulated cases.

Registration is performed based on certain mandatory documents:

**1. a completed, signed request.**

**2. the legal act which justifies the request, original or legalized copy.** The acts based on which registration is performed are: the authentic act concluded by a Romanian public notary, definitive and irrevocable court decision, the administrative act, in cases stated by law, other documents stated by law.

**3. proof of payment of the immobile publicity fee,** in case the operation is subject to such payment.

**4. fulfillment of other legal demands,** established by special laws, whose verification pertains to the cadastral office registration. For example, correction of the cadastral registrations is amicably performed, by authentic notary declaration of the holder of the right which is about to be changed or, in case of litigation, by definitive court decision (article 908 second alignment).

The content of the request is as mentioned in the Regulation for the reference, reception and registration in cadastral register as approved by the General Manager of the National Agency for Cadastre and Immobile Publicity no 700/2014, with subsequent,

The legal act which justifies the request must be concluded with the respect of the formal conditions stated by law, it must correctly identify the name of the parties, it must individualize the immobile by cadastral register number, the county where it is located and/or the topographical number; if the act is not drafted in Romanian, it must be accompanied by translation.

As for the legal acts concluded by the public notary, the request must be accompanied by a copy of the authentic or informative cadastral registration certificate based on which the act was drafted, except for the case in which this is mentioned in the act itself.

The immobile publicity fees are established in annex 1 of the Internal Affairs Minister no 39/2009.

The solutions of the registration can be any of the following:

- admission of request, in case the above listed conditions are met;
- the request for completion or remedy of any incomplete information. The completion request is the only way by which an already registered request (including that for the tabulation of an immobile real right) can be changed or completed;
- rejection, in case the documents are not complete or there are other restrictions for registration.

The model for admission or rejection of request is stated in the Regulation approved by Minister's Order no 700/2014 with subsequent changes.

The admission or reject solution can be attacked, thus requiring reexamination within 15 days from the time it was communicated.

This request must be solved within 20 days from the time it was filed. This solution can also be attacked, by filing a complaint which is to be solved by the courts where the immobile good is located.

**Tabulation of the property right acquired by sale** is achieved in a conventional manner based on the sale contract. The property right is registered to the buyer, whether a person or a company.

In case of people, the cadastral register will mention whether the immobile good is acquired as an own good or as a common good. In case of goods acquired as own goods, the name of both spouses will be mentioned even if only one of them signs the sale contract.

In case of goods acquired as own goods, even if the owners are married under the regime of legal community of goods, according to the provisions of article 340 of the Civil Code, the consent of the other spouse is necessary, whether provided by authentic notary act or a separate document.

In case consent is provided by separate act and not within the sale contract, this act must be attached to the registration request. In case of goods acquired as own goods by a married person under the regime of separation of goods, as proved by matrimonial convention and the verification in RNNRM, agreements from the other spouse are no longer necessary. In this case, the cadastral registration will mention that the owner is married under the regime of separation of goods.

In case the good is registered in favor of co owners, but the registration no longer matches the real situation, the rectification of each owner's part of the property right over the immobile is achieved only based on a notary act or a court decision (The National Union of Public Notaries, 2013, p.346).

In case the price of sale is not entirely paid, according to the provisions of article 161 of the Regulation for the reference, reception and registration in cadastral register, approved by the General Manager of the National Agency for Cadastre and Immobile Publicity no 700/2014, with subsequent changes, the cadastral operator will register the seller with a right of legal mortgage for the amount which was not yet paid.

The seller can renounce this right, whether within the act or by separate authentic document; in the latter case, the renunciation act must be filed along with the sale contract.

The registration of the property right acquired by sale over agricultural lands located outside cities is performed based on the notary act, along with the law required documents, depending on the specific case (notice from the National Defense Minister, notice from the Culture Minister and so on).

In case the land is located within a certain city, but the cadastral register shows it is located outside the city, it is necessary that the request for registration also asks for the notation of the urban character based on a urbanism certificate or a receipt; both documents must be issued by the competent city.

This obligation is also present in case the cadastral registers do not show whether the land is located in rural or urban areas.

The registration of a property right acquired based on a sale contract, with the reserve of property right is a special case. In the case where, until the full payment of the price of sale, the seller reserves property, the sale contract *in itself* will be filed with the competent cadastral office in order to acknowledge its existence, based on article 902 second alignment point 9 of the Civil Code.

The registration of the buyer's property right is subsequently performed, after the price of the contract is paid in full, based on the following documents: (i) the seller's authentic declaration by which he confirms the full payment of the price and declares that he agrees that the buyer registers the property right to his name or (ii) the definitive court decision of registration or (iii) the document issued by an officer of the court which confirms full payment of the price.

The three above mentioned means are regulated by article 187 of the Regulation for the reference, reception and registration in cadastral register, approved by the General Manager of the National Agency for Cadastre and Immobile Publicity no 700/2014, with subsequent changes.

In the first case, that of the authentic declaration of the seller, the public notary must request the authentication cadastral certificate. However, practice shows the registration of the property right in favor of the buyer can also be performed based on the bank's confirmation of the payment in the seller's account, in which case the seller's agreement in regard to the cancelation of his right needs to be provided within the content of the sale contract (The National Union of Public Notaries, 2017,p.76).

Registration of the property right over constructions built without construction authorization previous to the date of 01.08.2001 is performed based on the fiscal certificate, along with cadastral documents for the property rights over the piece of land where the construction is built.

In case of construction built after the above-mentioned date, registration is performed based on the building authorization and the document which confirms the finishing of works.

In case of a sale contract, if the owner of the construction has only a right to use the land on which the construction is built, along with the property right, the buyer will also acquire the right to use the land which will be cancelled in regard to the seller and registered to the buyer.

In case the good is prohibited from being sold, the registration of the property right is performed only in case of the agreement of the holder of this right (based on specific documents depending on each case: death certificate, declaration of cancelation or so on).

In case of companies which are in the procedure of liquidation, merger, division or transformation, the property right and other immobile real rights are acquired only by registration in the cadastral register of the document by which reorganization of the society was ruled on, accompanied in both situations by the registration certificate of the newly founded company, the merger or division project or other documents (The National Union of Public Notaries, 2013, p. 366-367).

In case a right subject to cadastral registration was subject of successive cession without the registration being performed, the owner will be entitled to demand the registration of his right only if he demands the registration of previous acquiring.

**The registration of the property right acquired by donation** is performed based on the donation contract and the act of acceptance of donation.

**The property right acquired by inheritance** is registered based on the inheritance certificate. This certificate is proof of the property right of the people in regard to the parts shown in the certificate.

In the cadastral inventory, the property right acquired by succession is registered as shown by the public notary who issued the inheritance certificate.

In case the defunct was married and the immobile good was registered to both his name and the name of the surviving spouse, the property right will be registered in the amount shown in the inheritance certificate, usually  $\frac{1}{2}$ .

In this case, the notation of the defunct property right is not necessary. In case the defunct was married, the liquidation of the community of goods regime must be performed first, by authentic liquidation document, which will also be mentioned in the inheritance certificate.

In case the defunct is registered in the cadastral register along with other co owners (such is the case of lands acquired based on property right) the notation of each segment of property is needed; this operation is performed based on authentic declaration provided by the heirs of the defunct and other co owners.

In case after the inheritance certification is issued, an act of voluntary separation of goods is concluded, the cadastral registration can be subsequently performed based on cadastral documentation, except for the case in which the immobile goods are separated.

#### **4. Registration of the Rights which Derive from the Property Right**

Registration of the rights which derive from the property right (superficies right, benefit right, use right, habitation right, encumbrance right) is performed based on the act which forms that certain right.

Specific rules:

- if the rights which derive from property right are subject to a determined part of the immobile, a plan of location and delimitation of the immobile is necessary

- the encumbrance right is registered in the cadastral register within the C section of the certificate and in the cadastral book within the B section. In order to register the encumbrance right, an urbanism certificate issued by the competent administrative unit is necessary.

- the superficies right will be registered by mentioning its duration, as it can't be longer than 99 years (with possibility of extension). However, when the term expires, a new convention is needed to attest the end of the superficies right by fulfillment of term (The National Union of Public Notaries, 2015, p,311-314).

- in case of lands which are in the property of associative organism, forests, boundaries or other associative forms assimilated to the above-mentioned ones, they rights which derive from property right can't be formed as the right is unalienable.

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## 5. Conclusions

The cadastral register is a real and mandatory system of immobile publicity.

Along with temporary registration and notation, cadastral registration is a form of registration in the cadastral register whose main effect is (or at least, will be) the constitutive effect of rights.

Until the cadastral works are finalized and the cadastral registers are created for each administrative unit, the constitutive effect is suspended.

However, a person can only use his rights if registered in the cadastral register.

Furthermore, the registered right can only be disputed within 3 years in case of onerous acts and 5 years in case of free acts.

As a consequence, the *registration or real rights in the cadastral registers can be seen not only as an obligation, but also as a right* of the person who aims to protect its patrimony, as if a certain real right is registered in the cadastral register, it is presumed that certain rights exists to the use of the person who requested registration.

## References

- Bârsan, C. (2015). *Drept civil. Drepturile reale în reglementarea noului Cod Civil* [Civil law, Main real rights in the regulation of the new Civil Code]. Bucharest: Hamangiu Publishing House.
- Nicolae, M. (2011). *Tratat de publicitate a drepturilor reale*, vol.II [Real estate publicity treaty, second volume] Bucharest: Universul juridic Publishing House.
- \*\*\* *Law no 71/2011 for the enactment of Law no 287/2009 regarding the Civil Code*, published in the Official Bulletin no 409 of June 10<sup>th</sup>, 2011.
- \*\*\* *Law no 7/1996 of cadastre and immobile publicity republished based on the provisions of article III of Law no 150/2015 for the modification and completion of the Law of cadastre and immobile publicity no. 7/1996*, published in the Official Bulletin of Romania, part I, no 459 of June 25<sup>th</sup>, 2015, thus providing new numbering for the texts.

- \*\*\* *Regulation for the reference, reception and registration in cadastral register*, approved by the General Manager of the National Agency for Cadastre and Immobile Publicity no 700/2014, with subsequent changes, published in the Official Bulletin no. 571 bis of July, 31<sup>st</sup>, 2014.
- \*\*\* *The Civil Code passed by Law no. 287/2009 regarding the new Civil Code*, as published in the Official Bulletin, part 1, no 505 of July 15<sup>th</sup>, 2011.
- \*\*\* *The National Union of Public Notaries, Notary practice collection*, Commented cases, first volume, Notarom Publishing House, Bucharest, 2013.
- \*\*\* *The National Union of Public Notaries, Notary practice collection*, Commented cases, second volume, Notarom Publishing House, Bucharest, 2015.
- \*\*\* *The National Union of Public Notaries, Real estate publicity notary practice collection*, second volume, Notarom Publishing House, Bucharest, 2017.