

Flat Ownership and Registration in Europe, an Overview

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Key words: flat, apartment, commonhold, ownership, possession, registration, Land Register, Cadastre, case study

SUMMARY

The objective of this study is to compare flat ownership systems and their legal and organizational structures in Europe. The study is conducted through case studies of ten European countries (Austria, Belgium, Finland, France, Germany, Norway, Poland, Slovenia, Sweden and Switzerland). Different systems of flat ownership and registration as well as management of flats in the abovementioned countries are described in general. Also transaction procedures in different systems are discussed.

Systems of organising and regulating the division of the possession of collectively owned real property have been developed in all the countries of this study. In this text the focus is on commonhold systems, which we have defined as a form of apartment possession, where the ownership is organized through a legal structure dividing the property into private and common areas.

Typical form of commonhold in the studied countries is commonhold with direct ownership to real property. Some countries, however, have a different approach. For example, in Finland and Sweden flat ownership is organized through indirect ownership instead of direct ownership to the real property unit. In these countries the ownership of a flat is managed through an instrument (e. g. a company or an association). The instrument retains the ownership of the real property unit and the buildings to itself and gives the shareholders the right of possession to a specified flat. Understanding of these features and their importance to the different real estate markets is important as cross-boarder real estate investment is becoming more common.

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1. INTRODUCTION

This paper is an overview of a study conducted in the Institute of Real Estate Studies, Helsinki University of Technology in the year 2006-2007. The study was motivated by integration of capital markets and the internationalization of real estate ownership within Europe and it was financed by the Finnish Ministry of Agriculture and Forestry.

The objective of this study is to compare flat ownership systems in Europe. The focus of this article is on situations, where the real property unit contains several flats and therefore, there exists a system of collective ownership in some form (e. g. co-ownership). The objective is therefore not to describe ownership of real property in general; also flat possession through lease is outside the scope of this article.

The study is conducted through case studies¹ of the following European countries:

- Austria
- Belgium
- Finland
- France
- Germany
- Norway
- Poland
- Slovenia
- Sweden
- Switzerland

This study describes the different systems of flat ownership and registration as well as management of flats in the abovementioned countries. Also transaction procedures in different systems are discussed.

¹ The authors of the case studies are: Ms Anna Currin (Austria, Germany), Ms Anne-Laure Henry (Belgium, France, Switzerland), Ms Katri Nuuja (Norway, Sweden), Ms Malgorzata Barbara Mierzejewska and Ms Magdalena Zaleczna (Poland), Mr Marjan Čeh and Ms Alenka Ličen (Slovenia) and Mr Marko Hannonen (Finland).

2. STRUCTURES OF COLLECTIVE OWNERSHIP

Direct ownership of real property is understood as a situation, where a person owns a dwelling (a detached house, semi-detached house, a terraced house) and also the real property unit (parcel) the house is built on. The possession of the real property unit can also be based on a site leasehold agreement. In direct ownership the ownership or other property rights are fastened directly to the real property without any additional organizational structures affecting it.

In all the countries studied, it is possible for several persons to own a good (e. g. a real property unit) together in co-ownership (a form of direct ownership). In co-ownership the ownership all owners have same rights to the real property unit and the enjoyment of the property belongs to all joint owners.

In the case of co-ownership each joint owner owns the real property with other joint owners. As a main rule, in absence of special agreements the undivided shares are supposed equal. The decisions related to the undivided property often require a majority decision, but owners are able to sell and mortgage their shares individually.

The study shows that the rights and responsibilities of the joint owners in a co-ownership vary between countries. Some countries (e. g. Poland, Slovenia, Switzerland), also recognise a system of co-ownership without shares. In this system all owners own the property unit collectively and the unit can typically not be sold, let or mortgaged without an unanimous decision of the owners. All actions taken concern the real property unit as a whole.

Co-ownership structures are typically not planned for the management of flat ownership in a building with several flats. These legal structures are not aimed at regulating flat possession of the share owners and thus their rights and obligations are often not clear. Even though the joint owners can make agreements on e.g. the usage and possession of the separate flats, these arrangements may lack stability since the agreements are primarily only binding between the contracting parties. This problem has been taken into consideration in some systems (for example in the French, Belgian and Finnish system) by enabling the registration of these agreements in the public Land Register. Registered agreements then also bind third parties.

However, systems of organising and regulating the division of the possession of collectively owned real property have been developed in all the countries of this study. In this text the focus is on commonhold systems, which we have defined as a form of apartment possession, where the ownership is organized through a legal structure dividing the property into private and common parts.

2.1 Commonhold systems

A commonhold is a form of flat possession, where the ownership is organized through a legal structure dividing the property into private and common parts. In this article our aim is to describe the various commonhold systems in the studied countries on a general level and to classify some of their characteristics.

In a commonhold, the private unit is the part of the building (and in some cases land) used exclusively by one owner. The common parts are the areas in the building and plot used by all owners or by some of them and the parts of the building ensuring the stability, the resistance and the protection of construction. Typically, these are stairwells, elevators, corridors, gardens, access roads, the roof, floors, foundations, load-bearing walls and exterior walls.

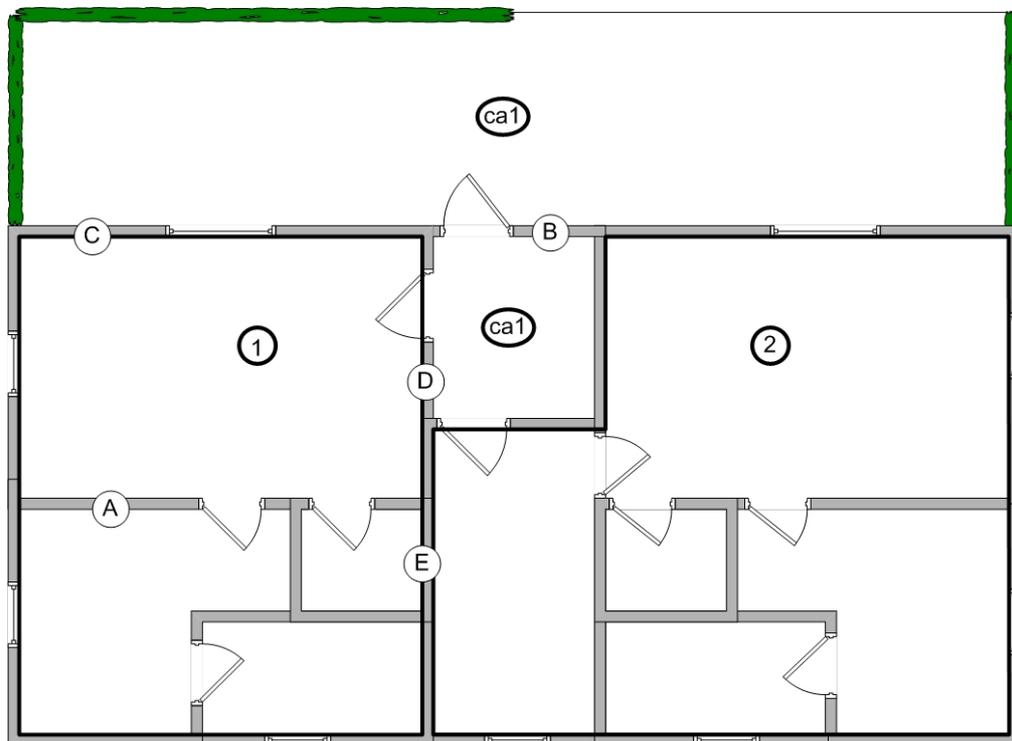


Figure 1: Example of a commonhold

In this commonhold, there are two private units (flats) (1) and (2). Each owner has either right of ownership or an exclusive right of use to the unit. Each owner can use and enjoy freely the common areas (corridor, garden) (ca1) under the condition of not obstructing the rights of the other owners.

The legal structure of the division varies in the countries studied. In certain systems, the divided parts form and are registered as individual real property units. In others, the real

property unit remains undivided and the division of the possession is carried out through specialised instruments (e. g. a company or an association). These structures are discussed in detail in chapter 3.

In addition to the division of possession, one of the main reasons for organising collectively owned properties into commonholds is the decision-making structures which are typical in all commonhold systems. Often, in the case direct co-ownership (or joint ownership) decisions concerning the property have to be unanimous, which may lead to problems especially when there are conflicting interests. Organised decision-making becomes also necessary, when the number of owners is high.

In commonhold systems, the highest decision-making body is typically the general assembly, where all the owners have a right to vote and which makes the most far-reaching decisions concerning the property and its usage as well as the rights of the owners. Often the decisions are made on majority basis, but in certain situations qualified majority is required. The routine administration of the commonhold may be issued to an administrative board and a condominium manager.

In commonhold systems, the right to decide on the use and alterations on the property is usually divided between the owners and the collective decision-making body. Typically, the owner has the right to make decisions concerning the private unit, whereas the decisions concerning common parts and fundamental structures of the building as well as utilities are made by the decision-making body. Major alterations of the private unit usually require a permission from the decision-making body or at least an announcement to the administration of the property.

3. OBJECT OF OWNERSHIP IN COMMONHOLD SYSTEMS

The system of commonhold is used in all of the countries studied, but the legal and organizational structure and thus the object of ownership vary between them.

In this article, these systems have been divided into three categories:

- commonhold with direct ownership
- association and co-operative systems
- limited company systems

3.1 Commonhold with direct ownership to the real property

A typical form of commonhold is the system where the owner has direct ownership (usually co-ownership) to the real property unit, where the building or buildings are located. The real property unit may be formed into a commonhold, i.e. divided into private and common parts. A defined private unit (flat) is assigned to each owner either by right of ownership or an exclusive right of use to the unit. The systems usually lay down requirements for the conversion concerning the real property, e.g. the minimum number of flats.

The object of the owner's rights in this system is the private unit and a share of the common part combined. Typically, these cannot be separated in case of mortgage or transaction.

The common part belonging to the scope of the ownership can be defined as a specified percentage of the areas common to all the owners (e. g. in proportion to the relative value of the private unit, as in the French and Belgian *copropriété* system or in proportion to the floor area of the flat, as in the Polish system). It is also possible, that the common areas are possessed and managed as a whole by all the owners, with no division according to the private unit division (e. g. in the Norwegian *eierseksjon*, where areas outside the private units are formed to a common area).

Table 1 lists the countries using this type of commonhold system, as well as the title of the system in national language.

Country	Title of system	Type of possession to private unit
Austria	<i>selbständiges Miteigentum/ Wohnungseigentum</i>	exclusive right of use
Belgium	<i>copropriété forcée/ gedwongen medeigendom</i>	right of ownership
France	<i>copropriété²</i>	right of ownership
Germany	<i>Wohnungseigentum</i>	right of ownership
Norway	<i>eierseksjon</i>	exclusive right of use
Poland		right of ownership
Slovenia	<i>etažna latsnina</i>	right of ownership
Switzerland	<i>copropriété par étages/ stockwerkeigentum</i>	exclusive right of use

Table 1 Commonhold systems with direct ownership in the studied countries

3.2 Association and co-operative

In some countries of the study, legislation allows a system of flat ownership through a membership or a share in an association or a co-operative, whose main purpose is to provide dwellings with advantageous conditions to their members.

country	system	Note
Sweden	<i>bostadsrätt</i>	
Norway	<i>boret</i>	
Switzerland	<i>société coopérative d'habitation/ Wohngenossenschaft</i>	
Poland		There exists three types of rights to the flat: (1) Right to rent a flat, (2) a co-operative member's right of ownership and (3) right of ownership

Table 2 Systems with ownership through an association or a co-operative in the studied countries

In these systems, the organization is the title holder of the real property unit, i.e. plot and building(s). Obtaining the share or the membership in the organization gives the shareholder right of use of a specified unit (flat). When joining the organization, the shareholders pay a membership fee. In addition, the shareholder is usually obliged to pay a maintenance fee to cover the running expenses of the property.

² The French legislation requires that the commonhold consists of both private and common parts. In case there are no common areas, a commonhold can not be created. However, a division consisting solely of private units is possible through so called division in volume (*division en volume*). This type of division is not regulated by legislation, but has been created by judicial custom.

In this system, the object of ownership is often considered movable property. This has certain implications concerning transactions, registration and taxation in comparison to direct real property ownership.

3.3 Limited company for housing

In Finland and Norway³ flat ownership can be organized through a specialized limited company (housing company).

The purpose of the housing company is to own and manage a building or buildings for housing purposes. The object of the company is not to generate profit. In the Finnish system, the requirement for forming a housing company is that over 50 percent of the floor area in the buildings must consist of flats, which have been assigned to the shareholders possession in the articles of association of the company.⁴ The company owns the real property unit as well as the building and defined shares allow the owner to gain possession of a specified flat or some other part of the building or site.

Similarly to the system of association or co-operative explained in the previous chapter, the object of ownership is a share or shares in a limited company i. e. movable property. This has certain implications concerning transactions, registration and taxation in comparison to direct real property ownership.

country	system
Finland	<i>asunto-osakeyhtiö/bostadsaktiebolag (also asumisoikeus/bostadsrätt⁵)</i>
Norway	<i>boligsaksjeselskap</i>

Table 3 Systems of flat ownership through a limited company in the studied countries

³ It should be noted that after the Act on Housing Co-operatives (*LOV 2003-06-06 nr 39 Lov om burettslag*) came into force in the year 2003, new limited companies for housing can not be established in Norway. For this reason, the chapter focuses on the Finnish system.

⁴ Finnish Housing Company Act (809/1991), Section 1.

⁵ The functions of the Finnish system of *asumisoikeus* ("right of residence") resemble the systems organized through associations and co-operatives. In this system, the commonhold is organised through a limited company for housing, the shares of which are owned by a non-profit organisation (e. g. an association, a limited company). The organisation conveys rights of residence (exclusive right of use). The fee for the membership as well as the maintenance fee are regulated.

4. REGISTRATION OF FLAT OWNERSHIP, TRANSACTIONS

This chapter discusses the registration of flat ownership or other rights. Typically the registration entry is made to the land information system, which usually consists of the Land Register and Cadastre.

Real property ownership i. e. title is typically registered in the Land Register. Depending of the system of flat ownership used in the country in question, the ownership is either registered as title to real property, some other form of entry in the Land Register or in some other register. There are also systems, which do not include any registration in a official register.

4.1 Registration of direct ownership

In commonhold systems based on direct ownership, the title to a specified share of the real property unit is typically registered under the original real property unit in the Land Register.

The creation of the commonhold may divide the original collectively owned real property unit into individual real property units. Another approach is to maintain the original real property unit in the Land Register as a whole and register the division into commonhold as subfolders of the original unit.

As commonhold with direct ownership is regarded as real property, the regulation concerning transactions of real property in general is applied. As a main rule, certain formalities are required. These may concern the form and content of the deed of conveyance as well as the participation of a notary public.

4.2 Registration of a share in an association or a housing co-operative

Depending on the country in question, the share in an association or a housing cooperative is registered either in the Land Register (as e.g. Switzerland) or an unofficial register. The development in the studied countries has been towards official registration of the share ownership, mainly due to a need to increase the security value of the share and also the publicity of the ownership information.

In Norway the registration of housing co-operative shares was initiated on 1st July 2006. Through the registration, the shares gain similar legal protection as real property units have. The register forms a part of the Land Register maintained by the State Mapping Authority. As a main rule, a registered acquisition has priority in relation to an unregistered acquisition.

In Sweden, the shares in tenant-ownership association are at the moment registered only by the associations themselves. There has been suggestions to establish an official register, where the shares in a tenant-ownership association would be registered. The main motivation for the establishment of such register has been the aim to improve the value of the tenant-ownership as collateral. The register would enable mortgage on the tenant-ownership. The responsibility

of registration of the owner as well as the pledge would be transferred from the tenant-ownership association to a registration authority.

Depending on the country in question, transactions of shares in an association or a housing cooperative may be comparable to transactions on real property in general. Typically, if the shares are not considered immovable property, regulation concerning real property transaction does not apply.

For example, in the Swedish tenant-ownership (*bostadsrätt*) system, a tenant-ownership share is considered movable property and thus, in a situation of transfer of ownership, the provisions of the Commercial Code apply. The rights of the tenant-owner are limited by the provisions concerning the decision making power of the tenant-ownership association, i. e. the association can, when certain prerequisites are met, refuse to accept the buyer as a member of the association and the sale becomes void.

However, in Norway The Act on Real Property Transactions (*LOV 1992-07-03 nr 93: Lov om avhending av fast eiendom*), which regulates the transfer of real property through voluntary purchase, exchange or gift applies also shares in housing co-operatives.

4.3 Registration of a share in a limited company for housing

In the Finnish housing company system, the company is registered as the title holder in the Land Register. The individual shareholders' right of possession is not registered to any register maintained by a public official. However, the company is obliged to maintain a share register, where the shares and shareholders are listed. The register is public and thus, anyone can obtain an excerpt of it.

The register entry is required for the shareholder to have a right to vote in the general assembly of the company. In transaction situation, an entry in the register is sufficient proof of the seller's ownership of the shares, provided that the seller also has the share certificate in his or her possession. Therefore, the register has functions of public reliability.

Flat ownership in housing company form is indirect, i.e. the object of ownership is shares and not the real property. Shares are considered movable property and therefore, there are no formal requirements for the transaction, as there are for transactions of real property in the Finnish Land Code (*Maakaari 540/1995*). Transfer of housing company shares is regulated by the Housing Transactions Act (*Asuntokauppalaki 843/1994*), which defines i.a. the rights and obligations of the buyer and seller. After the buyer has obtained ownership of the shares, a note on the transfer is made on the share certificate. Paying the transfer tax (for housing company shares 1,6 % of the purchase price) is a requirement for the entry to the shareholder register.

5. DISCUSSION

Direct co-ownership (or joint ownership) is understood as situation, where two or more parties are the joint titleholders to a real property unit. In order to increase the stability of collective ownership concerning residential real property, systems of structuring the ownership and possession of the property as well as management and decision-making have been created.

These commonhold systems, which we have defined as a form of apartment possession, where the ownership is organized through a legal structure dividing the property into private and common parts, exist in all the countries of this study.

In this article we have divided commonholds into three categories: commonhold with direct ownership, association and co-operative systems and limited company systems. The systems have similarities, as the objective of the structure and organisation is typically the same. However, there are fundamental differences in the functions of these systems.

The main distinctive features of the systems are the object of ownership and the rights related to it, as well as the regulation concerning transactions and registration. In some countries, the object of ownership (flat) is regarded as immovable property and thus, in cases of e.g. transactions and registration, the same regulation as for real property in general is applied. Contrarily, in some countries the object of ownership is movable property.

Understanding these differences are of importance when capital markets integrate and real estate ownership within Europe internationalizes. The implications can be seen on two levels; they affect both individuals as well as markets. On the individual level the key question is understanding the rights and obligations attached to flat ownership, as well as stability of these systems, e.g. in case buying a flat abroad. On the market level especially differences in registration and their effect on the legal protection of pledge are of importance, as they affect the use of flats as collateral.

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BIOGRAPHICAL NOTES

Ms. Heidi Falkenbach, M.Sc. (Tech.), Student of Economics (b. 1982)

Ms. Falkenbach works currently as a researcher in the Institute of Real Estate Studies, Helsinki University of Technology the focus of her study being effects of international investments on the Finnish commercial real estate market dynamics. Ms. Falkenbach has worked as a researcher and a research assistant at the Institute of Real Estate Studies on various projects during the years 2002 to 2006 and as a secretary of study affairs during the years 2004 to 2005. During autumn 2004 she prepared her Master's Thesis, a statistical and literature analysis of the effect of the proximity of water to the price formation of unbuilt building sites located outside detail planned area. Ms. Falkenbach completed her M.Sc. (Tech.) degree at the Department of Surveying, TKK in February 2005 and started her post-graduate studies in March 2005. She is also a M.Sc. (Econ.) student at the Turku School of Economics, where her major subject is Economics (Finance).

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Ms. Nuuja works currently as an assistant in the Institute of Law, Helsinki University of Technology (TKK). Ms. Nuuja has worked as an assistant at the Institute since January 2001 and during the period of 2001-2005 she has also worked as a research assistant at the Institute. During the study year 1998-1999 Ms. Nuuja studied Business and Contract Law at the University of Huddersfield (UK), Business School, Department of Law. Ms Nuuja completed her M.Sc. (Tech.) degree in the degree programme of Real Estate Economics at the Department of Surveying, TKK in November 2003. In 2007 Ms Nuuja will complete her Master of Laws degree at the University of Turku, Finland.

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