

# Cadastral Registration of the Rights on Real Estate in Argentina

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**Key words:** parcel, land registration, cadastral registration, cadastral folio, cadastral map.

## SUMMARY

The present paper tends to give information on territorial cadastre, as well as of the cadastral registraci3n of the rights on the real estate, and theirs essential documents in Argentina. The land registration is carried out by the Territorial Cadastre and Land Registry, taking to the parcel as the unit of registration. They are managed by the respective provincial rules. In the Territorial Cadastre the parcels are registered with reference to the state of right contained in the public document or possession exercised. To that end surveyors have determined for each parcel the application and extend of a real right or possession over the land, through acts of parceling and/or territorial survey; and they have identified that parcels on the cadastral map and alphanumeric registry; this show evidence of parcels registered have physical existence.

In provinces argentine there aren't equals territorial cadastres. Each of them have their own aspects and functional structures, but with all its strength and weakness support the system of registration of the real estate in the land registry and in the transactions between individuals. Both the Land Registry and Territorial Cadastre, tend to give publicity to all entries of its registries, to provide legal security to land traffic. This is the unique form to assure the purchaser that real estate exists and is real.

The territorial cadastre performs a activity referred to measurement, registration and identification of parcels, thus the Land Registry has the aim the of inscription of acts referred to domain and other right on real estate. The cadastral survey also are carried out by the particular surveyors while the tasks of cadastral registration e identification of parcels are exclusively of the Territorial Cadastre.

The real rights considered in the Civil Code are eight, but only some of them have application in the land. There are other right on real estate create by law which are not incorporated in the civil code; it is the case of horizontal property, registered frequently in the big urban centers of provinces argentine. It's used for to register the division of building, but also for to register others special cases.

The importance to determinate precisely the parcels through acts of parceling survey, and to register it in the cadastral map and folio, constitute the base to register the real rights in real folio in the land registry. In this way the principle of specialty will be in force.

**Palabras claves:** parcel, registraci3n inmobiliaria, registraci3n catastral, folio catastral, mapa catastral

## RESUMEN

El presente trabajo tiende a brindar informaci3n sobre el catastro territorial, principalmente de la registraci3n catastral y sus documentos esenciales en Argentina.

La registraci3n territorial es efectuada por el Catastro Territorial y el Registro Inmobiliario tomando como unidad de registraci3n a la parcela. Ellos se rigen por las respectivas normas provinciales.

En el Catastro Territorial las parcelas se registran con referencia al estado de derecho, contenido en un instrumento p3blico o a la posesi3n ejercida. A esos efectos se ha determinado para cada parcela, la aplicaci3n y extensi3n de un derecho de propiedad o posesi3n sobre el territorio, a trav3s de actos de levantamiento territorial y/o parcelario, y se las ha individualizado en los registros catastrales gr3ficos y alfanum3ricos, evidenciando de este modo que las parcelas registradas tienen existencia f3sica.

No existen catastros provinciales iguales, cada uno tiene sus propios aspectos y estructura funcional, pero ellos con todas las fortalezas y debilidades, apuntalan el sistema de registraci3n de los inmuebles y a las transacciones inmobiliarias entre particulares.

Tanto el registro inmobiliario como el catastro territorial, tienden a dar publicidad a las anotaciones que constan en sus registros, a los efectos de proveer seguridad jur3dica al tr3fico inmobiliario, 3nica forma que le asegura al adquirente no solo la protecci3n jur3dica de su adquisici3n, sino tambi3n que lo que adquiere existe y es real.

El catastro territorial realiza una actividad referida a la medici3n, registraci3n e identificaci3n de las parcelas, mientras que el registro inmobiliario tiene por objeto la inscripci3n de los actos relativos al dominio y otros derechos sobre inmuebles. La medici3n catastral tambi3n es realizada por los agrimensores particulares, pero las tareas de registraci3n e identificaci3n de las parcelas son exclusivamente del catastro territorial.

Los derechos reales contemplados en el C3digo Civil son ocho, pero no todos tienen aplicaci3n territorial. Existen otros derechos sobre inmuebles creados por ley que no est3n incorporados al C3digo Civil, tal es el caso de la propiedad horizontal, que se registra con frecuencia en los grandes centros urbanos de las provincias argentinas. Esta forma de registraci3n es usada no solo para registrar la divisi3n de un edificio, sino tambi3n para otros casos especiales.

La importancia de determinar con precisi3n la parcela a trav3s de actos de levantamiento parcelario o mensura e inscribirla en el registro y folio catastral, constituye la base para inscribir los derechos reales en folio real en el registro inmobiliario. De este modo, el principio de especialidad registral tendr3 vigencia.

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## 1. INTRODUCTION

The registration of the real estate in Argentina was begun in the nineteenth century. In 1824 in the Province of Buenos Aires is elaborated the topographic map of the province, and it is organized a cadastral map and alphanumeric registry of the real estate. In the country is instituted a cadastre with civil effects, setting up the procedure of survey and demarcation. For historical reasons the Republic Argentina has a legal regime of the real estate inherited of the Spaniard legislation. Some provincial cadastrals have been organized, when there wasn't a Civil Code.

The Civil Code is sanctioned, in 1871. It was not introduced the registral publicity. The author of the Civil Code makes mention to the difficulties of executing in the country a parceling cadastre that permits the individualization of the real estate, as the cause for which did not introduce the registral publicity among the arrangements of the Code.

About 1881, Buenos Aires and other provinces organized its respective Land Registry. The laws that instituted them have imposed the requirement of the registration for the transmission of the real rights, to effects of the opposition to third parties, requirement not envisaged in the Civil Code.

Logically this gave rise to constitutional conflicts order, inasmuch as do not agree with the arrangements of the Code, but in practice continued registering the titles, therefore until the sanction of the Law 17.711/68 was registered an important proportion of the real estate of the country.

Since then have been made several attempts to reform the Civil Code, trying of surpassing the deficiencies of the system, concerning the constitution and publicity of the real rights. Was indispensable the existence of the Territorial Cadastre, and in those times very few provinces had begun the execution process of the cadastre.

The situation of empty registral legislation is extended until 1968, when is modified the Civil Code and it is instituted the record of acquisition or transmission titles of real rights on real estate, to the effects of the opposition to third parties.

Introduced the publicity registral in the argentine legal system, it was necessary the organization of the Land Registries. Thus, in the year 1968 was sanctioned the National Law N° 17.801 of the Land Registry that establishes the regime which will remain subject all the Land Registry of the country, and introduces the registration system in real folio, which is currently outstanding in all the provinces.

## 2. CADASTRAL LEGISLATION

As indispensable complement of the publicity of the state to right that prescribes the Law 17.801, in 1973 is sanctioned the National Law of Cadastre N° 20.440, that was incorporated into Civil Code.

Among the principal arrangements, this law incorporated into argentine legal regime the publicity of the fact state of real estate. Regulate the parceling state of the real estates and its determination, the cadastral registration, and establishes the obligation of the notaries, judges and other authorities to have in sight and to relate to the documents that authorize, the cadastral certification.

But this law, that establishes cadastral rules of uniform procedure for all the country, has had very few years in force, since in 1980 remained discontinued the validity of its articles 5 to 57 inclusive.

Since then the institutions involved with the cadastral topics, have elaborated various projects of law, but of to date there is not a national law of cadastre.

Referring to the Law 20.440 are in force the first four articles, that reflect the basic concepts of the cadastral rules, in base to which will operate the provincial cadastres. The first article establishes that the provincial Territorial Cadastres "will gather, register and order the information related to the real estate thing with the following purposes":

- a) to determine the correct location, limits, dimensions, surface and boundaries of the real estate, with reference to the legal titles or to the exercised possession;
- b) to establish the parceling state of the real estate and manage its development;
- c) to know the territorial wealth and its distribution;
- d) to elaborate economic and statistic data of base for the legislation tax and the action of planning of the local and national public authorities".

These four articles provide the essence of the cadastres, given by the identification and ordering of the parcel.

The provincial laws have full autonomy in cadastral matter. Due to the fact that the power of cadastral policeman is an attribution of the provinces and has not been delegated to the nation, the procedures are from local jurisdiction. Consequently the provincial laws act with property and competence in its respective jurisdictions.

The Provincial Cadastres fulfill mainly fiscal functions, but also fulfill the important function of complementing to the Land Registry of the respective jurisdiction through a common element the parcel, informing its real existence, through the physical characteristic, location, possession state, every time that the land registry has to register documents that contains legal acts with real transcendence.

There are not equal Provincial Cadastres, each one has its own aspects, functional structure and special functions, but with all the strengths and weaknesses, support the registration system of the real estate and to the land transactions among particular.

In the last decade most of the provinces were in process of implementation of development cadastral and registral programs, with financial agencies assistance such as the World Bank and the Inter-American Development Bank, to change the organizational structure of some Provincial Cadastres, update and computerization of the cadastral information, implementation of a territorial information system, development of geodesics standards for the georeferenciation appropriate, measurement to produce cadastral cartography, rural and urban cadastral survey, computerization of the Land Registry, creation of integrated data bases, etc.

### **3. THE CADASTRAL REGISTERS**

The Territorial Cadastre can be considered as the institution that establishes the existence of the parcel, to which registers graph and analytically.

The cadastral registration unit, is the defined parcel as the thing of territorial extension continuous, on which is exercised a right to property or possession. That parcel must be defined and represented in a cartographic document registered in the Territorial Cadastre.

Due to the fact that the provincial laws have full autonomy in cadastral matter, the territorial cadastres are different in the several argentine provinces. An essential element of the cadastral registration is the cadastral map; this constitutes a basic element to support to the real-estate registration

#### **3.1. Classification of the Cadastral Registers**

All the parcels of a given jurisdiction, are registered in the territorial cadastre in two ways. One of them in form graphic on a map, in which directly can be visualized the represented parcel; and the other in analytical form, the information of each one of parcels, is incorporated to other record, different from the graphic, in which can be recovered information in many and different ways.

This two types of records, are named the cadastral map and the cadastral alphanumeric record, and they contain:

1. The cadastral map, contains the geometric description of the parcels in different scales, that depend on the density on the contents in the map, in this are represented the results of all the surveys of the parcels. In some provinces the parcels are represented in the cadastral map by a math description, normally based on a coordinates system. Cadastral maps that contain the graphic data of the parcels, answer to different constructive characteristics and content according to the provinces. Also, they can be computerized.
2. The cadastral alphanumeric record, sometimes called analytical record or cadastral file, contains the textual information of the parcels, such as linear survey, surface, form, use of the land, improvements, name of the proprietary or owning and identity data; data of the property title and of registration in the Land Registry, such as number and deed date, notary, number of domain or real folio, etc., that normally it is annotated in specially designed forms in each territorial cadastre.

The graph information acquires a great relevancy; in addition to define the form, position and the dimensions of the parcels to the effects of consult and publicity, it is linked to the analytical data, generally through identification code of the parcels.

Some provinces of our country, are attempting to achieve computerized cadastral maps, while others are in process of integrating of their graphics and alphanumeric cadastral data base, in a statal territorial information system, formed by some data bases mainly referred to the Land Registry.

### 3.1.1. The Cadastral Map

Probably the first cadastral map existing in the country, may have been the Cartography Buenos Aires Province of, published by the Topographic Department of the Province in 1864. It was called Graphic Record, in which were set the existing rural properties within the zone limited by the frontiers of the aboriginals.

Until the sanction of the first Law of Parceling Cadastre of the country in 1935, there were a few cadastral maps. This law ruled the formation of the parceling cadastre of Buenos Aires Province.

The other provinces have not developed cadastral map in the same way as Buenos Aires, but they have had some kinds of cartography that has served to the cadastral purpose.

Only after the decade of the 60's in some provinces, begun the cadastral projects tending to achieve comprehensive cadastral maps of all the provincial territory.

Currently still exist various provinces that have not developed graphic records in the whole of its jurisdictions, though it has been preoccupation by strengthening the Provincial Cadastres, so that represent all the parcels of its respective jurisdictions in cadastral maps.

The action of planning of the provincial and national public authorities needs territorial base information to achieve the economic development and the optimum environmental administration of its jurisdictions, and until the moment the information which account most of cadastres of the country is not enough for the end of planning.

Generally it is spoken of the cadastral map as an unique element in all jurisdiction, but being its purpose to represent graphically to all the parcels, the term cadastral map, is employed as an expression of the whole. The cadastral map is normally divided into leaves, and in the generality of the cases those leaves answer to a hierarchic relationship.

The division in leaves is a logic consequence of the need of describing graphically to the parcels of all the jurisdiction, within them exist cities, centers populated in rural zones, country house and farm intended for the agricultural development, etc., in those which the parcels have different size, that they can vary from a few square metres until thousands of hectares.

For example, as the smallest parcels in urban zones need large scales so that they could be described graphically, it is not possible to represent all the city in one leaf, but the cadastral map necessarily it must be divided to make possible the graph representation of each one of the parcels.

This implies that they are divided progressively in different detail levels, continuing usually the political division. This has been the modality used by the provinces that count on its own cadastral map that is divided successively in departments, districts, and sections cadastral. So that the different provinces of our country count on a variable quantity of leaves of the cadastral map.

All the parcels should be represented in the cadastral graphic record. Above the cadastral section plan, it should be to appreciate graphically the form and the linear survey of the parcels, and its location respect to its frontier and to the topographic and natural accidents existing.

This indicates us the importance of the fact that cadastral map represent various elements, in addition to the parcels, to a scale that permit that all the elements and details will be clearly visible, since what is being representing are territorial facts of legal character. Each leaf of the cadastral map is a graph expression of the parceling legal situation of the zone that represents.

The confection of the leaves of the cadastral map, is carried out according to the provincial regulation. Also, can be found variations within a same jurisdiction, due to that each zone has its own characteristics. What is important is that each leaf supplies all the possible information in an adequate scale, with appropriate clarity in reading.

As a rule each leaf in which is divided the graphic record constitutes a cadastral section plan, that represents a given area according to the existing parceling in a scale that permit to individualize the registered parcels and to visualize the size and form of the same.

It has been adopted the projection Gauss-Krügger for the confection of the cadastral cartography, what has allowed to get will with the cadastral map with the general cartography of the country.

Some provinces have elaborated cadastral maps of reduced areas, generally urban, or suburban and of populated centers, without support to a coordinates system, or have adopted the cartography elaborated by other institutions with other aims to the territorial cadastre, such as the cartography of the irrigation areas, to the effects of counting on some cartographic element that allows to individualize the parcels.

In other provinces the cadastral map are originated from the previous survey of the territory through a cadastral survey of integral character. This task involves mainly the survey of all the parcels in its physical, legal and economic aspects, the determination of support points for the subsequent cadastral surveys, and the execution of the cadastral map from different provincial jurisdictions, and its division in leaves, so that all the parcels are represented precisely and clarity in each leaf of the cadastral map.

Some provinces that have developed its cadastral map in base to the survey integral of the territory and census of parcels through acts of territorial survey performed by contracted companies by the cadastral organization.

The cadastral map originating from these acts are perfected with the registration of acts of parceling survey practiced by the land-surveyors.

In Appendix are shown two leaves of cadastral section plans, the first corresponds to a urban area and the second to a rural area.

#### **4. ACTS OF TERRITORIAL AND PARCELING SURVEY**

In our country can be distinguished two types of cadastral survey, that the cadastral laws define as acts of territorial survey and acts of parceling survey.

The cadastral surveys are carried out with a specific purpose, mainly to establish the limits of parcels, of areas of public domain and of the political jurisdictions; also they can be executed to establish the limit among different destination zones, for example with the purpose of the cadastral valuation.

The principal purpose of the cadastral survey is to determine for each parcel its precisely location in a place, locality, city and country, the extension of its limits and surface, to register them in a cadastral map, in which furthermore will be shown all the subsequent modifications that occur in the original parcels by partition or unification, of the way and time this occur.

The acts of territorial survey have been defined by the National Law of Cadastre N° 20.440, as those that have as purpose to recognize, to determine and to survey the territorial space and its characteristic.

The same national law establishes that are acts of parceling survey those acts of territorial survey practiced in order to constitute the parceling state of a real estate, to modify it or to verify its subsistence.

The same norm has expressed that the essential elements of the parcel constitute the parceling state of a real estate, and establish a differentiation among the acts of territorial survey and the acts of parceling survey, but at the same time includes the acts of parceling survey within the first.

The essential elements of the parcel are:

- a) The location of the real estate and its adjoining.
- b) The limits of the real estate in relationship to legal title or the exercised possession.
- c) The linear surveys, angle and of surface of the parcel.

They constitute the parceling state of a real estate.

The acts of territorial survey generally are associated to the cadastral survey of a set of parcels, with the aim of incorporating them into cadastral map and record.

The acts of parceling survey involves a particular operation, that focus to determine mainly the geometric and legal conditions, and in some jurisdictions the economic conditions, of a certain parcel. Through these acts are determined with accuracy the limits of that parcel, the

linear surveys, angles and of surface, and are represented in a cartographic document, in order to its cadastral registration.

In both cases the individualization of the parcels is achieved through the operations of character geodesic, topographic, legal and cartographic, in a general way in the acts territorial survey, and particular in the acts of parceling survey.

The National Law of Cadastre N° 20.440 also has established that the acts of territorial survey that aim to constitute or modify the parceling state of a parcel will be made by survey, with adjoining citation and its essential documents will be the act, the survey's plan and the report.

Consequently the parceling state of a real estate is constituted when a surveyor engineer determines by survey the essential elements of that parcel.

The constitution of the parceling state, is not an indicator of that parcel have acquired parceling state, because the acquisition of the parceling state is achieved through act of enrollment, through which the Territorial Cadastres incorporate a real estate into its records.

The modification of the parceling state, is interpreted that is referred to change the parceling state of a real estate, already acquired through the enrollment, for example if is practiced the partition of a parcel, or the unification of two or more parcels belonging to the same proprietor.

The verify of the parceling state implies to prove the subsistence of the parceling state of a real estate, determined by survey and registered in the Territorial Cadastre.

The acts of parceling survey are ruled in the various provinces by own norm dictated by the provincial cadastres, for the execution, demarcation and registration of the survey's plans.

As a rule, the essential document of the acts of parceling survey intended for to constitute and to modify the parceling state is the survey's plan.

#### **4.1. Territorial Application of the Rights**

The Civil Code recognizes the following real rights: 1) the domain and the condominium, 2) the usufruct, 3) the use and room; 4) the active servitudes, 5) the right to mortgage; 6) the pledge, 7) the antichresis, 8) the forest surface.

Originally the real rights were seven, the right to forest surface is created by law in the year 2001 and there are still any provinces that have not experimented this type of special registration.

Of the existing real rights only some have application to the territory. The bigger proportion of the survey's plans that are presented to registration, are referred to the domain and condominium.

In addition to the real rights, also are presented to register the survey's plans by the horizontal property regime, for which results divided a building. This special regime combines in only one right the exclusive property on some parts of the building, and the common property on others that are accessories to the first. The exercise of this regime is regulated by the National

Law N° 13.512 and a joint ownership and administration regulation, elaborated to each particular building..

The horizontal property regime, also is employed for the registration of special cases, such as industrial parks, park cemeteries, field clubs, closed neighborhoods, etc.

The survey's plans are elaborated exclusively for surveyors engineer. These plans have different objects, they can be executed on real estate of the private domain of State or particulars.

Among the objects of work more frequent are found the plans referred to survey of one parcel, subdivision, unification, condominium division, subdivision by the horizontal property regime, subdivision for annexation, prescription of domain and for expropriation.

In all the cases, the surveyors engineer determine which will be the parceling state of the real estate, and then through the cadastral registration, that parcel acquires the parceling state through a designated act "enrollment".

The enrollment consists in the assignment of a number to each parcel for its identification, and the creation cadastral folio that complements to the real folio.

## **5. RELATION AMONG THE TERRITORIAL CADASTRE AND THE LAND REGISTRY**

The Land Registry and the Territorial Cadastre are two independent institutions, organized by each provincial State. These contribute to the exercise of the real rights on real estate, in the way established in the respective law.

The territorial cadastre organizes its cadastral records taking as a base to the parcel, defined as the territorial unit, delimited by the limits that mark the extension on which is applied the same right.

Instead the land registry is organized in function of the technique of the "real folio", of obligatory application in all the provinces.

Among these two institutions there is a necessary correlation that is manifested of different way in the various provinces, but also there is a common element, the parcel, which is the basic material element or object of real rights, and it is furthermore the registration unit in both institutions.

Both institutions fulfil the same objective, that is, to register aspects of the parcel, should be intimately related. The Territorial Cadastre is the one that provides the material element, the parcel and its physical and economic characteristics, and the possession state, while the land registry provides the legal state.

The land registry inform to the territorial cadastre the real rights that could to be invoked on the parcels which existence arises from documents registered in the territorial cadastre.

There is a link among these two organizations, constituted by the specialty o determination principle of the parcel. That link makes to the legal safety, since the buyer is assured not only the legal protection, but also what acquires exists and it is real.

The registration of the real estate in the land registry is carried out in function of the content of the property title, that is, is registered the state of right with reference to the parceling state of real estate registered in the Territorial Cadastre.

In the land registry, the opening of the real folio is carried out only with the information on the existence of the parcel contained in the cadastral folio.

## **CONCLUSION**

The lasts decades the provincial governments have invested no only money but also effort in order to get a full development of its Territorial Cadastres, but they still haven't completed that. Thus the provincial governments should be urged to go on working on this direction.





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