



# Legal Splinters with Regard to the National Programme for Land Registration and the Land Registry

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**Abstract.** The National Programme for Land Registration and the Land Registry, which aims to achieve the systematic registration of land in the integrated land cadastre and land register throughout the country by 2023, is in progress. It is a massive undertaking which requires the creation of a new land register and the registration of approximately 40 million immovable assets into it. The present study shows the legal hurdles that have been faced in carrying out the programme. These issues are the following: ongoing property and border disputes between the various owners, succession procedures which have yet to be finalized, and litigation that has arisen as a result of differences between land measurements and the data in the records held at the land registry. Due to the aforementioned legal issues, it is not possible to finalize the systematic registration in the integrated cadastre and land register throughout the country in time (by 2023). Also, there is the legal issue posed by the possibility for the person possessing the immovable asset without valid title to be inducted into the land register as owner, based on a certificate issued by a notary public, which, in our opinion, is contrary to the law.

**Keywords:** cadastre, land register, land registry, immovable assets, National Programme for Land Registration and the Land Registry, sporadic land registration, systematic land registration

## 1. Introductory Thoughts

The purpose of land registers is to guarantee rights *in rem* over immovable assets and to provide publicity, allowing for anyone to know relevant information pertaining to immovables such as the owners with title to the property of the immovable, ongoing legal disputes which may affect property rights, and any similar relevant facts.

The role immovable assets play in Romanian socio-economic life has undergone significant alterations due to the frequent incidence of subject substitutions in the person of the owner (mainly transfer from state ownership to private ownership of immovable assets), which occurred after the year 1990 as a result of the application of land laws, thus imposing the necessity for the legal system to ensure the substitution of subjects but also the registration of this substitution.

It is well known that the abrupt historical changes that have occurred in the last century have upset the main thing that guarantees the safe transaction of immovable assets: the authentic land register. The uncertainty regarding the status of nationalized immovable assets (lands, forests) and the lands that have been reallocated to agricultural cooperatives have started to corrode, and even undermine the system. Due to the property reform that started in the 1990s, the number of immovable assets and the underlying lands<sup>1</sup> has risen greatly.<sup>2</sup> A few hundred thousand lots have now been fragmented from main, previously compact parcels.

The operations subject to registration in the land registers have also increased in number and complexity over time, creating a distance between the contents of land registers and the real state of affairs. This is why the modernization of the legal, technical, and material aspect of land registration has become imminent.

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1 The underlying land is a piece of land that lies on the surface and is not interrupted by internal or external borders, and the possessor or owner is the same throughout the underlying land.

The concept of underlying land has two main characteristics:

a) Firstly, the land surface is a compact piece of land that is not interrupted by natural or artificial features (rivers, roads, railways, etc.) or by internal and external borders.

b) The second characteristic is that the possessor or owner is the same throughout the land. This is why, as a second exception, we must consider the lands that have the same owner or possessor and are not interrupted by rivers, roads, railways, crossroads, or internal and external borders as underlying lands. In this respect, crossroads and branched roads must be considered as the interrupters of natural cohesion. The underlying land of an immovable asset generally appears together with the components that lie on the land (for example, building, underground garage, cellar, etc.). The underlying land without components is always a separate immovable asset. If the underlying land has the same owner as its component, the underlying land together with its components becomes a separate immovable asset, based on the principle of *aedificium solo cedit*.

2 According to official estimations, from the 40 million Romanian immovable properties, 20% are located in towns and 80% in villages; however, only 11.38 million are registered in the land register: <http://www.ancpi.ro/> (downloaded on: 17 November 2019).

The legal basis for this has been Law No. 7 of 1996 on Land registration, which was later completed by the provisions of the new Romanian Civil Code.

Today, the National Programme for Land Registration and the Land Registry<sup>3</sup> is in progress. According to its legal provisions, it aims to provide systematic registration in the integrated cadastre and land register throughout the country by the year 2023, a service which is free of charge to owners, the costs being fully financed by the Romanian state and the European Union. The undertaking requires great attention, significant legal and technical knowledge, precision, openness in exercising one's profession, and knowledge on every aspect that surrounds land registers.

It is legitimate to expect that the completion of agricultural payments and a few million parcels of nationalized property that have been 'reconstituted' to the property of previous owners based on land laws will be registered in the integrated cadastre and land register.<sup>4</sup> It is necessary to create a new register of property instead of the old one; however, this requires complex and innovative solutions regarding form and substance and efficient legal instruments, which can serve people's interests and affairs of property in a more just and efficient way.

It is natural for such a great and challenging undertaking that requires a lot of effort and reshaping to leave behind rough surfaces and splinters. The present paper mentions a few of these rough surfaces and splinters in order for us and the legislator to be able to contemplate the resulting legal problems and anomalies.

## **2. The Romanian Land Registry Systems**

Until the implementation of the new system for the registration of property, the current cadastre and land register systems are used in Romanian law, namely the registration and transcription register, the register of property, and the land register. The systems of registering property that are in effect will cease to exist when the cadastral registers will be finalized for the entire country. When the cadastral registers for the entire country will be finalized, the legal provisions governing land registers that are in force now will be repealed. The systems of

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3 Ordinance no. 295/2015 on the National Programme for Land Registration Purposes and Land Registry, published in the Official Journal [Monitorul Oficial] no. 309/2015. Ordinance no. 1427/2017 was necessary in applying the national programme as it contains the technical norms of the work that needs to be carried out in registering land. There is also a procedure regarding the monetary frame and an ordinance regarding the status of the work carried out in favour of the interested parties.

4 By 2018, the cadastral measurements were completed in only 57 out of the 3,181 administrative units existing in the country – village, town, county –, this number amounting only to 1.79%. See: <http://www.ancpi.ro/pnccf/stadiu-lucrarilor.html> (downloaded on: 17 November 2019).

registration of property that are in effect are therefore temporary and remain in effect only until the implementation of the new system.

The systems now on their way to being replaced, but (albeit temporarily) still in use for registering property, are presented briefly as follows.

a) *The old<sup>5</sup> cadastre and land register system of immovable property.* The main purpose of the integrated cadastre and land register is to guarantee the safety of property rights, the undisturbed transfer of property, and the protection of creditor's rights.

The object of registration in the land register is the immovable property item that is in the civil circuit and can be encumbered. Immovable property is an immovable object, an item of property that cannot be moved without destroying or altering it – a property that is fixed to the earth. In the opinion of Bálint Kolosváry, 'immovable properties are parcels of land together with their components and any other benefit which arises out of land; everything else is movable property'.<sup>6</sup> Immovable property includes the land together with its components that can be delimited: the parcel of land and everything that is part of the land (buildings, trees, etc.). Since ancient times, lands have played an important role in people's economic and social lives. Ownership of land – beyond the economic value that is tied to it – also had the meaning of title to the owner.

Ownership and use of land require the marking of land boundaries and the registration of property. During the evolution of society, different versions of land registers have emerged, partly with the aim of protecting the safety of land ownership and partly to facilitate the collection of taxes.

According to the provisions of the Civil Code,<sup>7</sup> immovable assets are strips of land, fountains, rivers, plantations rooted in the earth, buildings and other edifices that are attached to the earth, production support vessels and equipment designed to exploit resources that are on the continental shelf, under the sea, and everything that is a natural or built-in component thereof.

Moreover, materials that are detached from an immovable property item with the purpose of reattaching them later are considered immovable property until their shape changes; also, the same is applicable to the constituent pieces of an immovable property item as long as the detachment from the immovable to which it belongs is temporary. Materials that are used to replace old materials become immovable when they receive this destination.

According to the provisions of the Civil Code,<sup>8</sup> movable property is what the law does not consider immovable. Electromagnetic and similar waves, which are legally produced, obtained, or transported by natural persons and are put

5 The old land registers were introduced based on Ordinance no. 115/1938.

6 See Szladits 1942. 13–16.

7 Art. 537–538 of the Romanian Civil Code.

8 Art. 539–540 of the Romanian Civil Code.

to personal use as well as all kinds of energy, irrespective of the immovable or movable aspect of its source, are considered movable property. The soils and the natural resources found in the soil, the fruits that have not yet been separated from the tree, the plants and constructions that are connected to the soil are all considered mobile assets by anticipation. In order to obtain the opposition of rights to a third party, the rights need to be noted in the land register.<sup>9</sup>

b) *The cadastral record*, maintained by the Land Registry Offices, had the purpose of providing information regarding plots outside the boundaries of settlements for statistical, administrative, and agricultural production purposes. The national land register was the foundation for the creation of parcels of land apt for industrial cultivation as well as for the further registration of the changes that occurred in relation to the land and, later, for the redemption of lands used by cooperatives.

This method of land registration had the negative effect that the guarantee instituted by the court of law ceased to exist resulting in lack of the authentic, *constitutive effect* of registration of ownership in the land register by which transfer of title over immovables to the registered owner normally took place. The land registers became subordinated to the national administration. This negative change had clear ideological reasons as most of the immovable assets that became the property of the state, or were close to being owned by the state (being owned by socialist cooperatives), had been previously owned by individuals violently dispossessed, at times sentenced to death, under the authority of the state.

The transformation of agriculture and the latter's transformation into cooperatives by the use of force – based on the land reform, the administration of the parcels of land, and other political measures – led to the use of tax land registers.

After the socialist reorganization of agriculture mentioned above, the country's agriculture was characterized by industrial farming performed on a large scale, while individual farming was only present on a small scale. The drain of income that originated from land was not of significance because the state procured its income from other sources. New requirements arose in the matter of land registers that were being used for tax purposes. Instead of these, a new register was needed that could become the *basis for agricultural planning* and could keep track of all the land parcels in the country. Data was needed in order to make agricultural planning work. In order to be able to calculate how much grain is needed annually in the country, it was necessary to know the exact number of square meters of agricultural land and the exact percentage that is being used by factory farms and by cooperatives. On the other hand, in order to be able to verify the *proper use of land according to its purpose*, reliable registers were required. This is why a national land register was created.

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9 For the classification of goods as movable and immovable, see Veress 2017. 76–77.

The purpose of the national land register was to supply the data which was needed for planning and statistical analysis (for example, to know: the exact square meters of land that is being used for agriculture, the cultivation of grapes, or mowing in a county; the exact owner or the possessor of these plots of land). The register was also the *basis for taxation by way of the land tax and any income tax*.

The national land register kept a record of the parcels of land by categorizing them according to the administrative unit they belonged to – county, town, and village. The parcels of land that belonged to a certain administrative unit were further subcategorized into *inside plots* (those inside the administrative boundary of urban and rural populated settlements) and *outside plots* (those outside the administrative boundary of populated settlements). This meant that there were separate sheets for inside plots and outside plots. The separate registers were necessary because the two types of lands had different *destinations*. The object of land registers incorporated *all parcels of land in the country*. They also contained the underlying land, land register numbers, areas, standards, and types of cultivation as well as owners, possessors, or users. The land register also contained data that was necessary for the purposes mentioned above. The data about the land was organized into work divisions. There were *main* work divisions and *complementary* work divisions. The main work divisions were: the sheet for possessors, the land register and land registry map of the administrative district.

The following complementary work divisions could be found: a table of contents organized by name, a register organized by land registry numbers, etc. The latter data helped to identify the immovable asset.

The sheet of possessors separately contained the following: owner, possessor. There was a separate sheet of possessors for the inside plots and outside plots. Data presented in the sheets of possessors were summed up; this way, it was possible to see the total plots of land owned by the same subject, organized by different types of agriculture.

The land register of a village contained most of the data regarding the plots of land that could be found in the inside plots and outside plots of the village, in the order of topographical numbers. Land registers made possible to record the plots of land that could be found in the village, town, or county based on types of agriculture.

The counties' land registers were organized by the county cadastre, geodesic, cartographic offices (*oficiile județene de cadastru, geodezie și cartografie*), and their legal predecessor, the Cadastre and Land Organization Office (*Oficiul județean de cadastru și organizarea teritoriului*). The changes that surfaced in time regarding the owner or the possessor were also registered.

c) *The transcription and inscription registers of the land registry system* applied the principle of 'personal folium', according to which the internal classification

of the register is by the owners of the immovable asset and not by the assets themselves. This system was used in Moldova and Wallachia.

d) *The new and complete land registration system.* The new Romanian Civil Code and Law no. 7/1996 are based on the principle of 'real folium', according to which the internal classification of the register is by goods, not by the owners of the immovable asset. The laws conserve the basic unit of the land registry system as being the parcel of land, according to which the land itself and any edifices erected on it are registered in the same place. The law maintains the completeness of the land registry in the sense that the latter incorporates most of the immovable assets of the country and that it also conserves the basic, classical principles (registration, authentication, publicity, principle of documentation, hierarchy) that stem from the old land registers (which are in force even today), which have been attributes of land registries for a long time.

It is the National Cadastre and Land Registry Agency's (*Agenția Națională de Cadastru și Publicitate Imobiliară*) remit to record data, rights, and facts that are related to immovable assets. The united land registration system was adopted in the year 2004 because that was the year the land registry offices that had been operating under the supervisions and control of courts (*birourile de carte funciară*) were subordinated to the land registry agency and therefore placed under the supervision of the executive branch of government. The current structure is the following: the National Cadastre and Land Registry Agency is in the centre, and the land registry offices come second.

Nowadays, land registers are kept in an administrative manner as the institution of the land register judge no longer exists. A new profession has emerged, that of the registrar of the land registry.

### 3. Sporadic Registration in Land Registers

Nowadays, immovable assets are registered in land registers using the sporadic land registration approach, which is based on land registry numbers assigned in numerical order.

According to Land Law no. 18/1991 and the subsequent land laws, when the titles of ownership were filled out, the situations presented in the land registers were not always being taken into account. This way, it became possible for the certificate of title to contain lands that were registered in the land registers as being in the property of other people; in other words, the certificates of title 'overwrote' the land registers, changing the existing situation presented in the land registers and the relationships around possession, even in those places where the old land registry system was in force. The properties were usually not returned to their original locations because land laws did not force the local land division

commission to do so *ope legis*. This way, the old owners would often receive other parcels of land than the ones nationalized from them or their ancestors.

Sporadic registration in land registers<sup>10</sup> is now being rolled out across the entire country, which is slowly leading to the loss of the ‘old’ land registers that existed in certain parts of the country (mainly in Transylvania). We can say that the land law, which has been altered and amended several times over the past years and which makes it possible to record ownership titles in the land register, has led to situations that may differ from the legal situations presented in the ‘old’ land registers.

Art. 40, paragraph (3) of the Land Law referred to above states that in those places of the country where the directions set forth by Decree-Law no. 115/1938 concerning the management of land registers are still in effect, the registration of the parcels of land returned to previous owners on the basis of land laws is done in the new land registers based on land register numbers assigned based on specific documentations; the applicable system of registration is the sporadic land registration system. This way, old land registers have lost their original roles, and registration based on assigned land registration numbers has spread.

In conclusion, the registration of parcels of land which have been returned based on land laws has led to the birth of a sketch that is similar to a mosaic in every administrative district. It is impossible to assume that these parcels will someday (by year 2023?) fit into a complete land registry system.

## 4. On Systematic Land Registration

In essence, according to the National Programme for Land Registration and the Land Registry, the systematic registration in the integrated cadastre and land registers should be finalized throughout the country by the year 2023.

According to the provisions of art. 11, paragraph (2) of Law no. 7/1996, the process of systematic land registration consists of the following steps:

- notifying owners and other interested parties;
- establishing the borders of local administrative districts;
- identifying immovable properties within and outside built-up areas;
- marking the land registry districts;
- obtaining all necessary data with the help of an expert appointed by the land registry<sup>11</sup> and inserting it in the land registration procedure;
- identifying immovable properties in the land registry districts;
- identifying the owners and possessors and those entitled to rights *in rem*;

<sup>10</sup> This is how they registered parcels that had been registered based on land titles.

<sup>11</sup> The legal and technical data can be collected from the Land Registry Office, public institutions, private and public entities.



- calling upon the services of the Chamber of Notaries in cases where the succession process has not been completed and have them appoint the competent notary public;
- comparing the results of the measurements with data from the records of the land registration office;
- receiving and approving the land register documents;
- at least 5 days before the technical data is submitted to the land registry, it is made public in a local and a national newspaper; there has to be a notification about making these data public at the headquarters of the local council and on the website of the Land Registry Office;
- the results of the measurements must be announced publicly and posted at the headquarters of the local council and on the website of the Land Registry Office;
- filing and resolving complaints that aim at correcting mistakes made in land registry documents or regarding the issue of ownership or possession;
- completing the systematic land registration;
- drafting the new property registers;
- abandoning the old land registers, based on the directive issued by the Director of the National Cadastre and Land Registry Agency, which is made public in the Official Journal;
- the interested parties receive new land registry decrees and new land registry extracts;
- archiving the old land registry documents;
- minimum 90 days after and maximum 2 years before the opening of new land registers, public notaries issue certificates in favour of the possessors, which make it possible for them to be registered in land registers as owners.

In relation to the procedures set forth by the law, we can mention the following ‘rough surfaces and splinters’:

a) With regard to the presence and notification of owners and other interested parties: it is reasonable to require the presence of these parties at the scene because they know best where the parcels of land are situated, who the neighbours are, and where the land boundaries are. If the owner is not a local, the trip costs money, and the owner has to take a leave of absence from work.

b) Marking the boundaries of the local administrative district: it is well known that in Romania the borders of the local administrative districts (villages, towns, counties) have been determined based on Law no. 2/1968 – these markings are in effect today. The communist regime of those times did not take those borders into account at all; instead, they created other, discretionary markings. This way, it was possible for parcels of land to be moved to another administrative district even though in the past – from a tax and land registry standpoint – they always belonged to a different administrative district. After the ownership reform of 1990, never-ending disputes started between administrative districts regarding

the location of the border;<sup>12</sup> in most cases, these disputes could only be resolved through the final, binding decision of a court of law. This way, considering that the marking of the borders of the local administrative district is the precondition of implementing the National Programme for Land Registration and the Land Registry, in many cases, the fact that the border issues have not been resolved poses a serious threat to the implementation of land registry procedures.

c) Completing the succession procedures: successions need to be finalized through a succession procedure. If there are no legal disputes between the successors, the situation is resolved through a probate process in front of a notary public. *Per a contrario*, if there is a legal dispute, a court of law has to determine the successors and the quota each are entitled to from the estate. It is undisputed that in both cases the interested parties need to pay for the succession procedures; these cannot be free of charge because there is either the fee of a notary public that needs to be paid or the fee for dispensation of justice or the fee of an expert or of a lawyer. Moreover, a succession that is resolved through a court of law requires time, and this way land registry procedures get postponed.

d) Comparing the results of the measurements with data from the records of the land registration office, records of public institutions, and the private records of private entities and legal entities; posting and publicly announcing the results of the measurements; filing and resolving complaints that aim at correcting mistakes made in land registry documents or regarding the issue of ownership or possession – if there is any discrepancy between the measured land and the numbers present in the registers, these numbers need to be compensated either by adding or by subtracting. The unhappy owners can file a complaint at the Land Registry Office as an authority of first instance, and afterwards, if the owner is unhappy with the solution of the complaint, they can bring the matter before a court of law. The latter procedure is very time-consuming, and therefore it cannot be free of charge.

e) In matters regarding land that is located outside a built-up area, there is the possibility to register the possessor as the owner *ex officio* within 3 years after the recording of the possession if a legal dispute is not recorded in the land register during the 3 years after the recording of the possession. In such cases, the legal provisions governing the statute of limitations are not applicable, the possessor acquires the property right by law upon expiry of the aforementioned period, and there is no need to follow any subsequent procedure or obtain any certificates.<sup>13</sup>

Moreover, the local government must attest that:

- the immovable property is not the object of public ownership and is not privately owned by the state or one of the state's administrative districts,
- the interested party possesses the immovable property as an owner.

12 For example: the dispute between Harghita and Neamț counties. Also, there are a number of border disputes in progress, and resolving these disputes requires a lot of time.

13 Art. 13 (7) of Land Law no. 18/1991.

f) In matters regarding land that is located inside the built-up area, the possessor can be noted in the land register as the owner, based on a certificate issued by a notary public. The procedure begins based on the directive issued by the National Cadastre and Land Registry Agency.

The following papers need to be attached to the petition:<sup>14</sup>

- an extract from the land register;
- an authentic statement from the interested party stating the following:
  - i. the possessor is known to be the owner of the immovable;
  - ii. if the possessor is married or not. If the answer is yes, the type of the matrimonial community of property must be mentioned;
  - iii. the immovable property's title has not been transferred to someone else and/or encumbered;
  - iv. the immovable property is in the civil circuit, is not the object of a dispute, and a document can be produced that attests the fact that the possession of the current possessor is not in dispute;
  - v. the current possessor is the sole owner or a co-owner of the immovable property;
  - vi. a document that attests the possession of the immovable property or a statement; in the absence of such, a document can be produced;
  - vii. a document that attests the possession of the immovable property; if it exists, it is presented to the competent notary public;
  - viii. a copy of the identity cards and of the birth certificate extract of the possessor is presented.

In our opinion, the possibility for *the possessor to be noted in the land register as the owner based on a certificate issued by a notary public* should be repealed as the procedure is patently unjust because it is only possible to transform someone's rights of possession into property rights – according to the provisions of the New Civil Code – through usucaption (acquisition by prescription). Moreover, in our opinion, it is unlawful not to apply the rules that govern prescription when the possessor is noted in the land register as the owner. How is it possible for the possessor to acquire ownership after 3 years – in accordance with the law – without having to go through any other procedure or acquire any certificates?

Due to the 'rough surfaces and splinters' mentioned above, it is not possible to carry out the systematic registration in the integrated cadastre and land register throughout the country by the year 2023. Moreover, we have serious reservations regarding the fact that the procedures are free of cost. The establishment of the land registration system and its functioning do not reckon with serious challenges, and its services are not yet able to comply with the expectation of them being free (?) of charge.

14 Art. 13 (8) of Land Law no. 18/1991.

In conclusion: we need legal and technical solutions that have been carefully thought out beforehand, are doable, and are not mere legal and technical norms, without substance to them. Legislators need to permanently strive to put land registry laws into practice.

Aside from the modernization of the technical conditions of land registers, there is also a need to review the applicable laws. There are a series of issues that have been raised that need to be regulated through laws.

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\*\*\* [www.ancpi.ro](http://www.ancpi.ro) (downloaded on: 17 November 2019).