



Landadministration in Austria

Land Book

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Dr. Helmut Auer

- Read law at the University of Vienna
- Judge at a District Court (penal cases, land book)
- Education in informatics (1972/73)
- Change to the Federal Ministry of Justice (development of new Penal Code of 1975)
- As of 1980 responsible for the transition of the Land Book from paper to Information Technology (IT)
- Head of (new) IT-department (1981)
- Chief Information Officer
- Pensioned in 2004
- Working for the IT-Redesign of the Land Book

Guide on the adoption of property laws in Economies in Transition

Economic Commission of the United Nation, August 1994

(1) Land is literally the foundation of all economies. Land plays a key role in the creation of wealth. Employment, too, is created by all activities - buying, selling, leasing and mortgaging - related to land transactions. Land can attract large investments, particularly from abroad, for prime sites. For an enterprise, land constitutes one of the major assets of its business. It enables enterprises to raise funds, using the land they own as a security for their debts. Land also is one of the best forms of collateral for banks to secure loans. Governments can obtain revenues from the taxation of income from private land ownership. Finally, for individual households, the enjoyment of land ownership, including the right to bequeath land to heirs, is a fundamental right which encourages enterprise amongst the population.

(2) The benefits, however, which flow from private land ownership and the right to transfer ownership will not be created, unless there is a **clear land system** which is surrounded by a series of laws and specific institutions to enforce these laws. Owners need to be able to demonstrate proof of ownership and their power to sell. Buyers need to know what rights, burdens and mortgages exist on their property for which they contemplate ownership. Banks must have a clear title of ownership before they can lend money with confidence.

„Clear Land System“ I

- First requirement:
Cadastre describing specific pieces of land called parcel [lot] which are identified by a unique key and which can be found in nature without fear of a disput
- Second requirement:
Register (called in Austria „Grundbuch“ ¹⁾ - „земельная кнiга“) describing at least all civil rights and obligations in regard of such parcels („intabulation“) using the same key as the Cadastre to identify the parcel

1) literally translated to English as Land Book; the English terms „Land Register“ or „Land Registry“ are also used for Cadastre or a union of Cadastre and Land Book as well

- Organisation I

Cadastre and Land Book can be organized in one stately unit (agency) or separated as in Austria

 - Cadastre:
Federal Ministry of Economy, Family and Youth
 - Land Book:
Federal Ministry of Justice
Department of a District Court (134)
Head of this Department is a judge, but the main judicial work is done by specialized officers, called „Rechtspfleger“ [I will use afterwards the term „registrar“ in English]
This registrar is trained on the job by the justice system after high school and is approved after a positive examen to act as „Rechtspfleger“ at the Land Book
 - The only but essential link between Cadastre and Land Book is the unique key of the parcel

- Organisation II

- The whole area of the Federal Republic of Austria is split in Cadastral Units, named in different ways (e.g. „Altenberg“), but uniquely identified by a number (e.g. „20103“).

Afterwards I will use the abbreviation „KG“ [for german „**K**atastral**g**emeinde“].

- Each parcel belongs to a specific KG and is identified by a number as part of this KG; I will use afterwards the abbreviation „GSt“ ,[for german „**G**rund**st**ück“]

so for example a parcel is identified by „KG: 20103 GSt: 55“

- Organisation III

- The Land Book is divided into books identical to the KG (in former times in paper form really, today virtually in the IT data base).
- Each book holds units (in Austria called „Einlage“, in Germany called „Blatt“ [page]) which store the land register information and are identified by a number which is called „Einlagezahl“ – I will use afterwards the abbreviation „EZ“;
so a specific real property (estate) is identified by „KG 20103 EZ 355“.
- This book consists of
 - Main Ledger: contains the actual data
 - Register of cancelled entries
 - Collection of documents (which were the basis for entries)
- and is supplemented by
 - File of application: A journal is used to keep track of the files
 - Cadastral Map: a simple copy can be inspected as part of the Land Book

- Land Book Unit
 - is divided into sections:
 - Header („Aufschrift“):
contains some specific information
 - Section A („A-Blatt“):
describes the land by listing all parcels which form the real property describing usage, area and address
 - Section B („B-Blatt“):
stores shares, owner (name, date of birth, address), titles
 - Section C („C-Blatt“):
stores mortgages, servitudes (e.g. right of way) and other encumbrances/burdens

for example:


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LAND BOOK 01010 Neubau                                LAND-BOOK UNIT # 322
DISTRICT COURT Josefstadt
***** DATE OF ENQUIRY 2001-01-09
Last Docket # 4989/2000
***** A1 *****
  LOT-#   G USAGE          AREA  ADDRESS OF LOT
  123/1   G Total          5828
           Building        2904
           Other (hard surface) 2924  Museumstr. 7, Neustiftg. 2
***** A2 *****
  1  a 5479/1955 right in respect of land-book unit # 1440: obligation not
      to erect a building on part of the lot in the width of 10m used as
      court
  5  a 3778/1996 building area (at) lot # 123/1
***** B *****
  1 SHARE: 1/1
      Republic of Austria (Administration of Federal Buildings)
      ADR: Burghauptmannschaft Österreich (Burghauptmannschaft in Wien)
      Hofburg-Schweizerhof 1010
      a 1500/1961 RANKING 2310/1960 contract of sale 1960-03-28 ownership
      d 8191/1991 change of name, address
***** C *****
  1  a 1500/1961
      RIGHT OF PRE-EMPTION pursuant to section 10 of the contract of sale
      from 1960-03-28 in favour of People's Republic of Hungary
  3  a 3778/1996
      SERVITUDE on lot 123/1, restricted to parts named 5, 9 and 12 in
      parcelling map of 1986-05-28 according to contract 1995-06-06, part
      III, in favour of City of Vienna
      (Municipal Shops of Vienna - Electricity Plants)
***** NOTE *****
      Amounts without currency are to be read as ATS
***** 2001-01-09 15:20,22698 BJ ***** LINES: 30

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- „Clear Land System“ II
 - Legal requirements:
 1. Principle of recording:

All rights in rem may only be acquired when entered into the Land Book!

So for example a contract between two parties to sell and buy a real property doesn't create the ownership of the buyer – only the registration in the Land Book establishes the new ownership.

This basic rule was laid down already in the Austrian Civil Code of 1812 (see § 431 ABGB)

- „Clear Land System“ III

- Legal requirements:

- 2. Principle of reliance:

- Everybody may rely upon the correctness and completeness of the Land Book;

- the state has to guarantee this and to pay for compensation in case of damage if the registrar has worked in a faulty way.

A particular strict liability of the state has been stipulated for any damage from the use of IT support in the Justice System:

The damaged party does not have to prove the fault of the federal agency, which is different from the approach under the official-liability law.

- Access to the Land Book I
 - the Austrian Land Book is open for inspection by everybody
 - At the District Court – Land Book Department;
this was used in 2012 in about 177.000 cases where an excerpt was printed for somebody who asked for it
 - Using internet providers authorized by the Federal Ministry of Justice:
you have the choice of 13 providers (listed on the home-page of the Federal Ministry of Justice „www.justiz.gv.at);
after contracting one provider you get online access to the Land Book;
in 2012 there were executed about 5 million inquiries online;
the job of the provider is to handle the access of the client and to levy the fees of the court.

- Access to the Land Book II

- you have to know KG and EZ or KG and GSt to order an excerpt (at the court or online)
- if not you can search for these keys:

- by address
- using the Cadastral Map
- by name of the owner: This search is restricted due to privacy law; there must be given a „legal interest“, e.g. title for foreclosure; it is a court decision to allow such a search, so this search is not available online.

Exception:

A notary public or an advocat is allowed to search by name online in three cases:

- Inheritance: search for real property of the person passed away
- Own data: search for real property of the person asking for
- Foreclosure of money due: search for rights in rem of the debtor

- Access to the Land Book II

- Electronic signature

- If you order an excerpt online, you can ask for an electronic signature. This signature ensures that the information you get on the screen

- originates from the creator and
 - was not changed on the way from the creator to your screen.

- To achieve this the information is

- encoded by the creator using a hidden key and
 - decoded by you using a public key
 - The used algorithm ensures that the hidden key cannot be enclosed by reading the information

- Information signed this way can be transported to somebody else electronically without loss of security.

- Access to the Land Book III

Fees:

- at the court: € 13,- per printed excerpt
no fee if (simple) information can be given orally
- online: complete excerpt € 3,20; restricted information cheaper

- History I
 - Transition from paper/books to IT data base from 1979 to 1992
 - Common data base with Cadastre
 - About 550 person years of activities of registrars and 250 person years of activities of typists were spent to complete the transition
 - Big success:
 - Speeding up workflow
 - Cutting down personnel, amount of work and costs
 - Enhancing security

- History II
 - About 2000 data base out-of-date in a technically sense
 - Start of redesign: goal was to use more modern possibilities
 - Due to technical reasons now two data bases: Cadastre and Justice System separated – but automatic updating in both directions
 - New version started per 7. May 2012:
 - Notaries public, advocats, banks are enabled to file their applications electronically
 - So the registrar has no longer to enter the data as before, he/she has only to check the application, make the decision and sign it electronically

- Transactions
 - In 2012 about 624.000 applications were filed at the Land Book Departments
- **Workflow, typical for conveyance, mortgage, encumbrances**
(more complicated only in case of subdivisoning of a parcel where a plan of a licensed surveyor is needed which plan has to be certified by the Surveying Office)

1. Prior to the filing of the application at the District Court:

1.1 Agreement of parties as to object (real estate, apartment etc) and price of purchase

1.2 Drafting of a written contract (optional with the help of a notary or law firm)

1.3 Authentication of signatures on contract - both of vendor and purchaser - by notary public or district court

- **Workflow** cont.

1.4 Computation of property acquisition tax by notary public or lawyer and payment of such tax

1.5 In cases of agricultural property or if purchaser is foreigner: Submission of contract to land transfer commission for approval

1.6 Application filed with the competent court for registration; attached to application (on paper or online [EDI]):

- contract (in original and in copy),
- approval by land transfer commission (optional) and
- certification about payment of property acquisition tax

2. At the District Court:

2.1 Reception Unit:

- The application is endorsed with a time stamp indicating date and time of receipt and
- sent to Land Book Department

- **Workflow** cont.

- **2.2 Land Book Department:**

- The application's meta data is entered into a diary
 - is endorsed with a file number and
 - the paper file is transferred to the competent organ ("Rechtspfleger")

- **2.3 Registrar:**

- checks the status of the Land Book on screen,
 - checks all documents and the application,
 - opens a working area in the GDB.

- **In cases of a positive result :**

- He/she alters the data of the Land Book (GDB) in conformity with the application in the working area;
 - closes the working area with the effect of changing the data of the Land Book and fixing his/her signature to the changes;
 - certifies, by his/her signature on the original application, the correct performance of the changes in the Land Book.

- **Workflow cont.**

- 2.4 Land Book Unit:**

- computes the entry fees,
 - produces the court decree
 - sends the said decrees (usually) to
 - the applicant,
 - any person who is losing any rights,
 - municipality where the parcel (the property) is located,
 - revenue office
 - terminates the file and
 - incorporates the title documents to the collection of documents.

- **Workflow** cont.

- The time needed to produce contract (deed) and application is up to the parties and their representatives.
- In the simplest case the steps 1.2 to 1.6 (without need for step 1.5) may last 2 days, usually are 3 to 4 weeks.
- The workflow at the District Court from step 2.1 to completion of step 2.3 lasts typically 2 – 3 days, in complicated cases up to 3 weeks and more.
- With step 2.3 the data base is changed; everybody can inspect the changed data and rely on the new data, e.g. the bank to pay off the mortgage or the notary as trustee to pay the vendor.
- Step 2.4 may last additionally 1 to 2 weeks.

Thank you for your attention!

Questions ?