

The Surveyor in the City - His Role in the Organisation and Management of Apartment Buildings

François MAZUYER, Pierre BIBOLLET and Rafic KHOURI, France

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SUMMARY

Adequate administration of collective buildings requires setting up regulations specifying the rights and responsibilities of each owner. These rights and responsibilities are linked to the calculations of the surfaces, or the volumes, belonging to each owner. The French geometre-expert is in a position to make the measurements required and to write down the regulations accordingly. He or she also identifies the servitudes linked to the status of the property. He or she may also be the administrator of the building, and therefore be in charge of the implementation of the condominium regulations.

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INTRODUCTION

At the time when the Order was created in 1946, France was essentially a rural country.

The activity of the surveyor, linked to the concerns of the population at that time, was mostly carried out in the countryside.

The demarcation and boundary marking of rural properties, updating the cadastral plan and the management of farms or forestry holdings were the main activities.

The city existed with its buildings, but these belonged in the majority of cases to a single owner.

Where the building was divided into several apartments, it was generally a leased building and the occupants were tenants.

The activity of the surveyor in town was often limited to calculating rents, particularly in relation to the Law of 1 September 1948 which, in order to remedy the crisis of accommodation after the war, imposed regulated rents that depended not only on the surface area of the building, but also elements of fitting out, the number of windows and their dimensions.

The first consequences of the rural exodus and of agricultural policy also encouraged rural or peri-urban activity.

This was the appearance of the first regrouping of lands, allowing better structuring of farms, the development of drainage and decontamination plans. It was also the development of peri-urban housing schemes that allowed accommodation of families coming from the countryside who wanted to settle in individual houses.

The apartment buildings built in haste to accommodate populations who were obliged to leave the former French colonies are generally the work of public bodies who rent the apartments.

Thus, the surveyor profession has hardly any involvement.

For a long time frozen, dense, limited by its old fortifications, the city broke out under the pressure of the ever-increasing population. It needed new infrastructures, routes to serve the new districts.

Furthermore, the old leased buildings, occupied by tenants, are divided into apartments and shared ownership, with various owners in the buildings supported by a single real estate, tends to become commonplace.

The surveyor is therefore increasingly called upon to act in the city.

His action may be classified into two major categories.

- Traditional work:
 - Drawing up topographical plans for future developments, whether in non-built areas or street areas
 - Setting up buildings
 - demarcation and boundary marking of private and public properties

Work more specifically centred on apartment buildings with a view to their organisation and management.

It is this second category that is the subject of this short exposition

In this brief report we shall consider the following points from the perspective of the land surveyor:

1. The problem
2. The history of the organisation of property built under shared ownership
3. The various concepts of joint ownership
4. The organisation of property under the status of joint ownership in France
 - Advantage of the status
 - Disadvantage of the status
 - The role of the French land surveyor
5. Solutions other than joint ownership (division into volumes)
6. What new technologies can contribute to the organisation of property

1. THE PROBLEM

A property inhabited by several owners is a real physical, social and cultural entity; in short, it is a village, a district.

Of course, one rarely finds a town hall or a place of worship, but the various purposes of the premises (commerce, habitation, services) and their modes of occupation (private, public) are the basis of their identity.

Living together, in the same place, there are owners, tenants, old and young people with or without children, various social categories with lifestyles, aspirations and concerns that are, if not opposing, at least divergent.

Certainly, the situation of the property, the quality of the construction and its “standing” reduce this disparity.

Nevertheless, it is first and foremost a “living space” shared by people who, but for fate, would never have lived side by side.

The organisation of the property, therefore, both in terms of architecture and legal functioning, must have the essential aim of allowing them to live together.

In terms of the architectural aspects, the architects have tried to innovate and to make the apartment building a veritable village like, for example, Le CORBUSIER in MARSEILLE, although these various experiments have not achieved homogenous and durable results.

On the legal front, we will see that the problem is not new.

2. HISTORY

The systems for managing tall buildings belonging to several owners are often perceived as methods of managing modern buildings, and one sometimes forgets that certain authors refer back to the First Babylonian Dynasty (that is, two millennia before our era) and that ownership by floors seems to have been known throughout the East, particularly in Carthage. (see: *Nouvelle revue historique des droits français et étrangers* – July 1910 and MICHALOPOULOS, *Revue de Droit Immobilier* July-September 1995)

In France customary law reveals this system of joint ownership in certain regions, such as the custom of Auxerre of 1561 or that of Orléans or of Paris.

Specific circumstances such as the fire of Rennes in 1720, or the impossibility of developing a city such as Grenoble, surrounded by its fortifications, are cited as being at the origin of the rules of construction and management of buildings built by various owners on several floors and, therefore, of the superimposition of various properties.

The Civil Code was inspired by existing customs, but it was mainly after the massive destruction of buildings during the First World War, and to respond to the concentration of populations in the cities following the rural exodus, that the provisions existing at the time were found to be insufficient.

The status of jointly owned properties were first governed by the Law of 28 June 1938. Then the Law of 7 February 1953 extended the system of joint ownership to horizontal joint ownership.

However, it is the law of 1965 and its subsequent amendments that are truly the basis of French legislation.

The Court of Cassation has recently pointed out, in a decision of 30 June 2004, that the holder of a jointly owned lot has exclusive ownership over the private part of his lot, and the land surveyor regains an important role in describing the attributes of the lot, in the definition of its limits, both in relation to the other lots and in relation to the common parts of the building, and in the definition of the rights attached to this lot, particularly in relation to easements.

3. THE VARIOUS CONCEPTS OF JOINT OWNERSHIP

Systems of organisation and management of apartment buildings exist in numerous countries.

They differ from one country to the other depending on the history and culture of each, their traditions and practice.

There are two current theories; the unitary concept and the dualist concept of joint ownership.

- The unitary concept is one of general organised joint ownership. This has been adopted in Germany, Austria, Switzerland. In this system the joint owner only possesses a double right of use, over a determined fraction of the property (which we call the private parts) and over the parts of the property assigned for collective use. A joint owner who does not pay his charges may be expelled from the location that he occupies and of which he is not the “owner”.
- In the dualist concept one finds, in the person of the owner, the coexistence of property rights over the purchased location and binding joint ownership rights over the common parts.
- In this system, particularly if, as in France, it is covered by public law, it is the Courts that, in the final analysis, resolve disputes on a case-by-case basis, adopting different solutions depending on whether it is the interest of the joint owner or that of the community that must prevail. Furthermore, it is simultaneously a contractual (the regulations of the joint ownership is an agreement) and an institutional system, as the law imposes the essential rules of operation.

The whole difficulty lies in harmonising the individual freedom of the joint owner with the obligation to ensure effective joint administration.

Even with the dualist conception, varied approaches can exist from one country to the next, and a recent study in December 2006, carried out in the review “*Actualité Juridique Droit Immobilier*” compares the system in Quebec with the French system and highlights important differences that exist in the role and powers of the Managing Agent.

However, whichever they are, these rules must exist. They are often cruelly absent in countries where, transferring from state property to private property, apartments existing in public buildings have been sold without providing the means for managing the property as a whole. This absence of management regulations results in the rapid degradation of badly

maintained buildings, and consequently a substantial reduction in the value of the apartments and fragility of the creditor's guarantee.

4. ORGANISATION OF THE PROPERTY UNDER THE STATUS OF JOINT OWNERSHIP

We would point out, firstly, that Article 1 of the Law of 10 July 1965 declares that the said law is applicable to any built property or group of built properties where the ownership is divided between several persons. In this case the status of joint ownership applies "imperatively".

The same article, in the second paragraph, provides that the law also applies to "sets of property" unless otherwise agreed.

This property structure defined by law is a structure "of division", since it specifies that the property is divided into lots, each consisting of a "private part" and a share of the communal parts.

A priori, such a mechanism could appear very complicated and present more disadvantages than advantages.

In fact and in practice, the opposite is found to be the case.

4.1 The Advantages of the Status of Joint Ownership

The advantage of the status is that it legally organises the life of the community.

By clearly defining which is the private part and which is the communal part, by setting out the rights and obligations of the joint owner in relation to the private part and his share in the communal part, it protects the joint owners and gives additional guarantees to any creditors that he may have.

By organising the representation of the joint owners, defining the role and the powers of the General Meeting of Joint Owners and of their representatives through the Trade Union Council and the Management Agent, it allows a single representation of the divided building.

By fixing various levels of majority required according to the impact that the decisions will have on the joint property, rendering collective management accounts that are transparent and controllable, it facilitates the management of the apartment building.

By providing a distribution of the charges that is equitable and not open to challenge, by making maintenance of the building obligatory, by providing for improvement works, by making insurance compulsory, by granting to the community privileges over real property and movables for the recovery of charges, it ensures the durability and the conservation of the building.

The combination of guarantees stabilises the physical and legal life of the apartment building, it reassures individuals and investors and encourages fluidity in the market while reducing disputes.

4.2 The Disadvantages of the Status of Joint Ownership

A complex system of organisation such as this is never free of disadvantages.

However, these are limited and much fewer in number and quality than the advantages accrued by the status.

One could refer to the rigorous formalities that make the intervention of a professional almost necessary, but is this really a disadvantage?

One could refer to operating difficulties, either for joint properties in which there are only two joint owners, due to the fact that it may be impossible to reach a majority decision, or in large units due to problems of quorum.

Finally, there is a relative incompatibility between public and private joint owners.

4.3 The Role of the French Surveyor in the Organisation and Management of the Building

1) First of all, there has to be a plan of the building. Where the joint ownership applies to a new building, or to a sale of property yet to be completed, the surveyor uses the draft plans of the architect.

However, where the joint ownership is implemented in a built property, there must be a precise survey of the property, which is carried out by the surveyor.

The surveyor will also carry out the diagnostics necessary to implement joint ownership in a building over 15 years old, as set out in the Law of 13 December 2000, which introduced Article L 111-6-2 of the Construction and Habitation Act, and which has the objective of checking if the building is suitable to be divided (state of roofing, plumbing ...).

2) Then the surveyor intervenes in drawing up the joint ownership regulations and the statement of division of the property.

The joint ownership regulations contain some provisions that are compulsory and others that are optional.

They determine the purpose of the property.

They establish which is the communal part and which is the private part and the conditions of use of each of them.

They set out the rules relating to the administration of the communal parts.

They may set out clauses limiting the rights of the joint owners where these are justified by the purpose of the property (prohibition on hanging clothes in the windows, for example, prohibition on furnished letting or carrying out activities that cause noise or odours).

The statement of division allows identification of the lot for publication in the mortgage office.

It therefore identifies the property or the property unit that contains the lots.

It divides the property into various fractions.

It identifies each fraction by a lot number and by its nature and its place in the property.

Finally, it states the share of the communal parts included in each fraction. This share includes the share in the ownership of the land.

- 3) However, the role of the surveyor does not stop at drawing up documents prior to the implementation of joint ownership (diagnostics, plans of the premises, statement of division), nor in drawing up regulations for the future life of the building; he also participates in the management of the property, once it is put into the status of joint ownership.

This activity is provided for, in relation to French surveyors, in Article 8(1) of the Ordinal Law of 7 May 1946, and Articles 121 et seq. of the Decree of 9 September 1996.

- 4) Finally, the surveyor intervenes in the course of the life of the building, or at the moment of sale of a joint ownership lot, to establish documents that have the aim of guaranteeing the occupants and the owners (diagnostic techniques relating to the presence of lead, asbestos and termites, both in the communal parts and in the private lots, calculation of the surface of the lot in accordance with the provisions of the Carrez Law of 18 December 1996).

5. ANOTHER SOLUTION –DIVISION INTO VOLUMES

Sometimes the status of joint ownership does not lend itself to certain properties.

This is the case, for example, where there are two contiguous buildings with distinct characteristics, but circumstances are such that there is, even if very partially, a superimposition of two different properties on the same land.

This is also the case in large contemporary property units that are made up of parts with purposes that are very different and incompatible with each other such as, for example, underground public car parks, shopping arcades and public roads at ground level, offices or apartments above.

Division into volumes allows these incompatibilities to be remedied.

In this solution, there is no “communal management” of the entire property, the ground is dissociated from the constructions that it supports and each volume is independent of the others.

Moreover, it is often the case that one or several volumes of the property unit is itself subject to joint ownership status.

Each volume is then defined by its position in space, by the coordinates X, Y and Z.

It is burdened or benefits from easements of support in relation to the volumes below or above it.

In this case the surveyor is responsible for identifying each volume in space and defining the numerous easements that burden or benefit each volume.

6. WHAT NEW TECHNOLOGY CONTRIBUTES – TOWARDS A REGISTRY IN THREE DIMENSIONS

Land systems are fundamentally attached to registry systems.

These have been put in place since antiquity with the purpose of identifying parcels.

By tradition and because the technical means only allowed plans to be made in three dimensions with great difficulty, the registry representation was always done in two dimensions, length and breadth.

Certainly, the properties are well represented on the registry plans, but only according to their size on the ground.

To identify a fraction of an apartment building, there must first be identification of the parcel that supports the building within which this fraction is situated and then, using the statement of division, whether this is by joint ownership or division into volume, identifying the lot or the volume in the property supported by the previously identified parcel.

With current technology, nothing stands in the way of direct identification of the volume or lot.

Identification in three dimensions, regularly carried out for the division into volumes, could, without major problem, be generalised for any property whatsoever.

Furthermore, this would allow for resolution of the problem of natural superimpositions of different properties.

This case often arises in limestone regions, such as in the Loire country, for example, or in Dordogne, where the erosion has created sunken valleys or substantial cliffs that have sunk naturally or artificially.

It is not rare, in these sectors, to have an actual superimposition between properties that are situated above the cliff, (fields, forests, built properties), and cavities that may be very substantial and that exist in the cliff. These cavities are very often used and laid out, for example, for mushroom cultivation, restaurants, and even tourism.

These examples seem to take us away from the subject of the surveyor in the city, although here in LYON, a city of hills traversed by two rivers, I would be very shocked if there were not natural superimpositions of property apart from built properties.

The property identification chart to which the French Order of Land Surveyors attaches a fundamental importance could be a determining factor that transforms the registry from two to three dimensions.

7. CONCLUSION

Without losing his rural roots, the surveyor, over the course of time, has adopted the city.

He brings to town his specificity and his know-how.

In this regard, his skills are particularly well adapted to the needs of the organisation and management of the apartment building, in which his role is indispensable.

His technical and legal training help him to get to grips with the apartment building in its double complexity.

His humanism, his ability to listen and his sense of human relations allow him to transcend this double complexity, not only to establish rules that are clear and indispensable for the durability of the property, but to explain them and ensure they are applied with double observance of two conflicting concepts, that is, on the one hand the individual freedom of the joint tenant as against the freedom of others, and on the other the need to apply rules that allow effective management and conservation of the property.

The experience of the French surveyor in this field, among the other skills that he has, can contribute the security that is indispensable for the maintenance and therefore for the durability of assets of this type, thus encouraging fluidity in the market, confidence and a guarantee for investors.

CONTACTS

Francois MAZUYER Vice-President
Ordre Francois des Géomètres-Experts OGE
40, avenue Hoche
F-75008 Paris
FRANCE
Tel. +33 1 53 83 88 00
Fax: +33 1 45 61 14 07

E-mail: ordre@geometre-expert.fr
Web site: <http://www.geometre-expert.fr/>