

Research of the “Prove” and Conservation of the Real Rights within the Modern, Technological and Telematic Cadastre

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SUMMARY

The updating of the Cadastre happens necessary through the telematic communication of the updating data that are compiled by the contribution of the Surveyors Professional Men.

The new technologies guarantee a refining and an acceleration of the procedures and surveys but they do not allow the recognition of the “prove”, or rather, of the absolute guarantee of the public recognition of private rights corresponding to technical contents of the cadastral updating.

The modern technology, that belongs now in all the Cadastres, has to be supported by a juridical – certifying activity parallel to the technical one of surveying and of updating, that guarantees the maintenance, formation, constitution and/or suppression of the probable real rights linked to the real estate that are represented in the conservation and in the cadastral stocktaking of lands and building.

A starting point for this and also for the formation of the emerging Cadastres can be taken by the observation of the so called “Catasto/Tavolare” System that is operative in the old provinces of the ex Austro-Hungarian Empire and therefore also in some regions of the north-east part of Italy.

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In the former provinces of the old Austro-Hungarian empire, and hence in north-eastern Italy (Friuli Venezia Giulia and Trentino Alto Adige) the so-called “ex-Austrian” Land Register is still current.

From the point of view of land management, there are two main positive aspects of this system: probatory nature and publicity for geometries and rights.

The land register data, geometrical, technical, administrative and census, become elements of proof when brought to court for unquestioned recognition of the consistency of properties and the associated real rights, in the first place the right of ownership.

The system is based on the geometrical identification of the consistency and location of the asset in the land register and its correspondence with the “Libro Fondiario” or “Tavolare” where the Tavolare Judge guarantees the rights and publicity for the same.

There are two offices that operate the system: the Register (Catasto) (technical, administrative and fiscal), and the “Tavolare” (juridical). They conserve and publish – each within its own competency – all the technical and juridical acts produced by surveyors, notaries and public authorities and the private sector for conservation and updating of the system and the database.

Any citizen may at any moment verify both the consistency and the rights relating to a piece of land or a building and the certificate released (“visura”) is in itself probatory as the system does not admit lack of precision or doubts in the inventory of property ownership and representation of the territory.

At the “Catasto” one can verify all the technical data and at the “Tavolare” all the corresponding rights, ownership, active and passive servitudes, mortgages, burdens and the like.

The way it works can be understood by taking as an example the purchase of land by a private individual who intends to build his own house on it.

The land is surveyed and divided with a specific division plan (“piano di frazionamento”) prepared by a private surveyor.

The division plan is presented to the Land Register (Catasto Fondiario) for “technical validation” and then prerecorded; it is then brought by the Notary, the public official entrusted with preparation of the deed of sale (atto di compravendita).

The contract between the parties (seller and purchaser) prepared in the presence of the Notary, acquires legal value in so far as it determines:

- 1) The subdivision of the pre-existing registry plot and the formation of the new derived ones, with their effective consistency
- 2) The transfer of the rights of the newly formed subdivision from the old owner to the new one.

The act of notary is passed, along with the plan of division to the “Tavolare” office, where the judge checks its contents and decrees its legitimacy, having the “Tavolare” data (numbering of the new plots and entering of the new rights) entered in accordance with what appears from the division plan and the notarised contract.

The decree from the Tavolare judge, which corresponds to a true definitive sentence, is transmitted to the Land Register for definitive approval of the subdivision plan, for updating of the registry map, and of the administrative and census data for the new situation.

All these operations and these acts are absolutely “public” and their public nature is guaranteed at every moment, since they can be read at the Catasto or Tavolare offices by anyone who so wishes.

The laws that instituted the ex-Austrian Land Register system are very ancient ones and today the advent of computerised and telematic systems and scientific and technological developments in surveying and graphical representation techniques frighten members of the public who fear losing the benefits of the system and above all the guarantee provided by the probatory and by the public nature of the acts.

In fact, the current procedures, technologically very advanced and extraordinarily precise, have become very difficult for non specialists to understand.

Thus, if the databases are being refined to near perfection, their high quality is becoming an insurmountable obstacle for members of the public who must be able to “see” and readily recognise the “public” acts.

With telematic transmission of acts updating property registers taking place directly from the Surveyor’s Office to the Land Register, the data and graphics are necessarily standardised and compressed into IT formats, losing the graphic personalisation and legibility that technical documents prepared manually used to have.

Thus the Tavolare and Land Register archives become readable only by experts who, to reset the boundaries or to reconstruct the technical content of the surveys on site must obviously

process polar and Cartesian coordinates to extract the measurements for which there will always be a need.

This possibility is not available to citizens who are not technicians and not experts.

To avoid this problem, the Italian Surveyors propose that, in addition to the IT and telematic procedures, there should be a further figure surveyed, drawn in clear, with written measurements so that it is easily possible to determine the dimensions of the lands subdivided and the references to stable reference points.

This new figure surveyed could have the graphics, measurements, indications and references necessary for being read very easily by anyone.

The surveyor would self-certify the correspondence of the technical content of this figure surveyed with that of the act of Land Register updating presented and approved.

This figure surveyed could be attached to the notarised acts, and therefore archived together with the contract.

It could be presented to municipalities for building procedures and delivered to the clients concerned, so that the geometry of the survey would be present, visible and understandable by all entitled citizens in every database and in every archive, conserving and ensuring their probatory character and public nature.

BIOGRAPHICAL NOTES

Academic experience: Dipl. in Surveying

Current position: Member of the Consiglio Nazionale Geometri

Activities in home and International relations:
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