

PELIFILIP

FLOREASCA BUSINESS PARK
169A CALEA FLOREASCA • BUILDING B • 5TH FLOOR
014459 - BUCHAREST • 1ST DISTRICT • ROMANIA
PHONE +40 21 527 2000 • FAX +40 21 527 2001
OFFICE@PELIFILIP.COM • WWW.PELIFILIP.COM

THE CADASTRE LAW – CHANGES AT A GLANCE¹

Significant changes to the Law no. 7/1996 regarding Cadastre and Real Estate Publicity (the “**Cadastre Law**”) came into effect as of 2 July 2010, the date of the publication with the Official Gazette no. 451 of 2 July 2010 of the Emergency Ordinance no. 64/2010 (the “**Ordinance**”).

The changes aim to accelerate the process of organization and implementation of a unitary cadastre and registration with the land book of real estate in Romania and to increase the efficiency of such system by creating the appropriate data base for conducting registrations and searches electronically.

The objectives of the Cadastre Law, as amended by the Ordinance, refer to enhanced security of real estate transactions, supporting the mortgage lending industry and the public taxation systems, providing economical, technical and legal information regarding real estate property and ensuring the publicity of rights thereon.

The most important changes brought by the Ordinance are the following:

1. **The National Electronic Registry for Street Nomenclature. The geo-portal INSPIRE**

The National Agency has the duty to create, maintain, update and manage a unitary document of evidence, containing the street nomenclature of each commune, village and municipality in Romania. This evidence is named the National Electronic Registry for Street Nomenclature and shall serve to assign street denomination and administrative numbers to real estate properties.

The National Agency also has the duty to create and maintain the Romania geo-portal INSPIRE, ensuring its compatibility with the geo-portal INSPIRE of the European Community. By this amendment, the Directive 2007/2/EC establishing an infrastructure for spatial information in the European Community (INSPIRE Directive) is better implemented in the Romanian law. The goal of the INSPIRE Directive was to ensure transparency of public information, but with much broader scope than the availability of land book information for the mortgage lending industry. The INSPIRE Directive entered into force on 15 May 2007, aiming to ensure that member states' infrastructures of spatial data are compatible and usable in a Community and cross-border context.

2. **The electronic system of registration and consultation of cadastre records**

The information registered with the unitary cadastre and land book system will be also available in electronic format. By using the electronic signature, interested persons may file applications for registration or for obtaining relevant information or may obtain land book excerpts, rulings,

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or other documents and plans. The legal effects of such electronic communications shall be the same as if the documents should have been issued in hard copy.

3. **The National Programme for registration of real estate properties. The role of the cadastre has been increased**

- A National Programme for registration of real estate properties has been instituted. There is a significant focus on ensuring that the cadastre records give a complete and accurate reflection of real estate property.
- The technical function of the cadastre is now performed through determination of the limits between neighbouring immovables, based on measurements. This means that priority is given to the correct delimitation of real estates.
- The technical specifications contained in the public procurement documentation need to be endorsed by the National Agency prior to the initiation of the public procurement procedure; the contracting authority may take over the specialized works only after endorsement thereof by the National Agency. No payment by the contracting authority is allowed without observance of the above mentioned requirement.
- Cadastral works will begin countrywide in order to identify the cadastral sectors and to create the unitary cadastre and land book system. All owners will be notified to provide information regarding their properties so that the actual situation of the real estate be reflected in the new land books.
- The registration with the land book shall be made *ex officio* after the finalization of the cadastral works for each cadastral sector and after the elapse of the term for solving possible challenges. The cadastral register of real estates and the cadastral plan shall be the basis of amendments or drafting *ex officio* of the land books, upon finalization of cadastral measurements.
- From the date of opening *ex officio* the land books, the transcription and inscription registries (in Romanian “*registre de transcriptiuni si inscriptiuni*”) and any other evidence/ records of cadastre and real estate publicity shall be replaced, for the respective sectors, with the cadastral plan and with the new land books.
- The registration of immovable property shall be performed also in case the owner of the immovable may not be identified. If a possessor thereof exists, the registration of the possession over immovables shall be made. If no identification is available for either owner or possessor of the immovable, when cadastral works be made *ex officio*, the land books shall be opened bearing the endorsement “unidentified owner”.
- The technical documents for each cadastral sector shall be posted to each administrative territorial unit municipality headquarters. According to the Ordinance, the beneficiary of encumbrances (including any mortgages, liens, summons, seizures, litigation and any other deeds) priory registered with the transcription and inscription registries, shall request the registration of their encumbrances with the new land books within 30 days as of the date the municipality of the administrative territorial units posted at their headquarters the technical documentation corresponding to each cadastral sector. The requests for rectification of cadastral technical documents shall be made in the same term of 30 days.
- The evidence of the delimitation from other real estate properties can only be made by the excerpt of the cadastral plan.

4. **Modification of the content of third part of land book**

Changes were made to the content of the third part of land book (regarding the encumbrances and dismemberments of the ownership right). The right of concession and of administration have been expressly added as forming object of registrations with the land book of encumbrances; lease agreements and assignment of receivables shall be registered irrespective of their duration (before this amendment, only the ones whose duration exceeded three years had to be registered).

5. **Mergers and de-mergers of real estate properties**

The de-merger and merger of real estate properties can now be performed without the encumbrances thereon, should there be a convention to this effect. Also, the owners of the neighbouring properties can merge such properties for exploitation purposes. Certain changes to the manner the actual registration with a new land book of the de-merged or merged immovables have been also implemented.

6. **Registration with the land book. New identification details needed**

A deed cannot be registered with the land book unless it contains the identification details of the parties; personal identification number, fiscal identification number or sole registration code are now mandatory to be provided; the identification of the immovable has to be made by land book number and cadastral or topographic number.

7. **Amendments to the challenge procedure**

Any interested person may challenge the ruling of the clerk within a term of 15 days as of communication thereof by filing a re-examination request; this shall be settled by the chief-clerk within the territorial Office of Cadastre and Real Estate Publicity.

The ruling of the chief-clerk can be further challenged in court within 15 days as of communication thereof; the re-examination request and the challenge against the chief-clerk ruling shall be submitted to the territorial Office of Cadastre and Real Estate Publicity, shall be registered with the Land Book and shall be forwarded by the latter to the competent court, as per the procedure priority provided under the Cadastre Law. However, the examination by the competent court of such challenge shall be made without summoning the territorial Office of Cadastre and Real Estate Publicity. Same goes with other cadastral related claims. In order to facilitate the procedure, the challenge against the ruling of the chief-clerk may also be submitted directly to the competent court of law.

This is an important step forward for accelerating the settlement of these claims by competent courts.

8. **Registration of ownership over constructions**

The registration with the land book of the ownership right over constructions is made based on (i) the building permit, (ii) the delivery-receipt minutes at the completion of works, as well as of (iii) the cadastral documentation. The certificate issued by the competent City Hall acknowledging that the owner has erected the building in accordance with the building permit is no longer requested.

For constructions built prior to the amendment of the Law no. 50/1991 (the “**Construction Law**”) by Law no. 453/2001, registration may be performed based on (i) the building permit, and in the absence thereof based on (i) a certificate issued by the municipality attesting the registration of the immovable with the agricultural register and with the fiscal authorities and on (ii) cadastral documentation.

Furthermore, owners shall be able to register with the land book the ownership right over constructions upon completion of different construction stages (not only upon completion of the whole construction works, as previously). For this type of registration (i) the building permit, (ii) the minutes attesting the physical stage of the construction endorsed by the authority issuing the building permit and the (iii) cadastral documentation are required. This amendment should be implemented in the provisions of the Construction Law and its Application Norms, as well as in the provisions of the Government Decision no. 273/1994 for approving the regulation for taking over of construction works and installations thereof.

9. **Other new provisions regarding registration with the land book**

- The first registration of real estate properties with the cadastre and land book can be performed either on request, based on the ownership documents and on the cadastral documentation, or *ex officio*.
- Ownership titles issued on the grounds of restitution laws will be automatically registered with the relevant land books based on the parcel plans validated by the county commission for application of restitution law, plans that have been taken over by the territorial Office of Cadastre and Real Estate Publicity.
- The owners of real rights registered with the transcriptions-inscriptions registers, the owners of real rights registered with land books opened by the Decree no. 115/1938 and the owners of real rights registered with land books opened by the Law no. 242/1947 have to request the opening of new land books, by 31 December 2014, under the sanction of inopposability of such rights to third parties after the expiry of the term. Such registrations shall be made free of charge.
- The beneficiary of encumbrances registered with the transcriptions-inscriptions registers have to request the opening of new land books for the encumbered real estate, by 31 December 2014 as well as the renewal of their rights, under the sanction of inopposability thereof to third parties after the expiry of the term. Such registrations shall be made free of charge.

The effect of the above mentioned amendments is expected to be significant for developers of real estate projects in Romania. Currently, increased costs have been generated in technical due diligence and urbanism planning because of the lack of related information between the registries kept by the various authorities involved in urbanism and real estate development and updated information in the registries.

The creation of transparent and interoperable national registries would prevent such setbacks, and significantly simplify the planning and design stage of a real estate project.