

Property Marking Synchronisation in the Cadastre

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Abstract:

Assigning rights, particularly ownership rights, to any property requires its description, or in other words, marking. Cadastral systems based on Germanic solutions, including the Polish system, rely on two separately maintained registers. One of them is the land and building register and the other is the land and mortgage register. The land register records information about the actual state of the land, including its boundaries, land use, and quality. On the other hand, the land and mortgage register records property rights and the individuals entitled to those rights. Such organization of the cadastre requires checking the consistency of the same data present in both systems, particularly concerning property description. Due to historical and institutional reasons, Poland often experiences a lack of synchronization between the land and mortgage registers and the cadastre. This article presents the causes of such a situation and possible solutions aimed at standardizing property marking

Keywords: property cadastre, land and mortgage registers, property marking, data synchronization.

1. Introduction

The land and building register system (cadastre) in Poland is closely connected with the system of land and mortgage register. The two systems record and keep information about the state of the land. The cadastre records the land's physical state with its features, such as, the boundaries of plots and their resulting area, the land use, soil class (quality), etc. Apart from that, the cadastre keeps information about the entities (first and second name, other names, address) who hold titles to the registered land plots. The stored data describing the registered objects (land plots) include the number of the particular Perpetual Book in which every land plot has been entered as part of a real estate. The cadaster is kept by *starosts* (district heads)¹ as part of their tasks entrusted to them by the central government administration.

The land and mortgage register stores information about each real estate. The real estate may include any number but at least one land plot. The Perpetual book consists of 4 parts called sections. These sections are shown in Figure 1.

¹ The administrative division of Poland includes voivodships (provinces), powiats (counties) and gminas (communes).

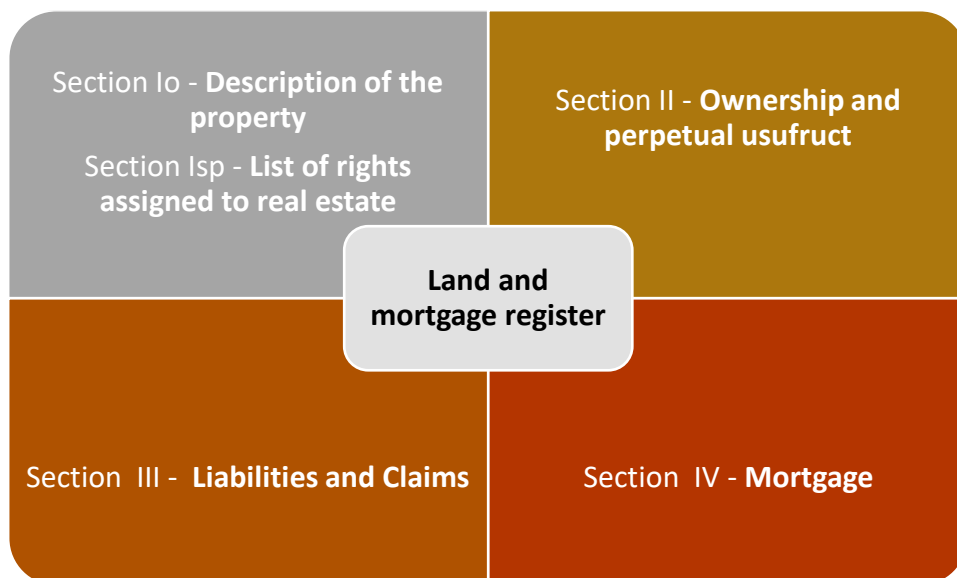


Fig . 1. The structure of land and mortgage registers in Poland

The connection between the cadastre and the mortgage register can be seen first of all in the Perpetual Book's Section Io: "description of the property." This is so because of the principle which requires that before any title or right can be assigned to any object, this object must first be marked (described). Real estate marking is comes from the land and building register. The scope of information obtained from the land and building register and recorded in Perpetual Book's Section Io is shown in Table 1.

Tab. 1. The structure of Section "Io" of land and mortgage registers

Rubrics	Rubric content
mention (note)	possible mentions of: application, complaint, appeal, cassation appeal, etc.
property number	consecutive number of the property disclosed in the land and mortgage register
position	includes the following fields: "order number", "voivodeship", "county", "commune", "town", "district"
description	includes data on the marking of plots, buildings, premises. For a cadastral plot, it includes the fields: "plot identifier", "plot number", "location", "street", "method of use", "disconnection", "connection", "number lost, destroyed, old books, collections of documents
area	in the case of land property, this is the area of the property constituting the sum of the areas of the cadastral parcels
compliance with data from the register	result of the examination of compliance of the data recorded in the land and mortgage register with the data of the land and building records

The Perpetual Books are currently kept by district courts. It is important to note that the territorial jurisdiction of district courts is not always identical with the territory of the counties. There has been no legal obligation to have a Perpetual Book set up for each property in Poland so far. Owners may never have a Perpetual Book established for their property. The only exception here are the constitutive rights, that is, rights which begin to exist at the moment when an inscription is made in the Perpetual Book.

Such rights include mortgage, ownership of a property, and its perpetual usufruct. If any entity enjoys one of these rights, it means that a Perpetual Book has been set up for the property to which this right pertains. Some other obligations related to establishing Perpetual Books result from other laws, the most important of them being the Notary Public Law (Act 1991). According to this law, whenever a change of the ownership rights is done before a notary public (sale, donation, etc.) the notary is obligated—on behalf of the acquirer—to apply to a district court for setting up a Perpetual Book or for entering the acquired real estate in the existing Perpetual Book.

2. Reasons of the lack of synchronisation

The reasons of the lack of synchronisation between the land and building register and Perpetual Books have mainly historical roots. In the years 1795-1918, a time when Europe was introducing its first cadastral systems, Poland was under occupation by its neighbour empires: Russia, Germany (Prussia), and Austria. Therefore, when Poland regained independence in 1918, there were three different cadastral systems operating on its territory or there was no cadastre at some places at all (Polish lands formerly held by Russia). A mixed system based on solutions used by the three empires which had formerly controlled the Polish territory continued to be in use for quite a long time since. The division of Poland covered by the former cadastral systems in 1945 is shown in Figure 2.

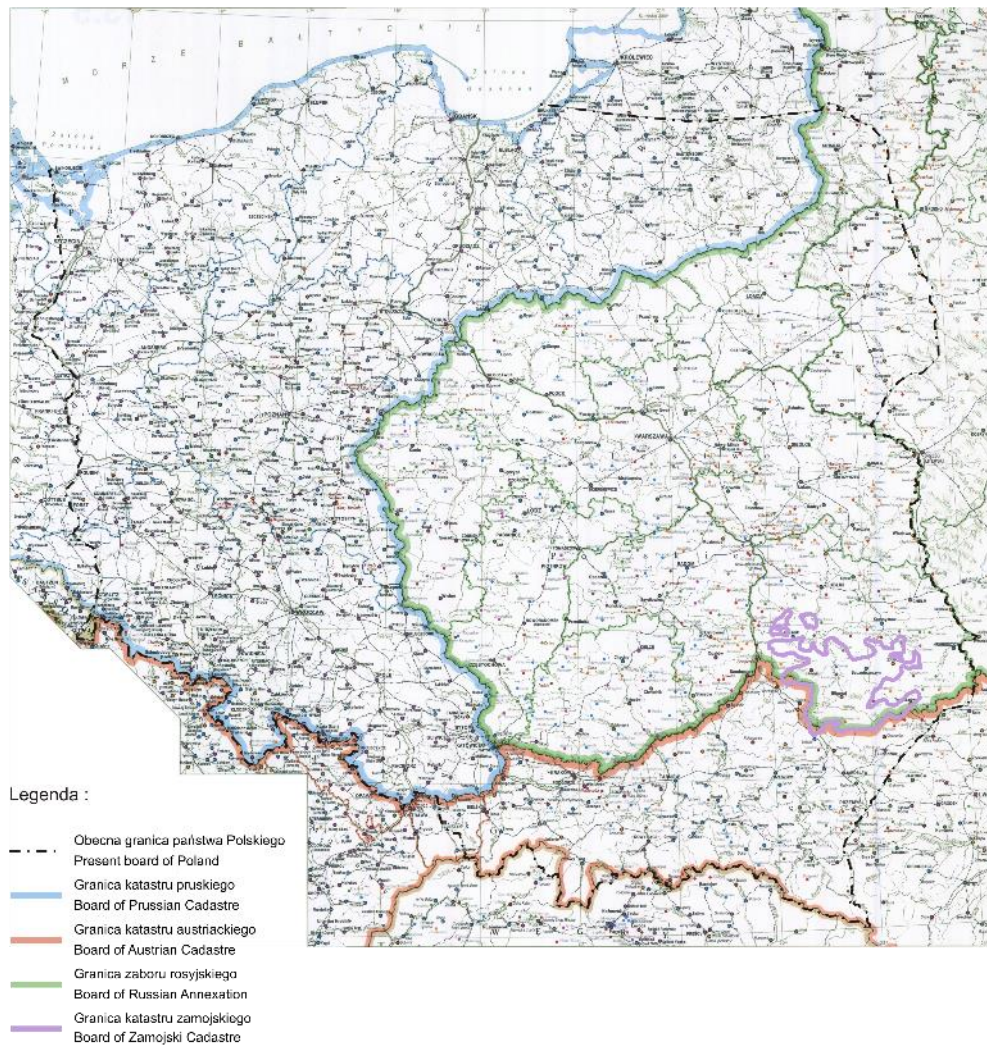


Fig. 2 . The division of Poland based on the functioning of former cadastral systems (source: MGGP).

The land and buildings register introduced shortly after 1955 was designed to ensure the system's uniformity on all the Polish territory. The definition of a land plot as the basic object of the system was a key factor of the assumed uniformity. This definition was different, in particular, from the definition of the basic object used by the Austrian cadastre called cadastral parcel. The main difference was that the cadastral parcel was an area under homogenous crops, while the Polish land plot could be heterogenous here. Land plots delineated at the time of the register's introduction could consist of more than one or only a part of a parcel. Note, that the definition of the parcel assumed its homogenous land use, not a homogenous legal status. This is a key difference considering that World War II took about 6 million Polish lives and caused resettlement or displacement of another 5.8 million people (Fig.3).

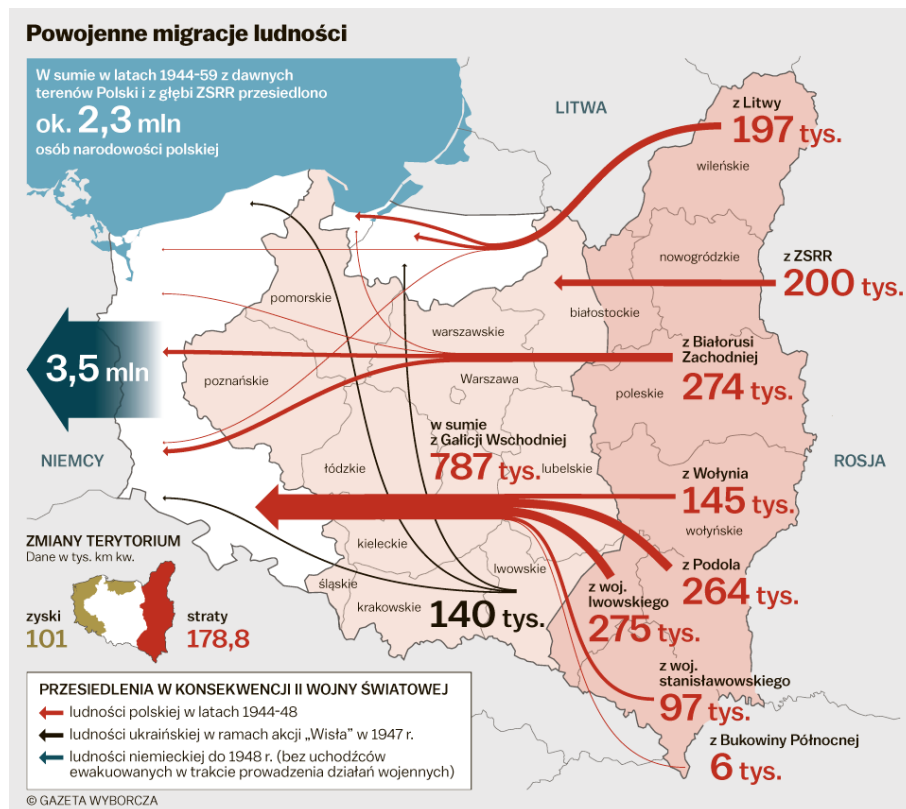


Fig.3. (source: www.geografia24.pl)

Legend:

- migrations after WWII
- altogether, ca 2.3 million Polish nationals resettled from the Polish and Soviet territory in the period 1944-1959
- border changes, area in thousand square kilometres
- gains 101, losses 178.8
- resettlements as a consequence of WWII
- Polish population resettled in the years 1944-1948
- Ukrainian population resettled during the "Operation Vistula"
- German population resettled until 1948 (without refugees who left during the hostilities)

Poland in 1946 adopted a uniform land register system called the Perpetual Books. Meanwhile, the inherited Austrian descriptions of land parcels were entered in those Books covering the period between 1947 and the introduction of land and building register (usually 1960-1980).

The efforts to regulate the changes in land ownership structure which occurred after World War II was made no sooner than in 1971. At that time, rural areas were regulated by the Law on the Regulation of Farm Ownership (Act of 1971). Under this law, local government bodies (district heads) were issuing administrative decisions called "Land Ownership Acts" which confirmed the ownership title to the particular piece of land. This law remained in force from November 4, 1971 to April 6, 1982. The Land Ownership Act carried the numbers of plots (and, in the early stage, also numbers of the Austrian parcels) which identified the pieces of land now becoming the property of physical persons. The Land Ownership Act was, consequently, a document which confirmed the ownership right and allowed

entering this right into a Perpetual Book. This Act also provided grounds for entering a cadastral subject in the land and building register.

The above factors are largely responsible for discrepancies between real estate descriptions in the Perpetual Books' Section Io and the data recorded in the land and building register.

3. Synchronisation list

The synchronisation list is a document made by a qualified surveyor who compares data in the Perpetual Books (often old registers established before 1946) with data present in the land and building register. This comparison focuses on marking or description of each land property which is usually defined by numbers of land plots (plots and parcels) and by the area of the plots. The land use is usually not taken into consideration. Also, the comparison of cadastral subjects with owners shown in Perpetual Books is usually not required.

The synchronisation list is usually made in the following situations:

- a Perpetual Book is being set up when the owner is entered in the land and building register on the basis of the Ownership Act. There exists no Perpetual Book for this particular property but there is an old, pre-war land register in which the land is marked with numbers of the parcels involved;
- an inscription is being updated in the existing Perpetual Book set up after 1946 but before establishing the land and building register. The description of the land in the Perpetual Book is based on the numbers of parcels assigned to them under the Austrian rule;
- a property's legal status is being updated (e.g., positive prescription). The sole proprietor (the subject who seeks his ownership title to be regulated by the court of law) is inscribed as the possessor. The regulation of the ownership right requires the deletion of the property involved from the old Austrian land registers.

Making a synchronisation list does not generate modifications in the land and building register. It is a document necessary for making changes in the Perpetual Books. The production of such a list can be roughly divided into the following activities:

- obtaining information about the numbers of land plots for which the list is made;
- obtaining a copy of the cadastral map and a copy of the relevant part of the cadastral map of lands once under Austrian rule,
- calibration of the land and building register map (unless a vector map is available) and then calibration of the cadastral map,
- identification of cadastral parcels corresponding with the land plots registered,
- identification—in the land register court—of the numbers of Austrian land registers (LWH) assigned to the identified parcels (list of parcels) and then obtaining information from the particular pages in the identified LWH, including the parcel areas,
- checking the differences between the plot areas and their corresponding parcels,
- whenever it is necessary to use only part of the parcel's area, the parcel division is made on the cadastral map (an inscription "part of Ikat..." will be sufficient in some counties).

The crucial stage of this process is the comparison of the current cadastral map (which represents the state currently seen in the land and building register) with the map showing the cadastral state presented by the land registers. An example of such comparison is given in Figure 4.



Fig. 4 Comparison of maps

Black colour shows the situation on the current land and building register map and red shows the situation represented on the old Austrian cadastral map.

A sample of a finished synchronisation list is shown in Figure 6.

STAN DOTYCHCZASOWY (LWH)							STAN NOWY (EGiB)										
Lp.	Nr KW	Imię i nazwisko właściciela (władającego)	Położenie nazwa - b gm. kat. lub jedn. ewid.	p.gr. kat. dz.	Powierzchnia			Nr arkusza mapy	Nr działki	Określenie położenia - obr. jedn. ewid.	Powierzchnia			Imię i nazwisko właściciela (władającego)	Uwagi		
1	2	3	4	5	ha	a	m ²	6	7	8	9	10	11	12	13	14	15
	LWH 571	Tadeusz (Henryk, Krystyna) - udział 1/1	Gm. Kat Kraków Bieżanów	Lk 904-14 lk 904-16 Lk 904-18	0 05 48 0 11 97 0 25 98			Zmiana oznaczenia działek (parcel)		326/2		Kraków Podgórze Obr.106	0 43 15	G. 247	21493	Tadeusz (Henryk, Krystyna) - udział 1/1 30-741 Kraków ul.	
					razem	0 45 43											

Fig. 6. Example of a synchronisation index

4. Summary and conclusions

Historical circumstances are responsible for the fact that the ownership structure of real estate in Poland continues to generate many problems even today. For one thing, the times in which Poland was partitioned among three empires through the 19th century when cadastral systems were emerging and, for the other, the tragedy of World War II have produced a situation where it is often very difficult to establish who and on what grounds is the owner of a particular piece of land. A parallel registration of land information in different systems and the legal status being recorded separately from the actual land data makes the picture even more complicated. The synchronisation of data describing real estate by its physical features (boundaries, area and land use) present in the land and building register with the same data inscribed in the Perpetual Books' Section Io is the precondition of reliability of data sitting in both systems. Despite the obligation to doublecheck the advancement of data synchronisation (obligation required by the implementing provisions for the Act on Land and Mortgage Registers and on Mortgage (1982) this problem has not been fully solved in a systemic way until today.

It should also be mentioned that in practice, the synchronisation lists made to co-ordinate records in both systems are not regulated by the law. They are functioning on the mere basis of general provisions set forth in the Law on Real Estate Management (Act of 1997). This problem has not been fully solved in present day Poland either.

References

Act of 1991: the Notary Public Act of February 14, 1991.

Act of 1971: the Law on the Regulation of Farm Ownership of October 26, 1971.

Act of 1982: the Act on Land and Mortgage Registers and on Mortgage of July 6, 1982.

Act of 1997: the Act on Real Estate Management of August 21, 1997.

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