

Transactions regarding Units of Real Property in Denmark – National Report, Version 0.5

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Abstract. At the 4th COST G9 MC meeting in Delft, November 2nd 2002, it was agreed to prepare national reports on transactions regarding units of property rights, as a basis for later assessment of the benefits and costs of such transactions. The paper presents such report for Denmark in a version, which awaits integration with the outcomes of a Short Term Scientific Mission (STSM) and formalization in terms of use of the Unified Modelling Language (UML). The STSM by Marina Vascovich to Denmark addresses the procedures related to sales and subdivisions in Denmark. These processes are thus not covered by the present version.

1. Introduction

The COST *action* Modelling Real Property Transactions (G9) aims at assessing the costs and benefits of transactions regarding real property. Such transactions are performed in a societal setting that best can be grasped through a historical introduction. The transactions changes real property rights. Although constitutions all over the world mention real property rights in similar ways, the specific interpretations vary from one country (jurisdiction) to the next. The peculiarities of national interpretations thus have to be addressed (section 2.a). The transactions are supported by an infrastructure in terms of national information systems and professionals. A survey of the national information systems is provided in section 2.b, while section 2.c provides an exhaustive list of Danish procedures related to units of real property. The following sections then details the procedures on *mortgaging* and *granting of easement*, but will be completed with procedures on *sales* and *subdivision*. A conclusion closes the paper.

Some confusion may be noted as regards the terms *transaction* and *procedure*. In the following, the term *procedure* is preferred and used to describe a repeated sequence of activities, which are described from an information systems point of view, rather than from the view of economy and law.

2. Real Property Rights, Property Registration, and Procedures related to Real Property

The following section provides a short survey of the Danish setting of the procedures, which are detailed in the following section 3.

2.a Real Property Rights

In Denmark, real property rights developed differently in the cities (boroughs) and in the rural areas. The cities largely managed their own affairs as regards property rights and taxation, with the implication that property rights were developed largely by court rulings and legal doctrine as stated by university professors. Contrarily, the use and transfer of land outside the boroughs was regulated by statutory law. The objective of that legislation through more than two hundred years (mid 1700s through 1900s) was to keep the farms of the country of a size that it could employ and sustain a family. Splitting of farms through inheritance was thus forbidden. The Land Reform during the late 1700s provided government with cadastral maps and a profession of geodetic surveyors, which contributed to the fact that farmers generally abided by the rules.

The above outline of history serves the purpose of better understanding the conceptualization of a unit of real property. Legal doctrine takes its point of departure in the ordinary transactions by people. Basically, a unit of real property is what the seller points out to the buyer, and includes what usually is left over to a buyer, unless otherwise stated. The different laws regarding real property provide normative definitions. These definitions of, what is a unit of real property, differs from law to law, but the variations are fairly well coordinated. Briefly, the

situation may be summarized as follows: The conception of a unit of real property according to the Cadastral law (Udstykningsloven) comprises of one or more parcels that are identified on the cadastral map, and possibly a share in a jointly owned parcel (only about 500 such occurrences left now). The Land Registry law (Tinglysningsloven) agrees with this notion, but adds buildings on leased land, properties on non-mapped areas (e.g. harbours), and condominiums to the class of recordable property units. Agricultural law (Landbrugsloven) again agrees to the cadastral property unit as a basis, but in accord with the Property Taxation law (Lov om vurdering af fast ejendom) extends the unit to include other units, on the condition that they are managed together but not a farm unit.

Dispositions: The content of Real Property Rights	Unit of Real Property: The object of Real Property Rights
Physical dispositions - use, possess, gain usufructs - construct, fence Legal dispositions - sell, inherit - mortgage, use as collateral - lease, rent - subdivide, change shape - grant easement	A piece of the surface of the Earth - horizontal and vertical boundary - delimitation of fixtures relative to movables Definitions according to statute laws - Cadastral law (Udstykningsloven) - Land registry law (Tinglysningsloven) - Agricultural law (Landbrugsloven) - Property taxation law (Vurderingsloven) - Condominium law (Ejerlejlighedsloven)
The context for dispositions regarding Real Property	
Restrictions on R P R <ul style="list-style-type: none"> • Compulsory purchase (expropriation) • Purchase restrictions, incl. pre-emption rights • Spatial planning • Adverse possession 	Infrastructure of R P R <ul style="list-style-type: none"> • (Police) Protection of privacy • Solving title and boundary disputes • Performance of forced sales • Operating credit market • Maintenance of cadastral and land registry system • Protection of boundary marks

Figure 1: Elements of real property rights. Source: Stubkjær, 2003. Modified

2.b Property Registration

A national inventory of manors with tenant holdings was established 1688 for taxation purposes. It included no maps and can thus hardly be described as a cadastre. The size of areas was assessed by measuring one length and two widths of the lots. Maps and other information produced in the context of the Land Reform made the basis for **the 'new' cadastre**, which came into force by 1844 and has been updated since then. The cadastral unit of registration constituted for rural areas a statutory agricultural unit (holding), and the cadastre with its information on soil quality was thus an important instrument for the realization of the agricultural policy described above. The cadastre was computerized during the 1980s, and the cadastral maps digitized during the 1990s. Cadastral information is now accessible on the web. Traditionally, the encumbrances recorded in the cadastre relate to 1) property units which are statutorily notified as agricultural holdings, 2) units notified as permanent forests, and 3) implicit recordings of rights of way. During recent years, some other recordings are made as well, e.g. concerning polluted parcels. The scope is however not as wide as you would find it in e.g. Sweden or Finland. – There are no local offices of the cadastral organisation, the National Survey and Cadastre. The cadastral measurements and preparation of cases is performed by geodetic surveyors in private practise.

The **land books** are kept by the about 80 Land Registry offices that are part of the local courts. During 1840s it was instituted that land book recordings should apply the cadastral identifiers of the 'new' cadastre. Recordings were made in chronological ledgers till a reform of the system was initiated in the context of the Land Registry law of 1926. The reform was inspired by the development in Germany, but nevertheless departed from the German solutions. Thus, in principle we have a deeds system: The transfer of rights is established by the agreement 'inter partes', and the recording in the land book has effect only for a third party. However, the judiciary checks the legitimacy of the signer of documents to be recorded, and the State compensates in the very few

cases where losses occurs, so the system appears as trustworthy as a title system. The system was computerized during 1980s and 90s. It is available on-line, but has still the 24-textlines user interface of the pre-Windows age.

The shift in 1903 to Cabinet responsibility paved the way for a new taxation of real property. Rather than the old systems base of soil yield, it used market value as the taxation base. A new national information system was established at the counties and boroughs, which after the Municipal Reform of 1970 was taken over by the new 276 municipalities. The **municipal property register** (ESR) was computerized from the outset. It introduced a property identifier that corresponds to the stipulations of the Property Tax law, but includes reference to the cadastral identifiers and uses the area figures of the cadastre. The register is updated when deeds of conveyance are presented for compulsory notification of the tax value, which again determines the stamp duty of the deed. Also, the National Survey and Cadastre informs the municipalities of changes regarding the cadastral unit of real property. The ESR is supplemented by the **register of buildings and premises** (BBR), which was established 1976-81 to replace questionnaires issued every four years for property taxation, and rather similar questionnaires issued every five years for population and housing censuses. The central tax authority keeps a **governmental property tax register** (SVUR), which combines data from the ESR and BBR with data extracted from compulsory sales reports that are prepared for every sale of real property. The SVUR enables the tax authorities to automatically update assessment of property value for most categories of property units; yet, questionnaires are still needed for obtaining information on house rent for apartments.

2.c Procedures related to real property

Real property rights and the objects of real property rights may be changed through a variety of procedures. In order to better compare procedures, it has been agreed to prepare a fairly complete list of procedures, comprising the national names of the procedures, their English translation and a short description of the characteristics of the procedure. The following table accordingly provides a list of such procedures in Denmark. The cadastral procedures are specified in more detail than the transfer procedures. This is due to the fact that the Cadastral Law (Udstykningsloven) specifies such procedures with greater detail than the procedures, which transfer property rights within the frame of the Land Registry Act (Tinglysningsloven). The value of transferred rights per year might be a reasonable measure of the relative importance of the procedures, but such measure is not available yet. The numbering is meant only for relating English and Danish terms.

Transfer of real property rights <ul style="list-style-type: none"> ○ Sale of a unit of real property ○ Inheritance ○ Foreclosure action ○ Expropriation, forced sales ○ Mortgaging ○ Leasing ○ Granting of servitude 	Overdragelse af rettigheder i fast ejendom <ul style="list-style-type: none"> ○ Salg af en fast ejendom ○ Arv ○ Tvangsauktion ○ Ekspropriation ○ Pantsætning ○ Udleje, forpagtning ○ Stiftelse af servitut
Cadastral procedures <ol style="list-style-type: none"> 1. Subdivision (creation of new unit from one or more) 2. Amalgamation (two or more units into one) 3. Lot-transfer (transfer of lot between two existing units) 4. Boundary correction 5. Primary adjudication (Creation of new unit by extending coverage of cadastral map) 6. - (Separation of share in jointly owned unit) 7. Cadastral recording of expropriation 8. Cadastral recording of statutory land consolidation 9. Boundary settlement (Quasi-judicial boundary determination) 	Matrikulært arbejde <ol style="list-style-type: none"> 1. Udstykning 2. Sammenlægning 3. Arealoverførsel 4. Ejendomsberigtigelse 5. Matrikulering 6. Fraskillelse af fælleslod 7. Berigtigelse af ekspropriationsskendelse 8. Berigtigelse af jordfordelingsskendelse 9. Skelforretning
Quasi-cadastral procedures (identification of geographical objects) <ul style="list-style-type: none"> ○ Preparation of condominium register (a micro-cadastre) ○ Preparation of map for deed of servitude 	Identifikation af geografiske objekter <ul style="list-style-type: none"> ○ Opdeling i ejerlejligheder ○ Udarbejdelse af rids til servitutdeklarationer
Spatial planning restrictions <ul style="list-style-type: none"> ○ Statutorily imposed restrictions 	Regulering ved arealplanlægning <ul style="list-style-type: none"> ○ Generel regulering

○ Restrictions due to specific planning measures	○ Konkret regulering (lokalplan mv)
Taxation of real property	Ejendomsbeskatning

Figure 2: Procedures affecting real property rights

3. Sale of a unit of real property

4. Mortgage

Mortgage institutions developed in Denmark in the 2nd half of 1800s. The organizational structure chosen was the association, and the mortgage associations developed largely independent of the similarly developing commercial banks and savings banks. The mortgage association was an association of borrowers (mortgagors), who in addition to providing their estate as collateral for the loan agreed to a certain amount of mutual liability. On the other hand, the mortgage association protected the individual mortgagor from a possibly undue behavior on the part of the mortgagee, had the relationship been personal. Generally, the mortgage associations specialized in a certain types of real property, e.g. city property or farm, and in a specific county or diocese. Elected representatives of the association assessed the value of property to be mortgaged, and monitored the maintenance of the property during the amortization period. The loan could amount to 60% of the assessed value. It was secured with a mortgage deed, which was recorded at the Land Registry and returned, notified of the recording.

The mortgage associations issued mortgage bonds in batches (series) with fixed interest rate and a fixed amortization period, typically for 30 years. The nominal value of the bonds of a batch corresponded to the amount of the mortgage deeds in the same batch (the principle of balance). When mortgagors handed in to the association the notified mortgage deeds, the association in return gave them mortgage bonds, which were sold on the exchange. Depending on the quotation of the capital market, the mortgagor might suffer a certain exchange loss. In principle, the loans were irredeemable. However, a mortgagor could buy at the exchange the amount of bonds from his batch, which corresponded to the remainder of his loan, and have both the loan and these bonds annulled by the mortgage association.

The mortgage association for every batch of bonds had to manage two money streams: One incoming from the mortgagors, who had to pay interest and amortize the loan, and one outgoing comprising of the interest to the investors. Due among others to the principle of balance, the system was robust against fluctuations in the capital market and the economy at large and worked well for more than 100 years.

After 1970, the mortgage associations gradually integrated with the general bank system, and also the issuing of bonds lost its simplicity to allow for competition among mortgage banks. Also, mortgage bonds are not issued in paper form any more, as a Danish Securities and Settlement Center (Værdipapircentralen), handles bonds and accounts in digital form. For a recent survey of the present system, see Moody's (2002).

A mortgage loan is established as appears from the following figure.

Activity	Owner mortgages his real property
Context	Transfer of property, repair of building, or changes in mortgage market
Actors (legal competencies)	Active: Owner, LocalBank, MortgageBank, LandRegistry, Exchange Passive: Other mortgagees, credit rating agency
Trigger	Owner requests the service of LocalBank (not mandatory, but normal)
Sub-activities	<ol style="list-style-type: none"> 1. Owner (through LocalBank) asks MortgageBank for application form 2. Owner submits application for loan, supplemented with xerox copies of <ol style="list-style-type: none"> a. deed of conveyance b. certificate from LandRegistry c. receipts on payments due of other mortgages d. print-out on construction details (BBR-meddelelse) e. last final tax assessment f. pay slips from last 2-3 months

	<ol style="list-style-type: none"> 3. MortgageBank assesses the value of the property and credit rates the owner 4. MortgageBank issues an offer for mortgage and a mortgage deed to the owner (or motivates a rejection) 5. Owner signs the mortgage deed and (through LocalBank) submits it to the LandRegistry for recording, supplemented with the original deed of conveyance 6. LandRegistry checks authority of owner and priority of mortgages, records the mortgage (keeps copy), and returns original mortgage deed, notified of the recording 7. Owner sends (through LocalBank) notified mortgage deed to MortgageBank, and asks for payment of the loan 8. MortgageBank (transfers to owner, who) sells mortgage bonds on the Exchange, uses the proceeds to redeem older mortgages as agreed, and transfers the remainder to the account of the owner.
Variations	<p>Advisors to the owner may reduce the task of the owner to the signing of documents, or owner may run the process without assistance. Spouse of owner must sign mortgage deed as well</p>

Figure 3: Procedure for mortgaging

4. Subdivision

5. Easements

The practice of granting servitudes seems to develop during the 1800s. In urban areas, they were used e.g. for regulating the location of windows; in rural areas they were used e.g. for granting rights of taking (profit from) water or gravel. Right of way was usually established by the land surveyor as part of the cadastral process. Such roads were drawn on the cadastral map and this was till the era of summer cottages (1920+) considered sufficient proof of right of way.

Danish legal doctrine classifies servitudes as real and personal, positive and negative, apparent and non-apparent. The Danish term is ‘servitutter’, which includes also profits (Danish: ‘brugsservitutter’) and licenses. The English term ‘easement’ may be used to render that no profits is involved, but such distinction has no basis in Danish language. As ‘easement’ is the dictionary’s translation of Danish ‘servitut’, the term easement is used in the following in the broader sense that is including profits and licenses. Often, easements are reciprocal so that you have a dominant and a servient unit of property, but they may also be created on the request of an authority, e.g. to secure view at road crossings, or to claim preemption rights. Servitudes are stated without limitations in time and generally they are meant to be permanent. If a servitude is changed, the Land Registry will check that the beneficiary consents. Like other instruments that are related to the Land Registry, few formalities are needed to have servitude deeds recorded, see details below. The distinction between servitudes on one hand and other encumbrances is thus not sharp. Licenses, e.g. for hunting, and e.g. farm leases are recorded at the Land Registry in similar formats and the same section of the land book. When such encumbrances apply to a part of a unit of real property, you would rather talk of servitudes. Servitude agreements are committing, even without documentation, but except for roads shown on the cadastral map, they are in practice all recorded at the Land Registry. Statutory law may restrict the use of real property in ways that

An important category of servitudes appeared around 1900 in the context of the development of residential areas round the larger cities, so-called ‘villa-easements’, in technical terms a reciprocal negative easement. In order to establish a residential area of a certain style, buyers demanded that neighboring property units were sold under the condition of a minimum size of area, a maximum number of floors, and a use that did not imply ‘smoke, noise, or bad smell’. These ‘villa-easements’ developed into effective planning instruments in the hand of land surveyors and others, who already early in the century got some sense of urban planning during education and professional associations.

Presently, servitudes are used in the context of the issuing of building permits as a flexible means of implementing technically motivated conditions of permit granting, e.g. the protection of and access to sewers and other pipes on foreign property units. In such cases, the building authority is granted beneficiary status as well. Like other instruments that are related to the Land Registry, almost no formalities are needed, except the identification of the property unit, the signing by the owner according to the Land Registry, the naming of benefi-

ary(ies), and the specification of priority relative to other encumbrances (to be used in case of forced sales). However, one odd condition has to be taken into account: The municipality must state that the servitude does not replace due detailed planning. The background is the following: By 1970s, statutory spatial planning laws replaced the variety of planning instruments that existed before. The spatial planning process includes an obligatory phase of public hearing. For some developers, this public hearing might appear as waist of time (and money), so in order to avoid circumventions, the planning law requests the municipal to add a note on those servitudes, 'which create a state that could be specified in a detailed plan'.

Normally, the servitude deed consists of a text and an annexed map, where the object of right is located on a copy of the cadastral map. The creation process appears from the table below:

Activity	The owner grants an easement
Context	Applying for building permit; land development
Actors (legal competencies)	Primary: Owner, GeodeticSurveyor, Lawyer, LandRegistry Secondary: Beneficiary, Municipality
Trigger	Owner's advisor or potential beneficiary suggest the creation of an easement
Sub-activities	<ol style="list-style-type: none"> 1. Advisor or potential beneficiary establishes the need of an easement and gets the owner's consent to pursue 2. Advisor collects needed documentation and drafts the easement deed 3. The geodetic surveyor prepares the map to be annexed 4. The owner signs the easement deed 5. The deed is submitted to the municipality for notification according to planning law 6. The fee for the recording of the deed is paid 7. The LandRegistry checks, records and notifies the deed, keeps copy and returns original to advisor 8. The notified easement deed is given to the beneficiary 9. The honorary of the advisor(s) is paid by the requesting party
Variations	Depending on the context, the geodetic surveyor prepares both text and map
Parallel processes	-

Figure 4: Procedure for granting an easement

6. Conclusion

By completing the paper with procedures regarding sales and subdivision and rendering all procedures in the UML, the Danish contribution to this phase of the COST G9 project has been completed

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References

To be added